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6 individually and on behalf of all others similarly situated

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
8 **FOR THE COUNTY OF SAN DIEGO**  
9 **NORTH COUNTY BRANCH**

10 Karen Meyer, individually and on behalf of all )  
11 others similarly situated, )  
12 Plaintiffs, )  
13 v. )  
14 HOMEAWAY.COM, INC. a Delaware )  
15 corporation; and Does 1 through 100, inclusive. )  
16 Defendants. )

CASE NO: 37-2017-00036668-CU-BC-NC  
CLASS ACTION

- 1. Violation of the Consumers Legal Remedies Act - California Civil Code § 1750, et seq.;
- 2. Violation of the False Advertising Law – California Business and Professions Code § 17500, et seq.;
- 3. Violations of the Unfair Competition Law – California Business and Professions Code § 17200, et seq.
- 4. Breach of Contract - Misrepresentation of Benefits - California Civ. Code § 1709
- 5. Breach of Covenant of Good Faith and Fair Dealing

1 Plaintiff Karen Meyer (“Plaintiff”), individually and on behalf of all others similarly  
2 situated (“Class”), by and through her undersigned counsel, files this Class Action Complaint  
3 against HomeAway.Com, Inc. and DOES 1 through 100, inclusive (collectively “Defendants” or  
4 “HomeAway”) and alleges as follows:

5 **INTRODUCTION**

6 1. Plaintiff brings this action to remedy violations of law in connection with  
7 Defendants’ marketing, advertisement and management of its online rental site. Defendants  
8 marketed and advertised HomeAway as a website which offers world-wide listings of rental  
9 properties, a booking and secure payment site, and 24/7 customer service.

10 2. In its marketing materials, including its website, Defendants misled consumers by  
11 advertising that by booking their reservation through HomeAway, they would receive “premium  
12 customer service that is available 24/7” to help them with any issues regarding their stay or  
13 inability to reach the owner or property manager, which it does not. In addition, Defendants  
14 charge a service fee of between 5-12% based on the total amount of the reservation, but refuses  
15 to adjust such service fee for shortened reservations.

16 3. Through its misrepresentations, Defendants have therefore deceived consumers  
17 into believing that HomeAway offered services which it does not and that it had uses and  
18 benefits, which it does not have. In fact, Defendants’ representations about its services are false  
19 and misleading. In addition, Defendants’ refusal to credit customers for reservation  
20 modifications constitutes an illegal penalty under California law.

21 4. Because of its deceptive marketing and advertising, Defendants were able to, and  
22 did, entice customers to pay a fee to use the HomeAway reservation and booking website.

23 5. Due to Defendants’ misrepresentations, numerous consumers have expressed their  
dissatisfaction with the services provided by HomeAway in online reviews with sentiments like,  
“Stay away. They basically collect a fee for doing nothing.”, “BEWARE: these people are scam

1 artist.”, “Do not use HomeAway to book rentals.”, “STAY AWAY should be their name!”,  
2 RIPOFF ALERT #Homeaway Should be called STAYAWAY.”<sup>1</sup>

3 6. Because of its deceptive marketing, Defendants were able to, and did, charge  
4 service fees for reserving and booking through HomeAway.com. As a result of Defendants’  
5 unlawful conduct, Plaintiff and the Class members have suffered harm in that they paid fees for  
6 services they thought they were getting but did not. Plaintiff therefore brings this action seeking  
7 relief on behalf of herself and all others similarly situated.

### 8 **PARTIES**

9 7. Plaintiff Karen Meyer is a United States citizen who, in or around February of  
10 2017, booked a reservation through HomeAway to rent a guesthouse in California. After  
11 booking her reservation, Ms. Meyer’s plans changed in that she would be staying at the  
12 guesthouse one less day than noted on her original reservation. She immediately advised the  
13 owner of the guesthouse, who agreed to adjust her bill, but advised her to contact HomeAway for  
14 an adjustment to the service fee charged by Defendants. The only way to contact HomeAway is  
15 through their app via either email or phone call. Ms. Meyer attempted to contact HomeAway a  
16 number of times to request an adjustment to her service fee. Even though HomeAway’s website  
17 advertised “premium customer service that is available 24/7,” Ms. Meyer was unable to get  
18 through to them on a number of occasions. For instance:

- 19 • On or about March 3, 2017, Plaintiff attempted to call HomeAway and, after  
20 being placed on hold for over 45 minutes, had to terminate the call.
- 21 • On or about March 5, 2017, during the day, Plaintiff tried to both call and email  
22 HomeAway, but was unable to get a response through either method of  
23 communication. Later that same evening, Plaintiff tried to contact HomeAway  
through the phone number listed on its website, but received a recorded message  
asking the caller to leave a message. Plaintiff left a message and requested a  
return call, but did not receive a return call.

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<sup>1</sup> <https://www.yelp.com/biz/homeaway-austin-2> (last accessed 6/16/2017)

- 1           • On or about March 6, 2017, Plaintiff called HomeAway at least three (3) times  
2           but was put on hold for 20 plus minutes, at which time she had to terminate the  
3           call. She also sent an email to HomeAway, but received no response.
- 4           • Shortly after returning from her trip to San Diego, Plaintiff was finally able to  
5           speak with a HomeAway customer service representative. Plaintiff explained the  
6           situation to the customer service representative and requested an adjustment to the  
7           service fee she had previously paid. The representative refused to adjust  
8           Plaintiff's service fee.

8           Based on Defendants' representations made on their website, Plaintiff reasonably believed that  
9           HomeAway's customer service would be available 24/7 as advertised and that it would not  
10          charge an illegal penalty for reservation modifications. Had Plaintiff known that she would not  
11          have 24/7 customer service access to HomeAway and that HomeAway would not issue a credit  
12          for modified reservations resulting in a shortened stay, she would not have paid for 24/7  
13          customer service and would never have booked her trip through HomeAway's website. As such,  
14          Plaintiff lost money and suffered injury-in-fact as a result of paying a service fee to use  
15          Defendant's booking site.

14          8. Defendant HomeAway.com, Inc. is a Delaware corporation with its principle  
15          place of business in Austin, Texas. Defendant Homeway is a website that advertises and books  
16          rental homes.

17          9. The true names and capacities of defendants DOES 1 through 100, whether  
18          individual, corporate, associate, representative, are unknown to Plaintiff who therefore sues said  
19          defendants by such fictitious names pursuant to California Code of Civil Procedure Section 474.  
20          Plaintiff will amend this Complaint to allege the true names and capacities of DOES 1 through  
21          100 when Plaintiff has such information. Plaintiff is informed and believes and thereon alleges  
22          that each of the fictitiously named defendants is responsible in some manner for the occurrences  
23          and damages alleged herein.

10. Plaintiff is informed and believes and thereon alleges that, at all times mentioned,  
each defendant, including DOES 1 through 100, was the agent, representative, alter ego,

1 successor-in-interest, affiliate, principal, partner, joint venture, and/or employee of the other  
2 defendants, and was acting within the course and scope of their agency and employment. As  
3 such, each defendant was acting within the course and scope of its authority and with the express  
4 and/or implied permission, knowledge, consent, and ratification of all other defendants when  
5 doing the acts and omissions alleged herein.

6 **JURISDICTION AND VENUE**

7 11. This Court has jurisdiction over all causes of action asserted herein pursuant to  
8 the California Constitution, Article VI, § 10 and California Code of Civil Procedure § 410.10.  
9 Jurisdiction is also proper pursuant to California Business and Professions Code §§ 17202 and  
10 17203, and California Civil Code § 1781.

11 12. Venue is proper in this Court pursuant to California Code of Civil Procedure  
12 section 395. The contract forming the basis of this Complaint concerns a rental home located in  
13 San Diego County, California.

14 13. This court has personal jurisdiction over Defendants because, among other things,  
15 HomeAway regularly conducts business in California, and has marketed rental homes located in  
16 California. In addition, Defendants market to California consumers wishing to rent homes both  
17 in the United States and internationally, and has otherwise intentionally availed itself of  
18 consumer markets in California through its business activities, advertising and marketing in  
19 California. Defendants have sufficient minimum contacts with this state to render the exercise of  
20 jurisdiction by this Court in compliance with traditional notions of fair play and substantial  
21 justice.

22 **FACTUAL ALLEGATIONS**

23 14. HomeAway advertised and marketed rental homes located in California during  
the class period.

15. Once a consumer booked a reservation through HomeAway's website and the  
booking was accepted by the property owner or manager, the consumer would be charged a

1 service fee by HomeAway of between 5-12% of the total amount of the reservation (for most  
2 bookings).

3 16. HomeAway's website stated that this service fee, among other things, helped  
4 cover the cost of providing 24/7 customer service.

5 17. On its website, HomeAway states the following:

6 The service fee is paid by the traveler when booking through the  
7 HomeAway websites. This fee helps cover the costs of operating the  
8 websites for owners and travelers. Some of the costs to run HomeAway  
9 include: facilitating secure transactions, developing our products and  
10 services, and **providing 24/7 customer service.**<sup>2</sup>

11 (emphasis added)

12 18. Through their misleading statements, Defendants intended to and did deceive  
13 consumers into believing they were paying for 24/7 customer service. This is not true. Despite  
14 Defendants' representations, HomeAway did not provide 24/7 customer service to consumers.

15 19. Through its misrepresentations, Defendants have therefore deceived consumers  
16 into believing that HomeAway had uses and benefits, which it does not have. In fact,  
17 Defendants' representations about its service are false and misleading. HomeAway does not  
18 offer 24/7 customer service as advertised.

19 20. Numerous customers have expressed their dissatisfaction and problems with the  
20 service on Sitejabber.com, Yelp.com, and Trustpilot.com. The consumer complaints and  
21 comments about HomeAway demonstrate that HomeAway's advertising and marketing materials  
22 are misleading.

23 21. On Sitejabber.com, for example, a majority of the nearly 908 reviews were 1 star,  
the lowest possible rating. Indeed, several consumers' comments demonstrate that they are, in  
fact, misled about the services provided and the fees charged by HomeAway. Below are just  
some of these reviews:

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<sup>2</sup> <https://help.homeaway.com/articles/What-is-the-service-fee-and-how-does-it-work> (accessed June 21, 2017)

1 *“Charged twice and problems getting refund”*

2 I booked this one place but somehow it was canceled. The owners  
3 resent the payment and I played [sic] and it charged 91 dollars  
4 twice to my account. I was finally able to Pay the owner but for the  
5 canceled 91 dollars I am having problems getting back. Homeaway  
6 says there is an error in their system so billing would have to  
7 contact. I still have not been contacted and it has been 3 weeks.

8 *“What a sham!”*

9 6/8/17

10 I booked a villa through HomeAway in December, they said it was  
11 available for my chosen dates so I paid their 'service fee' of nearly  
12 £100. The following day I received an email from the company  
13 who HomeAway had passed me on to who said my dates were not  
14 available, and offered other dates. I declined the other dates and  
15 was told that HomeAway would be informed that the holiday was  
16 cancelled. However, HomeAway still took their so-called 'service  
17 fee' from my account. WHY!!! They had not provided me with any  
18 service whatsoever. Trying to contact them through their customer  
19 services was like trying to get blood from a stone!! ....So my  
20 advice is DON'T USE HOMEAWAY!!!

21 *“Homeaway Customer Service Non Existant”*

22 *“Do NOT use homeaway”*

23 6/1/17

Do not give this company your credit card number, you will be  
charged a fee immediately. You will not be able to contact anyone  
who can help, I've been transferred from one person to another for  
the last hour. Don't know how they get by with this.

*“worst company ever!!!”*

5/31/17

Its the worst company i have ever dealt with. customer service??  
wait what there is no service just dumb people who takes ages to  
understand the issue. I am still awaiting a part refund after the  
property owner cancelled at the last minute. its been over 2 wks &  
still chasing part refund. will never use the company and  
would advise no one to ever use them.

1 *“No business being in the travel business!”*

2 3/30/17

3 Horrible experience by owner and HomeAway. Owner agreed to  
4 switch reservation date then suddenly switched back to original  
5 date with less than a week notice. He would not refund my money  
6 and I am out over \$1200. Owner became volatile and angry. I spent  
7 hours on hold with customer service and filled out a detailed  
8 complaint with documentation. The company said I should try  
9 disputing charges with my credit card company and have not  
10 responded to my emails. Worst experience ever by both an  
11 unprofessional owner and a company that has zero customer  
12 service or support. I will never use their service again.

13 22. On Yelp.com, the majority of reviews were also negative. Out of a total of 231  
14 reviews, 197 were 1 star. Below are just some of these reviews:

15 **Worst. Customer service. EVER.**

16 These frauds authorized deposit charges on my bank account NOT  
17 once but twice for a rental I never even signed up for. Shame on  
18 me for giving them my credit card in anticipation of possibly  
19 renting.

20 Then trying to get them to rectify it is a JOKE. Sit on hold for  
21 days, get passed around and around. They clearly try to frustrate  
22 you hoping you will go away.

23 There [sic] days later and they are STILL monopolizing MY  
money for a transaction that never occurred!! Reprehensible and  
irresponsible.

I will NEVER use HomeAway again. Ever.

**They have the worst customer service.**

I had to wait over an hour and a half to speak to a representative.  
When I finally did they were so unhelpful. I asked to speak to a  
supervisor and when she finally got on the phone (again had to  
wait), she was not only unhelpful but also extremely rude.

I am a traveler, and had a trip cancelled on us by the renter. Not only was  
it impossible to find a customer support number within the app, when I  
found the number on Wikipedia, they were grossly unhelpful. I had to  
chase down each bit of my payment to ensure I received a full refund,



1 inclusive of service fees and insurances. Such a hassle on top of the  
2 terrible experience of being cancelled on. HomeAway did nothing to make  
3 the experience right or to offer support given the hassle and disruption to  
our plans. Unhelpful app and terrible support. Strongly advise against  
using them for your bookings.

4 23. On Trustpilot.com, one reviewer wrote “NO CUSTOMER  
5 SERVICE!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!,” while another wrote: “Don't trust their guarantee at all,  
6 Homeaway doesn't care about its customers at all. That bad ad is still incorrect and on their  
7 service.”

8 24. As a result of its conduct, HomeAway has been able to sell its services to  
9 unsuspecting consumers and profit handsomely from these transactions. Accordingly,  
10 Defendants’ unfair or deceptive acts and practices have injured Plaintiff and the Class members,  
11 who have lost money and suffered damages by booking rental homes through HomeAway’s  
12 website.

13 25. Alternatively, Plaintiff and the Plaintiff Class have been harmed by the premium  
14 they paid for booking through HomeAway’s website, compared to other rental home booking  
15 sites that do not claim consumers will have 24/7 access to its customer service. As a result of its  
16 representations about the benefits and abilities of HomeAway, and claims about the way it would  
17 perform, HomeAway was able to, and did, charge a premium for its services.

18 26. A reasonable consumer would attach importance to Defendants’ representations  
19 in determining whether to book their rental home through HomeAway, including but not limited  
20 to representations that HomeAway’s customer service would be available to them 24 hours a  
21 day, 7 days a week.

22 **CLASS ACTION ALLEGATIONS**

23 27. Pursuant to California Civil Code § 1780 and California Business and Professions  
Code § 17200 et seq., Plaintiff brings this class action lawsuit on behalf of herself and members  
of the Class (the “Class”) defined as follows:

1 All persons who reside in the state of California who rented a dwelling form HomeAway  
2 plus all persons who rented a dwelling in the State of California through HomeAway's  
3 website between January 1, 2014 and the present.

4 28. Excluded from the Class are: (1) HomeAway and its officers, directors,  
5 employees, principals, affiliated entities, controlling entities, agents, and other affiliates; (2) the  
6 agents, affiliates, legal representatives, heirs, attorneys at law, attorneys in fact, or assignees of  
7 such persons or entities described herein; and (3) the Judge(s) assigned to this case and any  
8 members of their immediate families.

9 29. Pursuant to Civil Code § 1780 and Business and Professions Code § 17200 et  
10 seq., Plaintiff brings this action individually, on behalf of the general public, and on behalf of all  
11 individuals similarly situated. Plaintiff reserves the right to amend this Complaint for such Class.

12 30. This action has been brought and may be maintained as a class action pursuant to  
13 the provisions of California Code of Civil Procedure § 382 because there is a well-defined  
14 community of interests in the litigation and the proposed class is easily identified. This class  
15 action may also be properly maintained as a class action because the proposed class is  
16 ascertainable. As further set forth below, this class action meets the statutory prerequisites for the  
17 maintenance of a class action, including as set forth in Cal. Civ. Proc. Code § 382.

18 31. **Numerosity:** The Class is so numerous that joinder of all members is impractical.  
19 HomeAway listed homes for rental throughout California. Plaintiff is informed and believes that  
20 the proposed putative class consists of thousands of customers in the United States. While the  
21 precise number of class members is presently unknown to Plaintiff, this information is in the  
22 control of Defendants and can be ascertained through discovery. Members of the Class are also  
23 readily ascertainable from Plaintiffs' description of the Class and/or Defendants' records.

32. **Common Questions of Fact and Law:** Common questions of law or fact exist as  
to all members of the Class and predominate over any individual questions. Some of the  
questions of law and fact common to Class members include, but are not limited to, the  
following:

- a. Whether Defendants engaged in the conduct alleged herein;

- 1                   b. Whether Defendants engaged in unlawful, unfair, or fraudulent business  
2                   acts or practices in connection with the design, marketing and advertising  
3                   of HomeAway;
- 4                   c. Whether Defendants used any unfair, deceptive, untrue, or misleading  
5                   advertising in connection with the services offered on HomeAway’s  
6                   website;
- 7                   d. Whether Defendants made any false and/or misleading claims,  
8                   representations and/or omissions in its advertising, marketing, or other  
9                   promotional materials in connection with the services offered on  
10                  HomeAway’s website;
- 11                  e. Whether Defendants’ conduct violates consumer protection statutes and  
12                  other laws as asserted herein including, but not limited to California’s  
13                  Unfair Competition Law (Cal. Bus. & Prof. Code § 17200 et seq.),  
14                  California’s Consumer Legal Remedies Act (Cal. Civ. Code § 1750, et  
15                  seq.), and California’s False Advertising Law (Cal. Bus. & Prof. Code §  
16                  17500 et seq.)
- 17                  f. Whether the members of the Plaintiff Class sustained damages as a result  
18                  of Defendants’ conduct and, if so, the proper measure and appropriate  
19                  formula to be applied in determining such damages;
- 20                  g. Whether members of the Plaintiff Class are entitled to restitution as a  
21                  result of Defendants’ conduct and, if so, the proper measure and  
22                  appropriate formula to be applied in determining such restitution;
- 23                  h. Whether members of the Plaintiff Class are entitled to other equitable  
                    relief, and if so, the proper amount thereof;
- i. Whether members of the Plaintiff Class are entitled to injunctive relief as a  
                    result of Defendants’ conduct and, if so, the appropriate form of such  
                    injunctive relief.

1           33.     **Typicality:** Plaintiff’s claims are typical of the claims of the members of the  
2 Class in that Plaintiff and the Class members booked a rental of a home located in the State of  
3 California on HomeAway’s website (www.homeaway.com). Plaintiff and the Class members  
4 have been injured by the same wrongful practices committed by Defendants, and the relief  
5 sought is common to all members of the Class. Plaintiff’s claims arise from the same practices or  
6 course of conduct that give rise to the claims of all Class members.

7           34.     **Adequacy:** Plaintiff will fairly and adequately protect the interests of the Class  
8 members. Plaintiff booked a stay at a rental home located in California through HomeAway  
9 during the Class period and is familiar with the basic facts that form the basis of the Class  
10 members’ claims. Plaintiff is an adequate representative of the Class in that she has no interests  
11 which are adverse to or conflict with those of the Class members that Plaintiff seeks to represent.  
12 Plaintiff has also retained counsel with substantial experience and success in the prosecution of  
13 complex consumer protection class actions of this nature.

14           35.     **Superiority:** A class action is superior to any other available method for the fair  
15 and efficient group-wide adjudication of this controversy since individual joinder of all Class  
16 members is impracticable. Furthermore, the expenses and burden of individual litigation would  
17 make it difficult or impossible for individual members of the Class members to redress the  
18 wrongs done to them, especially given that the damages or injuries suffered by each individual  
19 member of the Class may be relatively small. Even if the Class members could afford  
20 individualized litigation, the cost to the court system would be substantial and individual actions  
21 would also present the potential for inconsistent or contradictory judgments. By contrast, a class  
22 action presents fewer management difficulties and provides the benefits of single adjudication  
23 and comprehensive supervision by a single court, and is manageable based on the use of  
common evidence and a core number of representations and/or omissions of material fact at  
issue.

**FIRST CAUSE OF ACTION**  
**Violations of California’s Consumer Legal Remedies Act**  
**(California Civil Code § 1750 *et seq.*)**  
**(Against All Defendants)**

1  
2 36. Plaintiff hereby re-alleges and incorporates the allegations set forth in this  
complaint as if fully set forth herein. Plaintiff brings this cause of action on behalf of the Class.

3 37. This cause of action is brought pursuant to the Consumer Legal Remedies Act  
4 (“CLRA”) (Cal. Civ. Code § 1770, et seq.), which proscribes “unfair methods of competition and  
5 unfair or deceptive acts or practices undertaken by any person in a transaction intended to result  
6 or that results in the sale or lease of goods or services to any consumer[.]”

7 38. These acts, practices, and omissions described herein were intended to result in  
the sale of goods and/or services to the consuming public. These acts, practices, and omissions  
8 violated and continue to violate the CLRA in that they constitute unlawful methods of  
9 competition, unfair or deceptive acts undertaken in a transaction which resulted in the sale of  
10 goods to consumers. Such acts and practices include, but are in no way limited to, representing  
that goods had characteristics, benefits, or uses which they do not have.

11 39. At all times relevant hereto, Plaintiff and the members of the Class were  
12 “consumers” as defined by Cal. Civ. Code § 1761(d).

13 40. At all times relevant hereto, HomeAway offered “services” as the term is defined  
14 by Cal. Civ. Code § 1761(b).

15 41. At all times relevant hereto, Defendants constituted “persons” as the term is  
defined by Cal. Civ. Code § 1761(c).

16 42. At all times relevant hereto, Plaintiff’s and other Class members’ rentals of  
17 properties advertised on HomeAway’s website constituted a “transaction” as the term is defined  
18 by Cal. Civ. Code § 1761(e).

19 43. As alleged herein, Defendants misrepresented, concealed, and/or omitted material  
20 facts regarding the nature, performance, characteristics, abilities, uses, and benefits of  
HomeAway that were misleading.

21 44. By engaging in the conduct set forth herein, Defendants violated and continue to  
22 violate the CLRA, including but not limited to California Civil Code § 1770 subsections (2), (4),  
23

1 (5), (9), and (19). In particular, through the acts and practices set forth herein, Defendants have  
2 violated and continue to violate the CLRA by, among other things:

- 3 a. Misrepresenting the certification of services, in violation of Cal. Civ. Code  
§ 1770(a)(2);
- 4 b. Using deceptive representations in connection with services, in violation  
5 of Cal. Civ. Code § 1770(a)(4);
- 6 c. Representing that goods and/or services have characteristics, uses, and  
7 benefits that they do not have, in violation of Cal. Civ. Code § 1770(a)(5);
- 8 d. Advertising goods and/or services with intent not to sell them as  
9 advertised, in violation of Cal. Civ. Code § 1770(a)(9);
- 10 e. Inserting an unconscionable provision in the contract, in violation of Cal.  
Civ. Code § 1770(a)(19).

11 45. In purchasing Defendants' services advertised on HomeAway, Plaintiff and other  
12 Class members relied on Defendants' acts, practices, and omissions to their detriment. Had  
13 Plaintiff and the Class known about the true nature of HomeAway, they would not have booked  
their rental home through HomeAway or would have paid less.

14 46. As a direct and proximate result of Defendants' unfair and deceptive conduct,  
15 Plaintiff and the Class members have lost money or property in that they bought a service they  
16 otherwise would not have, they overpaid for their rental home booked through HomeAway,  
17 and/or did not receive the benefit of their bargain. Plaintiffs and other Class members were  
18 deceived into purchasing HomeAway's services as a direct and proximate result of Defendants'  
19 unlawful methods of competition and unfair or deceptive acts. As a direct and proximate result of  
20 Defendants' violations of the CLRA, Plaintiff and other Class members have therefore suffered  
damages in an amount to be proven at trial.

21 47. By engaging in the conduct described herein, Defendants have acted with fraud,  
22 malice, and oppression and in conscious disregard of the rights of Plaintiff and the Class  
23 members. As a result, Plaintiff and the members of the Class are entitled to punitive and

1 exemplary damages in an amount to be proven at trial. Plaintiff and Class members are also  
2 entitled to equitable relief.

3 48. Pursuant to Cal. Civ. Code § 1782(a), on or about April 19, 2017, Plaintiff, on  
4 behalf of herself and other similarly situated consumers, notified HomeAway of the unlawful  
5 methods of competition, the unfair acts and practices, and the CLRA violations described herein  
6 by a certified letter, which requested that Defendant cease and desists its unlawful conduct, offer  
7 to make appropriate restitution, correction, or other remedy, among other things, as required by  
8 Cal. Civ. Code § 1782. Plaintiff's notice was sent to Defendant by certified mail, return receipt  
9 requested pursuant to Cal. Civ. Code § 1782(a)

10 49. Defendant HomeAway has failed to provide appropriate relief for its violations of  
11 the CLRA. The notice period has expired and Plaintiffs and the Class are entitled to actual,  
12 punitive, and statutory damages, costs, attorneys' fees, and any other relief as the court deems  
13 appropriate pursuant to Cal. Civ. Code § 1782(d).

14 **SECOND CAUSE OF ACTION**  
15 **Violation of California's False Advertising Law**  
16 **(California Bus. & Prof. Code § 17500)**  
17 **(Against All Defendants)**

18 50. Plaintiff hereby re-alleges and incorporates the allegations set forth in this  
19 complaint as if fully set forth herein. Plaintiff brings this cause of action on behalf of the Class.

20 51. At all times relevant hereto, Defendants were and are "persons" as defined by Cal.  
21 Bus. & Prof. Code § 17506.

22 52. California Business and Professions Code section 17500 provides: "It is unlawful  
23 for any person, firm, corporation or association...with intent directly or indirectly to dispose of  
real or personal property...or to induce the public to enter into any obligation relating thereto, to  
make or disseminate or cause to be made or disseminated from this state before the public in any  
state, in any newspaper or other publication, or any advertising device...or in any other manner  
or means whatever, including over the Internet, any statement...which is untrue or misleading,  
and which is known or which by the exercise of reasonable care should be known to be untrue or  
misleading, or for any person, firm, or corporation to so make or disseminate or cause to be so

1 made or disseminated any such statement as part of a plan or scheme with the intent not to sell  
2 that personal property...so advertised at the price stated therein, or as so advertised.”

3 53. Through the acts and practices described herein, Defendants engaged in a  
4 campaign of advertising and marketing HomeAway to the public, including Plaintiff and the  
5 Class members. Defendants’ advertisements, commercials, marketing statements, and other  
6 promotional materials and representations were disseminated to the public. As set forth herein,  
7 Defendants’ advertising, marketing, and/or promotional materials contained untrue or misleading  
8 statements about rental homes located in California and listed on HomeAway’s website.

9 54. Defendants made and disseminated this advertising, including the untrue and  
10 misleading statements, with the intent of inducing the public to book rental homes located in the  
11 State of California through HomeAway’s website.

12 55. As set forth herein, Defendants’ statements, representations, advertising and  
13 marketing materials were untrue and misleading in that they were likely to deceive, and did  
14 deceive, the public.

15 56. In making and disseminating the advertising, marketing, promotional materials,  
16 statements and representations alleged herein, Defendants knew or by the exercise of reasonable  
17 care should have known that its statements and representations about HomeAway were untrue or  
18 misleading.

19 57. Defendants made representations and/or disseminated advertising regarding  
20 HomeAway with the intent not to offer the service as advertised.

21 58. Plaintiff and the Class members booked rental homes located in California  
22 through HomeAway in reliance on Defendants’ misrepresentations. Had Plaintiff and the Class  
23 members known the true nature of HomeAway, they would not have purchased the services or  
would have paid less.

59. As a direct and proximate result of Defendants’ false and misleading advertising,  
Plaintiff and the Class members have lost money and suffered damages in that they purchased a  
service they otherwise would not have or paid more for a rental home located in California  
booked through HomeAway than they otherwise would have. Plaintiff further alleges that, as a



1 direct and proximate result of Defendants’ false and misleading advertising as alleged herein,  
2 Defendants have obtained a monetary benefit from Plaintiff and the Class members. As such,  
3 Defendants have been unjustly enriched at the expense of Plaintiff and the Class members.

4 60. Plaintiff, individually and on behalf of the Class members, requests that this Court  
5 enter such orders and judgments as may be necessary to enjoin Defendants from continuing their  
6 unfair, unlawful, and/or deceptive practices, to restore to Plaintiff and the Class members any  
7 money Defendants obtained by unfair competition, including restitution and/or restitutionary  
8 disgorgement, and for such other relief set forth below or that the Court deems proper.

9 **THIRD CAUSE OF ACTION**  
10 **Violation of California’s Unfair Competition Law**  
11 **(California Bus. & Prof. Code § 17200 et seq.)**  
12 **(Against All Defendants)**

13 61. Plaintiff hereby re-alleges and incorporates the allegations set forth in this  
14 complaint as if fully set forth herein.

15 62. California’s Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code § 17200 et  
16 seq., proscribes acts of unfair competition, including “any unlawful, unfair or fraudulent business  
17 act or practice and unfair, deceptive, untrue or misleading advertising...”

18 63. Beginning at an exact date unknown to Plaintiff but at least since sometime in or  
19 around 2014, Defendants committed and continue to commit acts of unfair competition as  
20 defined by the UCL.

21 64. As specifically alleged herein, Defendants’ acts and practices violate the  
22 California Consumer Legal Remedies Act, Cal. Civ. Code § 1770, and the California False  
23 Advertising Law, Cal. Bus. & Prof. Code § 17500, and consequently constitutes “unlawful”  
business acts and practices within the meaning of Cal. Bus. & Prof. Code § 17200.

65. Defendants’ acts and practices, as alleged herein, threaten a continued violation of  
consumer laws, including but not limited to the California Consumer Legal Remedies Act, Cal.  
Civ. Code § 1770, and the California False Advertising Law, Cal. Bus. & Prof. Code § 17500,  
violate the policy and spirit of such laws, and otherwise significantly harm consumers.

Furthermore, Defendants’ acts and practice of marketing and advertising HomeAway while

1 misrepresenting the nature and efficacy of the service is immoral, unethical, oppressive,  
2 unscrupulous, and substantially injurious to consumers. The harm to Plaintiff, the Class  
3 members, and members of the general public substantially outweighs any benefits of  
4 Defendants' conduct. Consequently, Defendants' acts and practices constitute "unfair" business  
5 acts and practices within the meaning of Cal. Bus. & Prof. Code § 17200.

6 66. Defendants' acts and practices are likely to deceive, and did deceive, Plaintiff, the  
7 Class, and members of the general public and, consequently, constitute "fraudulent" business  
8 acts and practices within the meaning of Cal. Bus. & Prof. Code § 17200. Through the untrue  
9 and misleading statements contained in Defendants' advertising, marketing and other  
10 promotional materials, as alleged herein, Defendants misled Plaintiff, the Class members, and  
11 members of the general public about HomeAway. Through the conduct described herein,  
12 Defendants violated the "fraudulent" prong of the UCL by, among other things, representing that  
13 HomeAway's consumers would have 24/7 access to its customer service.

14 67. Defendants' advertising, marketing, and other promotional materials also  
15 constitute unfair, deceptive, untrue and misleading advertising. As alleged herein, Defendants'  
16 advertising, marketing, and other promotional materials contained claims, statements, and  
17 representations that were false, misleading, and/or likely to deceive the public, the Plaintiff, and  
18 Class members.

19 68. Defendants' misrepresentations and omissions, as alleged herein, were a  
20 substantial factor in Plaintiff and other Class members making their decisions to book their rental  
21 home through HomeAway's website and pay the prices they did. Had Plaintiff and the Class  
22 members known the true nature of HomeAway, they would not have used the service or would  
23 have paid less. As a direct and proximate result of Defendants' conduct, Plaintiff and the Class  
members have suffered injury in fact and have lost money by booking their rental home through  
HomeAway.

69. As a direct and proximate result of Defendants' conduct, Defendants received ill-  
gotten gains and have been unjustly enriched at the expense of Plaintiff and the Class members.



1 limited to, all compensatory damages, incidental and consequential damages, and other damages  
2 allowed by law.

3 **FIFTH CAUSE OF ACTION**  
4 **Breach of Covenant of Good Faith and Fair Dealing**  
5 **(Against All Defendants)**

6 76. Plaintiff hereby re-alleges and incorporates the allegations set forth in this  
7 complaint as if fully set forth herein.

8 77. Defendants have failed and continue to fail to perform the terms and conditions of  
9 the agreement by which they are bound. HomeAway breached the agreement by, among other  
10 things, failing to adjust the service fee paid by Plaintiff and other Class Members for reservation  
11 modifications resulting in shortened rentals and for failing to provide 24/7 customer service as  
12 advertised.

13 78. Plaintiff and the Class performed all duties, conditions, and obligations required  
14 to be performed by Plaintiff and Class except for those acts that have been prevented, delayed, or  
15 excused by the acts or omissions of Defendants pursuant to the parties' agreement.

16 79. HomeAway's breaches of the contract between the parties are the proximate  
17 cause of injuries and damages to the Plaintiff and Class as set forth in this Complaint.

18 80. As a direct and proximate result of Defendants' failure and refusal to perform  
19 their obligations under the contract, Plaintiff and the Class suffered injuries and damages, in an  
20 amount to be determined at trial.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff, on behalf of herself and all persons similarly situated, prays for  
23 judgment against Defendants as follows:

1. That the Court enter an order certifying the Class defined herein, designating  
Plaintiff as representative of the Class, and appointing Plaintiff's counsel as Class  
counsel;

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2. That the Court enter an order temporarily and permanently enjoining Defendants from continuing the acts of unfair competition or violations of law as alleged herein;
3. That the Court enter an order requiring full restitution or restitutionary disgorgement of all amounts obtained by Defendants as a result of the misconduct set forth herein in an amount according to proof at trial;
4. For all recoverable compensatory, consequential, actual, and/or statutory damages in the maximum amount permitted by law or other equitable monetary relief, plus pre and post-judgment interest thereon;
5. For punitive and exemplary damages in amounts according to proof at trial;
6. For other equitable relief;
7. For prejudgment interest as provided by law;
8. For costs of suit incurred herein;
9. For payment of reasonable attorneys' fees and costs as permitted by law, including but not limited to California Code of Civil Procedure section 1021.5, California Civil Code sections 1780-1782, and other statutes as may be applicable; and
10. For all such other and further relief as the Court deems just and proper.

**JURY TRIAL DEMAND**

Plaintiff hereby demands a jury trial for all claims and issues so triable.

