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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10 **FAIR HOUSING COUNCIL OF**
11 **SAN FERNANDO VALLEY, et**
12 **al., etc.,**

13 **Plaintiffs,**

14 **vs.**

15 **ROOMMATE.COM, LLC,**

16 **Defendant.**

Case No. 03-CV-09386 PA (RZx)

**PLAINTIFFS' SEPARATE STATEMENT
OF UNCONTROVERTED FACTS AND
CONCLUSIONS OF LAW**

Hearing:

Date: October 20, 2008
Time: 1:30 p.m.
Room: Hon. Percy Anderson

17 Pursuant to Local Rule 56-1 and the Court's July 15, 2008 Scheduling Order [Docket No.
18 113], plaintiffs lodge the following Separate Statement of Uncontroverted Facts and
19 Conclusions of Law in support of plaintiffs' motion for partial summary judgment, or in the
20 alternative summary adjudication of issues.

21 Dated: September 15, 2008.

22 Respectfully submitted,

23 BRANCART & BRANCART

24
25 /s/ Christopher Brancart
26 Christopher Brancart
cbrancart@brancart.com
27 Attorneys for Plaintiffs
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1 **PLAINTIFFS’ SEPARATE STATEMENT OF UNCONTROVERTED FACTS**
2 **AND CONCLUSIONS OF LAW**

3 After consideration of the papers in support of and in opposition to plaintiffs’ motion
4 for partial summary judgment, or in the alternative summary adjudication of issues, and the
5 oral argument of counsel, the Court determines that the following facts have been
6 established as

7 **UNCONTROVERTED FACTS¹**

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26 ¹As used herein, the terms “sex” and “gender” are synonymous.
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UNCONTROVERTED FACT

SUPPORTING EVIDENCE

1 Roommate.com, LLC owns and
operates the website called
www.roommates.com.

Defendant Roommate.Com, LLC’s
Objections and Responses to Second
Request for Admissions Propounded by
Plaintiff Fair Housing Council of San
Fernando Valley [hereinafter
“Defendant’s Responses to Plaintiff’s
Second Request for Admissions”],
attached as Exhibit 2 to the concurrently
filed Declaration of Christopher Brancart
in Support of Plaintiffs’ Motion for
Partial Summary Judgment or in the
Alternative Summary Adjudication of
Issues [hereinafter “Brancart Decl.”],
Response to Request Nos. 1-2; Answer
to First Amended Complaint, attached as
Exhibit 5 to the Brancart Decl.
[hereinafter “Answer”], ¶ 10.

2 Roommates.com can be accessed
through the World Wide Web by users
in California and throughout the United
States.

Defendant’s Responses to Plaintiff’s
Second Request for Admissions,
Response to Request Nos. 3-4.

3 Membership of roommates.com
fluctuates but generally remains around

Declaration of Bryan Peters in Support
of Defendant’s Motion for Summary

1 150,000.

Judgment [Docket No. 46], attached as
2 Exhibit 7 to the Brancart Decl.
3 [hereinafter “Bryan Peters Decl.”], ¶ 10.
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9 4 Of these 150,000 members,
10 approximately 40,000 are offering
11 “rooms for rent” and 110,000 are
12 looking for rooms.
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Bryan Peters Decl. ¶ 10.

14 5 Approximately 24,000 of the 150,000
15 members are paying members.
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Bryan Peters Decl. ¶ 10.

20 6 Fees for paid membership are as
21 follows: \$5.99 for a 3-day trial, \$19.99
22 for 30 days, and \$29.99 for 60 days.
23

Bryan Peters Decl. ¶ 10.

24 7 Roommates.com has approximately
25 150,000 active listings for roommates
26 and “rooms for rent.”
27

Bryan Peters Decl. ¶ 4; Declaration of
Michael Peters in support of Motion to
Dismiss for Lack of Personal
Jurisdiction or, Alternatively, To
28 Transfer Case [Docket No. 13], attached

1 as Exhibit 6 to the Brancart Decl.
2 [hereinafter “Michael Peters Decl.”], ¶ 5.
3
4 8 Roommates.com does not provide users Deposition of Bryan Peters conducted
5 who are not members of September 2, 2008, attached as Exhibit
6 roommates.com with contact 10 to the Brancart Decl. [hereinafter
7 information for other users. “2008 Peters Depo.”], at 36:8-10, 40:18-
8 22, 43:6-8.
9
10 9 “To become a member of Bryan Peters Decl. ¶ 11.
11 Roommates.com, a user must complete
12 a personal profile.”
13
14 10 “This is essentially a questionnaire with Bryan Peters Decl. ¶ 11.
15 multiple choice questions in either a
16 drop-down menu or select-a-box
17 format, in which users disclose
18 information about themselves as well as
19 what they are looking for in a
20 roommate.”
21
22 11 To begin this process, a user is directed Bryan Peters Decl. ¶ 12.
23 to a Free Membership page and “a user
24 is asked whether he or she is looking for
25 a roommate [i.e., a room to rent], or has
26 a place for rent.”
27
28 12 Exhibit H to the Declaration of Bryan Bryan Peters Decl. ¶ 12.

1 Peters is a true and correct copy of the
2 Free Membership page in 2004.

3
4 13 The Free Membership page in 2004 Bryan Peters Decl. Exhibit H
5 allowed a user to select either “I am (authenticated at ¶ 12 of the Bryan Peters
6 looking for a place to live” or “I have a Decl.).
7 place available for rent.”

8
9 14 Exhibit 1 to the Declaration of Justin Declaration of Justin Massa, attached as
10 Massa is a true and correct copy of the Exhibit 4 to the Brancart Decl.
11 Free Membership page in 2008. [hereinafter “Massa Decl.”], ¶ 4.

12
13 15 In 2008, the Free Membership page Mass Decl. Exhibit 1 (authenticated at ¶
14 allows a user to select either “I NEED a 4 of the Massa Decl.).
15 place to live” or “I HAVE a place
16 available.”

17
18 16 If a person clicks “I am looking for a 2008 Peters Depo. at 48:9-15.
19 place to live” on the Free Membership
20 page, then to become a member he or
21 she has to complete or advance through
22 a series of webpages to become a
23 member.

24
25 17 “If the user is looking for a roommate Bryan Peters Decl. ¶ 13.
26 [i.e., a room to rent], he or she is
27 directed to a page entitled ‘My Location
28 Preferences’ and asked to choose a

1 location preference including city and
2 state.”

3
4 18 “On the next page, which is entitled Bryan Peters Decl. ¶ 14.
5 ‘Surrounding Cities,’ the user is
6 prompted to select which, if any, cities
7 surrounding his or her preferred
8 location he or she wishes to include in
9 the search.”

10
11 19 “Then, the user is prompted to deselect Bryan Peters Decl. ¶ 15.
12 any regions of the location the user
13 finds undesirable.”

14
15 20 “On the next page, entitled ‘My Rental Bryan Peters Decl. ¶ 16.
16 Preferences,’ the user supplies criteria
17 concerning 1) the type of residence in
18 which the user is interested, 2) desired
19 move-in date, 3) maximum rent the user
20 wishes to pay, 4) lease period, and 5)
21 whether the user will share a bedroom
22 and/or bathroom.”

23
24 21 The My Rental Preferences page (now Bryan Peters Decl. Exhibit L
25 called the My Space Preferences page) (authenticated at ¶ 16 of the Bryan Peters
26 states “Select the criteria by which we Decl.) (stating “Select the criteria by
27 should match your potential roommate / which we should match your potential
28 rental.”); Massa Decl. Exhibit

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3 (authenticated at ¶ 24 of the Massa Decl. as a true and correct copy of the My Space Preferences form in 2008) (stating “Select the criteria by which we should match your potential roommate / rental”).

22 “The following page, entitled ‘My Roommate Preferences,’ prompts the user to select the criteria by which Roommates.com should match the user’s potential roommate.”

Bryan Peters Decl. ¶ 17.

23 The My Roommate Preferences page states “Select the criteria by which we should match your potential roommate.”

Bryan Peters Decl. Exhibit M (authenticated at ¶ 17 of the Bryan Peters Decl.) (stating “Select the criteria by which we should match your potential roommate”); Massa Decl. Exhibit 8 (authenticated at ¶ 40 of the Massa Decl. as a true and correct copy of the My Space Preferences form in 2008) (stating “Select the criteria by which we should match your potential roommate”).

24 On the next page, “entitled ‘About Me,’ the user is prompted to ‘[s]elect details regarding yourself/your lifestyle.’”

Bryan Peters Decl. ¶ 18.

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25 “On the next page, entitled ‘My Personality,’ the user may indicate which ‘emoticon’ (i.e., a cartoonish representation of a facial expression) generally displays his or her personality or character.”

Bryan Peters Decl. ¶ 19.

26 “The final page of the personal profile for those seeking a roommate [i.e., seeking a room] is entitled ‘Additional Comments.’”

Bryan Peters Decl. ¶ 21.

27 A homeseeker must complete the About Me questionnaire to become a member of roommates.com.

Defendant’s Responses to Plaintiff’s Second Request for Admissions, Response to Request No. 70 (admitting that “for users who provide the response ‘I NEED a place to live’ on the Free Membership webpage, a user must complete the form on the About Me webpage to become a member of roommates.com”); Bryan Peters Decl. ¶ 11 (“To become a member of Roommates.com, a user must complete a personal profile. This is essentially a questionnaire.”), ¶ 18 (the questionnaire used in connection with the process of

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creating a personal profile includes the About Me form); Massa Decl. ¶ 55 (stating that roommates.com prompts a homeseeker to complete an About Me page to become a member of roommates.com); 2008 Peters Depo. at 67:11-21.

28 Roommates.com has not made changes to the About Me form between 2004 and the present. 2008 Peters Depo. 73:23 to 75:10.

29 The About Me form prompts the homeseeker to indicate information about him or herself. Bryan Peters Decl. ¶ 18 (“On a page entitled ‘About Me,’ the user is prompted to ‘[s]elect details regarding yourself/your lifestyle.’”).

30 The About Me form asks a homeseeker to indicate his or her age. Bryan Peters Decl. Exhibit N at p. 62 (authenticated at ¶ 18 of the Bryan Peters Decl. as a true and correct copy of the About Me form in 2004) (prompting a user to indicate his or her age); Massa Decl. Exhibit 9 (authenticated at ¶ 57 of the Massa Decl. as a true and correct copy of the About Me form in 2008) (prompting a user to indicate his or her age); Massa Decl. ¶ 59 (stating that the

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About Me form prompts a homeseeker to indicate his or her age); Defendant’s Responses to Plaintiff’s Second Request for Admissions, Response to Request No. 72 (“Admitted that, for users who provide the response ‘I NEED a place to live’ on the Free Membership webpage, the first place where a user may provide information on the About Me webpage is a drop down menu that lists ages from 18 to 99”).

32 The homeseeker must provide his or her age.

Bryan Peters Decl. ¶ 18(a) (stating “the user must select his or her age”); Massa Decl. ¶¶ 61-62.

33 A homeseeker cannot submit the About Me form or become a member of roommates.com without indicating an age.

Defendant’s Responses to Plaintiff’s Second Request for Admissions, Response to Request No. 75 (admitting that a homeseeker “may not continue with the registration process on roommates.com unless the user selects an age”), Response to Request No. 76 (admitting that when a homeseeker provides no age and clicks the next button a pop-up box will appear stating “Age is required”); Deposition of Bryan

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34 The About Me form asks a homeseeker to indicate his or her sex.

A. Peters conducted July 27, 2004, attached as Exhibit 3 to the Brancart Decl. [hereinafter “2004 Peters Depo.”], at 51:13 to 53:1; Massa Decl. Exhibit 11 (authenticated at ¶ 62 of the Massa Decl.) (showing the pop-up box that appears); Massa Decl. ¶ 62 (stating that a homeseeker cannot proceed beyond the About Me form without making an age selection).

Bryan Peters Decl. Exhibit N at p. 62 (authenticated at ¶ 18 of the Bryan Peters Decl. as a true and correct copy of the About Me form in 2004) (prompting a user to indicate his or her “Gender”); Massa Decl. Exhibit 9 (authenticated at ¶ 57 of the Massa Decl. as a true and correct copy of the About Me form in 2008) (prompting a user to indicate his or her “Gender”); Defendant’s Responses to Plaintiff’s Second Request for Admissions, Response to Request No. 78 (“Admitted that, for users who provide the response ‘I NEED a place to live’ on the Free Membership webpage, the second place where a user may

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provide information on the About Me webpage is a drop down menu that lists the options ‘Male’ or ‘Female’”); Massa Decl. ¶ 63 (stating that the second question on the About Me form asks a homeseeker to indicate his or her sex); Bryan Peters Decl. ¶ 18(b) (“Next to the heading ‘Gender,’ the user must select from a drop down menu either ‘Male’ or ‘Female.’”).

35 In response to the sex question on the About Me page, a homeseeker can select one option from a drop down menu containing the following two menu choices: “Male” and “Female.”

Massa Decl. ¶ 64; see Massa Decl. Exhibit 12 (authenticated at ¶ 64 of the Massa Decl. as a true and correct copy of the About Me form showing the options in the drop down menu for Gender).

36 A homeseeker is required to indicate a sex.

Bryan Peters Decl. ¶ 18(b) (“Next to the heading ‘Gender,’ the user must select from a drop down menu either ‘Male’ or ‘Female.’”); Massa Decl. ¶ 65.

37 A homeseeker cannot submit the About Me form or become a member of roommates.com without indicating a sex.

Defendant’s Responses to Plaintiff’s Second Request for Admissions, Response to Request No. 81 (admitting that a homeseeker “may not continue with the registration process on

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roommates.com unless the user provides either ‘Male’ or ‘Female’”), Response to Request No. 82 (admitting that when a homeseeker provides no sex and clicks the next button a pop-up box will appear stating “Gender is required”); 2004 Peters Depo., at 51:13 to 52:4; Massa Decl. Exhibit 13 (authenticated at ¶ 65 of the Massa Decl.) (showing the pop-up box that prevents a homeseeker from continuing with the registration process without indicating a sex); Massa Decl. ¶ 65.

38 The About Me form asks a homeseeker to indicate his or her sexual orientation.

Bryan Peters Decl. Exhibit N at p. 62 (authenticated at ¶ 18 of the Bryan Peters Decl. as a true and correct copy of the About Me form in 2004) (prompting a user to indicate his or her “Sexual Orientation”); Massa Decl. Exhibit 9 (authenticated at ¶ 57 of the Massa Decl. as a true and correct copy of the About Me form in 2008); Massa Decl. ¶ 66; Defendant’s Responses to Plaintiff’s Second Request for Admissions, Response to Request No. 84 (“Admitted that, for users who provide the response

1 'I NEED a place to live' on the Free
2 Membership webpage, the third place
3 where a user may provide information on
4 the About Me webpage is a drop down
5 menu that lists the options 'Straight' or
6 'Gay/Lesbian'); Bryan Peters Decl. ¶
7 18(c) ("Next to the heading 'Sexual
8 Orientation,' the user must select from a
9 drop-down menu either 'Straight' or
10 'Gay/lesbian.'").

11
12 39 In response to the third question on the
13 About Me page, a homeseeker can
14 select one option from a drop down
15 menu containing the following two
16 menu choices: "Straight" and
17 "Gay/Lesbian."

Massa Decl. ¶ 67; see Massa Decl.
Exhibit 14 (authenticated at ¶ 67 of the
Massa Decl. as a true and correct copy of
the About Me page showing the options
in the drop down menu for Sexual
Orientation).

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19 40 The homeseeker is required to indicate
20 a sexual orientation.

Bryan Peters Decl. ¶ 18(c) ("Next to the
heading 'Sexual Orientation,' the user
must select from a drop-down menu
either 'Straight' or 'Gay/lesbian.'");
Massa Decl. ¶ 68.

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25 41 41. A homeseeker cannot submit the
26 About Me form or become a member of
27 roommates.com without indicating a

Massa Decl. ¶ 68; Defendant's
Responses to Plaintiff's Second Request
for Admissions, Response to Request

1 sexual orientation.

No. 87 (admitting that a homeseeker
“may not continue with the registration
process on roommates.com unless the
user provides either the response
‘Straight’ or ‘Gay/Lesbian’”), Response
to Request No. 88 (admitting that when a
homeseeker provides no sexual
orientation and clicks the next button a
pop-up box will appear stating “Sexual
orientation is required”); Massa Decl.
Exhibit 15 (authenticated at ¶ 68 of the
Massa Decl.) (showing the pop up box
that appears when a homeseeker attempts
to leave the sexual orientation question
blank); 2004 Peters Depo., at 51:13 to
52:2.

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18 42 The About Me form asks a homeseeker
19 to indicate his or her familial status.

Bryan Peters Decl. Exhibit N at p. 62
(authenticated at ¶ 18 of the Bryan Peters
Decl. as a true and correct copy of the
About Me form in 2004) (prompting a
user to indicate his or her “Children”
status); Massa Decl. Exhibit 9
(authenticated at ¶ 57 of the Massa Decl.
as a true and correct copy of the About
Me form in 2008) (prompting a user to
indicate his or her “Children” status);

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Massa Decl. ¶ 78; Defendant’s Responses to Plaintiff’s Second Request for Admissions, Response to Request No. 102 (“Admitted that, for users who provide the response ‘I NEED a place to live’ on the Free Membership webpage, the eighth place where a user may provide information on the About Me webpage is a drop down menu that lists the following options: ‘Children will not be present’ and ‘Children will be present’”); Bryan Peters Decl. ¶ 18(g) (“Next to the heading ‘Children,’ the user must choose from a drop-down menu either ‘Children will not be present’ or ‘Children will be present.’”).

43 In responding to the familial status question on the About Me page, a homeseker can select one menu option from a drop down menu containing the following two menu options: “Children will not be present” and “Children will be present.

Massa Decl. ¶ 79; Massa Decl. Exhibit (authenticated at ¶ 79 of the Massa Decl. as a true and correct copy of the About Me form showing the menu options in the drop down menu for Children).

44 A homeseker is required to indicate a familial status.

Bryan Peters Decl. ¶ 18(g) (“Next to the heading ‘Children,’ the user must choose

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45 A homeseeker cannot submit the About Me form or become a member of roommates.com without indicating a familial status.

from a drop-down menu either ‘Children will not be present’ or ‘Children will be present.’”); Massa Decl. ¶ 80.

Massa Decl. ¶ 80; Defendant’s Responses to Plaintiff’s Second Request for Admissions, Response to Request No. 103 (admitting that a homeseeker “may not continue with the registration process on roommates.com unless the user provides either ‘Children will not be present’ or ‘Children will be present’”), Response to Request No. 104 (admitting that when a homeseeker provides no response to this question and clicks the next button a pop-up box will appear stating “Children selection is required”); Massa Decl. Exhibit 19 (authenticated at ¶ 80 of the Massa Decl.) (showing the pop-up box that appears when a homeseeker attempts to proceed beyond the About Me page without selecting a familial status).

1 46 The About Me form asks a homeseeker Bryan Peters Decl. Exhibit N at p. 62
2 to indicate his or her occupation. (authenticated at ¶ 18 of the Bryan Peters
3 Decl. as a true and correct copy of the
4 About Me form in 2004) (prompting the
5 user to indicate his or her “Occupation”);
6 Massa Decl. Exhibit 9 (authenticated at ¶
7 57 of the Massa Decl. as a true and
8 correct copy of the About Me form in
9 2008) (prompting the user to indicate his
10 or her “Occupation”) Massa Decl. ¶ 69.

11
12 47 In response to the occupation question, Defendant’s Responses to Plaintiff’s
13 a homeseeker can select from a drop Second Request for Admissions,
14 down menu with the following options: Response to Request No. 90 (“Admitted
15 “Professional,” “Student,” “Military,” that, for users who provide the response
16 “Unemployed,” and “Retired.” ‘I NEED a place to live’ on the Free
17 Membership webpage, the fourth place
18 where a user may provide information on
19 the About Me webpage is a drop down
20 menu that lists the following options:
21 ‘Professional,’ ‘Student,’ ‘Military,’
22 ‘Unemployed,’ and ‘Retired.’”); Massa
23 Decl. Exhibit 16 (authenticated at ¶ 70 of
24 the Massa Decl.) (showing the options
25 that a homeseeker can select in response
26 to the occupation question); Massa Decl.
27 ¶ 70.
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48 A homeseeker cannot submit the About Me form or become a member of roommates.com without indicating an occupation.

Massa Decl. ¶ 71 (stating that when a homeseeker attempts to leave the occupation question blank and click the next button at the bottom of the About Me page, a pop up box appears, stating “Occupation is required” and directing the homeseeker back to the About Me page); Massa Decl. Exhibit 17 (authenticated at ¶ 71 of the Massa Decl.) (showing the pop-up box that appears).

49 With respect to a user who is utilizing roommates.com to “list a room for rent,” “the personal profile process is similar” to the process that a user who is looking for a room completes.

Bryan Peters Decl. ¶ 22.

50 “Thus, when listing a room for rent, the user responds to prompts on several pages that result in the posting of specific information about the location of the room for rent, neighborhood details such as subway access, dining, schools, etc., a description of the room for rent and amenities included, rental

Bryan Peters Decl. ¶ 23.

1 and deposit information, and utility and
2 occupancy information.”

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4 51 “On one page entitled ‘Household Bryan Peters Decl. ¶ 24.
5 Description,’ a user must provide
6 details regarding the characteristics of
7 his or her own household.”

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9 52 “The user may include an ‘emoticon’ Bryan Peters Decl. ¶ 25.
10 best reflecting the household’s
11 personality and up to six photos with
12 his or her profile.”

13
14 53 “On the following page, entitled ‘My Bryan Peters Decl. ¶ 26.
15 Roommate Preferences,’ the user may
16 select criteria by which
17 Roommates.com should match the
18 user’s potential roommate.”

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20 54 “The final page of the personal profile Bryan Peters Decl. ¶ 27.
21 for those with a place for rent is entitled
22 ‘Additional Comments.’”

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24 55 A housing provider must complete the Bryan Peters Decl. ¶ 11 (stating that a
25 My Roommate Preferences form to user must complete a personal profile to
26 become a member of roommates.com. become a member of roommates.com),
27 ¶¶ 22, 23, 26 (stating that a user
28 responds to prompts on several pages to

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56 The My Roommate Preferences form prompts a housing provider to indicate his or her preference for homeseekers with respect to age.

create a personal profile, including the My Roommate Preferences page); Massa Decl. ¶ 179 (stating that roommates.com prompts a housing provider to complete a My Roommate Preferences page); 2008 Peters Depo. at 128:15-19, 130:16-20, 130:24 to 131:3, 140:19-24.

Bryan Peters Decl. Exhibit Y, at p. 84 (authenticated at ¶ 26 of the Bryan Peters Decl. as a true and correct copy of the My Roommate Preferences form in 2004) (prompting a housing provider to indicate an age preference); Massa Decl. Exhibit 37 (authenticated at ¶ 179 of the Massa Decl. as a true and correct copy of the My Roommate Preferences form in 2008) (prompting a housing provider to indicate an age preference); Massa Decl. ¶ 182; Defendant’s Responses to Plaintiff’s Second Request for Admissions, Response to Request No. 269 (stating “for users who provide the response ‘I HAVE a place available’ on the Free Membership webpage, the first area where the user can provide information in the My Roommates

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Preferences webpage allows the user to provide an age range”).

57 By modifying the default settings, a user can use the My Roommate Preferences form to express or state his or her preferences in connection with the individual he or she will consider as a roommate. 2008 Peters Depo. at 145:3-7.

58 The housing provider can select a preferred age range by selecting minimum and maximum ages from drop down menus containing whole numbers between 18 and 99. Massa Decl. ¶ 183; see Massa Decl. Exhibit 38 (authenticated at ¶ 183 of the Massa Decl. as a true and correct copy of the My Roommate Preferences form that roommates.com prompts a housing provider to complete, showing a portion of the drop down menu for the age range).

59 A housing provider cannot submit the My Roommate Preferences form or become a member of roommates.com if he or she leaves the age question blank. Massa Decl. ¶ 184; Defendant’s Responses to Plaintiff’s Second Request for Admissions, Response to Request No. 274 (admitting that, if a housing provider “does not provide a response in the first area where the user can provide information in the My Roommate Preferences webpage and then the user

1 clicks the ‘next’ button, then a pop-up
2 box appears stating ‘Please make a
3 selection’”); Massa Decl. Exhibit 39
4 (authenticated at ¶ 184 of the Massa
5 Decl.) (showing the pop-up box that
6 appears); 2008 Peters Depo. at 146:13 to
7 147:6.

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9 60 The My Roommate Preferences form
10 prompts a housing provider to indicate
11 his or her preferences for homeseekers
12 with respect to sex and sexual
13 orientation by prompting the housing
14 provider to select a preference for
15 Female homeseekers.

Bryan Peters Decl. Exhibit Y, at p. 84
(authenticated at ¶ 26 of the Bryan Peters
Decl. as a true and correct copy of the
My Roommate Preferences form in
2004) (prompting a housing provider to
indicate preferences for Male and
Female homeseekers based on sex and
sexual orientation); Massa Decl. Exhibit
37 (authenticated at ¶ 179 of the Massa
Decl. as a true and correct copy of the
My Roommate Preferences form in
2008) (prompting a housing provider to
indicate a preference for Male and
Female homeseekers based on sex and
sexual orientation); Massa Decl. ¶¶ 185-
187; Defendant’s Responses to
Plaintiff’s Second Request for
Admissions, Response to Request No.
278 (stating “for users who provide the

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61 The My Roommate Preferences form prompts a housing provider to indicate his or her preferences for homeseekers with respect to sex and sexual orientation by prompting the housing provider to select a preference for Male homeseekers.

response ‘I HAVE a place available’ on the Free Membership webpage, the second area where the user can provide information in the My Roommates Preferences webpage allows the user to provide a response from a drop down menu with the following options: ‘Straight or lesbian,’ ‘Straight,’ ‘Lesbian,’ or ‘No females’”).

Bryan Peters Decl. Exhibit Y, at p. 84 (authenticated at ¶ 26 of the Bryan Peters Decl. as a true and correct copy of the My Roommate Preferences form in 2004) (prompting a housing provider to indicate preferences for Male and Female homeseekers based on sex and sexual orientation); Massa Decl. Exhibit 37 (authenticated at ¶ 179 of the Massa Decl. as a true and correct copy of the My Roommate Preferences form in 2008) (prompting a housing provider to indicate a preference for Male and Female homeseekers based on sex and sexual orientation); Massa Decl. ¶¶ 185-187; Defendant’s Responses to Plaintiff’s Second Request for

1 Admissions, Response to Request No.
2 284 (stating “for users who provide the
3 response ‘I HAVE a place available’ on
4 the Free Membership webpage, the third
5 area where the user can provide
6 information in the My Roommates
7 Preferences webpage allows the user to
8 provide a response from a drop down
9 menu with the following options:
10 ‘Straight or gay,’ ‘Straight,’ ‘Gay,’ or
11 ‘No males’”).

12
13 62 With respect to the “Female” prompt, a
14 housing provider can indicate a
15 preference for female homeseekers by
16 selecting one option from a drop down
17 menu containing the following four
18 options: “Straight or lesbian,”
19 “Straight,” “Lesbian,” and “No
20 females.”

Massa Decl. ¶ 186; see Massa Decl.
Exhibit 40 (authenticated at ¶ 186 of the
Massa Decl. as a true and correct copy of
the My Roommate Preferences form that
roommates.com prompts a housing
provider to complete, showing the
options in the Female drop down menu).

21
22 63 With respect to the “Male” prompt, a
23 housing provider can indicate a
24 preference for male homeseekers by
25 selecting one option from a drop down
26 menu containing the following four
27 options: “Straight or gay,” “Straight,”
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Massa Decl. ¶ 187; see Massa Decl.
Exhibit (authenticated at ¶ 187 of the
Massa Decl. as a true and correct copy
of the My Roommate Preferences form
that roommates.com prompts a housing
provider to complete, showing the

1 “Gay,” and “No males.”

options in the Male drop down menu).

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3 64 A housing provider cannot submit the
4 My Roommate Preferences form or
5 become a member of roommates.com if
6 he or she leaves either the Female or
7 Male question blank.

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Massa Decl. ¶¶ 188-189 (stating that, if a housing provider does not provide a response to the Male and Female questions on the My Roommate Preferences page and clicks on the “next” button on the bottom of the page, a pop-up box appears, stating “Please make a selection” and directing the housing provider back to the My Roommate Preferences page); Massa Decl. Exhibit 42 (authenticated at ¶ 188 of the Massa Decl.) (showing the pop-up box that appears if a housing provider attempts to leave the Female prompt blank); Massa Decl. Exhibit 43 (authenticated at ¶ 189 of the Massa Decl.) (showing the pop-up box that appears if a housing provider attempts to leave the Male prompt blank); 2008 Peters Depo. at 147:10 - 148:17 (cannot leave the Female prompt blank); 2008 Peters Depo. at 148:18 to 149:16 (cannot leave Male prompt blank).

65 The My Roommate Preferences form

Bryan Peters Decl. Exhibit Y, at p. 84

1 prompts a housing provider to indicate
2 his or her preferences for homeseekers
3 with respect to familial status.
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(authenticated at ¶ 26 of the Bryan Peters
Decl. as a true and correct copy of the
My Roommate Preferences form in
2004) (prompting a housing provider to
indicate a familial status preference);
Massa Decl. Exhibit 37 (authenticated at
¶ 179 of the Massa Decl. as a true and
correct copy of the My Roommate
Preferences form in 2008) (prompting a
housing provider to indicate a familial
status preference); Massa Decl. ¶ 193;
Defendant’s Responses to Plaintiff’s
Second Request for Admissions,
Response to Request No. 296 (stating
“for users who provide the response ‘I
HAVE a place available’ on the Free
Membership webpage, the seventh area
where the user can provide information
in the My Roommates Preferences
webpage allows the user to provide a
response from a drop down menu either:
‘I will live with children,’ or ‘I will not
live with children’”).

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25 66 The housing provider can indicate
26 preferences for homeseekers with
27 respect to familial status by selecting
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Massa Decl. ¶ 194; Massa Decl. Exhibit
44 (authenticated at ¶ 194 of the Massa
Decl. as the My Roommate Preferences

1 one option from a drop down menu
2 containing two options, “I will live
3 with children” and “I will not live with
4 children.”

page that roommates.com prompts a
housing provider to complete, showing
the options on the Children drop down
menu).

5
6 67 A housing provider cannot submit the
7 My Roommate Preferences form or
8 become a member of roommates.com if
9 he or she leaves the familial status
10 question blank.

Massa Decl. ¶ 195 (stating, if a housing
provider does not provide a response to
the familial status question on the My
Roommate Preferences page and clicks
on the “next” button on the bottom of the
page, a pop-up box appears, stating
“Please make a selection” and directing
the housing provider back to the My
Roommate Preferences page); Massa
Decl. Exhibit 45 (authenticated at ¶ 195)
(showing the pop-up box); 2008 Peters
Depo. at 150:4-14 (pop up box appears if
user leaves children question blank).

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20 68 A housing provider who selects “I will
21 not live with children” when
22 completing the My Roommate
23 Preferences page will have a member
24 profile that states “Children: No
25 children please.”

Massa Decl. ¶¶ 118-121; Defendant’s
Responses to Plaintiff’s Second Request
for Admissions, Response to Request
No. 317; Massa Decl. Exhibit 25
(authenticated at ¶ 119 of the Massa
Decl. as a true and correct copy of the
My Roommate Preferences page for
which the option “I will not live with

children” has been selected) and Exhibit 26 (authenticated at ¶ 120 of the Massa Decl. as a true and correct copy of the corresponding Member Profile indicating the preference “No children please”).

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8 69 As of August 5, 2008, the number of
9 housing providers on roommates.com
10 who indicated a preference for straight
11 homeseekers in response to the
12 questions on the My Roommate
13 Preferences form was 24,107.

Defendant Roommate.Com, LLC’s
Objections and Responses to First
Interrogatories Propounded by Plaintiff
Fair Housing Council of San Fernando
Valley, attached as Exhibit 1 to the
Brancart Decl. [hereinafter “Defendant’s
Responses to Plaintiff’s First
Interrogatories”], Response to
Interrogatory No. 5 (“As of August 5,
2008, the number of users who clicked
the ‘I HAVE a place available’ option
who completed the My Roommate
Preferences page by providing the
response ‘Straight’ to any prompt for
information was 24,107”).

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24 70 As of August 5, 2008, the number of
25 California housing providers on
26 roommates.com who indicated a
27 preference for straight homeseekers in
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Defendant’s Responses to Plaintiff’s
First Interrogatories, Response to
Interrogatory No. 6 (“As of August 5,
2008, the number of users who clicked

1 response to the questions on the My
2 Roommate Preferences form was 3,571.

the 'I HAVE a place available' option,
who completed the My Location page by
listing California as the location, and
who completed the My Roommate
Preferences page by providing the
response 'Straight' to any prompt for
information was 3,571").

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9 71 As of August 5, 2008, the number of
10 housing providers on roommates.com
11 who indicated a preference for
12 homeseekers without children in
13 response to the questions on the My
14 Roommate Preferences page was
15 39,036.

Defendant's Responses to Plaintiff's
First Interrogatories, Response to
Interrogatory No. 7 ("As of August 5,
2008, the number of users who clicked
the 'I HAVE a place available' option
who completed the My Roommate
Preferences page by providing the
response 'I will not live with children'
was 39,036").

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19 72 As of August 5, 2008, the number of
20 housing providers on roommates.com
21 who indicated a dispreference for male
22 homeseekers in response to the
23 questions on the My Roommate
24 Preferences page was 11,901.

Defendant's Responses to Plaintiff's
First Interrogatories, Response to
Interrogatory No. 8 ("As of August 5,
2008, the number of users who clicked
the 'I HAVE a place available' option
who completed the My Roommate
Preferences page by providing the
response 'No males' to any prompt for
information was 11,901").

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73 As of August 5, 2008, the number of housing providers on roommates.com who indicated a dispreference for female homeseekers in response to the questions on the My Roommate Preferences page was 3,357.

Defendant’s Responses to Plaintiff’s First Interrogatories, Response to Interrogatory No. 9 (“As of August 5, 2008, the number of users who clicked the ‘I HAVE a place available’ option who completed the My Roommate Preferences page by providing the response ‘No females’ to any prompt for information was 3,357”).

74 As of August 5, 2008, the number of housing providers on roommates.com who indicated a dispreference for homeseekers based on age in response to the questions on the My Roommate Preferences form was 38,577.

Defendant’s Responses to Plaintiff’s First Interrogatories, Response to Interrogatory No. 10 (“As of August 5, 2008, the number of users who clicked the ‘I HAVE a place available’ option who completed the My Roommate Preferences page by providing any response other than 18 to 99 to the prompt for information regarding age was 38,577”).

75 As of August 5, 2008, the number of California housing providers on roommates.com who indicated a dispreference for homeseekers based on age in response to the questions on the

Defendant’s Responses to Plaintiff’s First Interrogatories, Response to Interrogatory No. 11 (“As of August 5, 2008, the number of users who clicked the ‘I HAVE a place available’ option,

1 My Roommate Preferences form was
2 5,602.

who completed the My Location page by
listing California as the location, and
who completed the My Roommate
Preferences page by providing any
response other than 18 to 99 to the
prompt for information regarding age
was 5,602”).

9 76 As of August 5, 2008, As of August 5,
10 2008, 48,031 current users selected “I
11 HAVE a place available” on the
12 webpage

13 <http://www.roommates.com/get_starte
14 [d.rs](http://www.roommates.com/get_starte)>.

Defendant’s Responses to Plaintiff’s
First Interrogatories, Response to
Interrogatory No. 3.

16 77 As of August 5, 2008, 93,140 current
17 users selected “I NEED a place to live”
18 on the webpage

19 <http://www.roommates.com/get_starte
20 [d.rs](http://www.roommates.com/get_starte)>.

Defendant’s Responses to Plaintiff’s
First Interrogatories, Response to
Interrogatory No. 3.

22 78 To steer means, inter alia, to control the
23 course of, direct.

Merriam-Webster Online Dictionary,
available at [http://www.merriam-
webster.com/dictionary](http://www.merriam-webster.com/dictionary); American
Heritage Dictionary of the English
Language (4th ed. 2000), available at
27 <<http://www.bartleby.com/61/>>.

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79 Once a homeseeker completes a Massa Decl. ¶ 93; Bryan Peters Decl. ¶
personal profile, including completing 29.
the About Me form, Roommates.com
provides a list of available housing to
the homeseeker.

80 “Based on the criteria in the members’ Bryan Peters Decl. ¶ 29.
personal profiles [including a
homeseeker’s responses on the About
Me form], Roommate’s automated
computer system matches suitable
living partners.”

81 Members may utilize these computer- Bryan Peters Decl. ¶ 29.
generated lists of matches to find a
roommate.

82 “After finding possible roommates Bryan Peters Decl. ¶ 29.
through the matching process,
Roommate.com members typically
exchange ‘roommail’ messages and
then, after learning more about each
other, have direct contact by phone or in
person.”

83 Homeseekers who are members of Massa Decl. ¶ 94; Defendant’s
roommates.com and who are logged Responses to Plaintiff’s Second Request

1 onto roommates.com can access their
2 Match lists by clicking on the My
3 Matches tab located near the top of
4 many roommates.com webpages.
5

for Admissions, Response to Request
No. 131 (admitting that a homeseeker
who is logged onto roommates.com “can
access the My Matches webpage by
going to the roommates.com website and
clicking the tab with the phrase ‘My
Matches’”).

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9 84 A homeseeker’s Match list contains lists
10 of available housing.
11

Massa Decl. ¶ 97.

12 85 A homeseeker’s Match list states near
13 the top, “Matching roommates.”
14

Massa Decl. Exhibit 24 (authenticated at
¶ 93 of the Massa Decl.).

15 86 Exhibit 24 to the Declaration of Justin
16 Massa is a true and correct copy of the
17 first page of a My Matches list that
18 roommates.com provided to a
19 homeseeker.
20

Massa Decl. ¶ 93.

21 87 A homeseeker’s Match list does not
22 contain housing providers who have
23 indicated a dispreference for the
24 homeseeker’s disclosed age, sex, sexual
25 orientation, or familial status.
26

Defendant’s Responses to Plaintiff’s
Second Request for Admissions,
Response to Request No. 141 (admitting
that a homeseeker’s My Matches list
does not include housing providers who
indicated an age range preference that
does not include the age that the
homeseeker entered on the About Me

1 webpage), Response to Request No. 143
2 (admitting that a homeseeker’s My
3 Matches list does not include housing
4 providers who indicated a gender
5 preference that does not include the
6 gender that the homeseeker entered on
7 the About Me webpage), Response to
8 Request No. 145 (admitting that a
9 homeseeker’s My Matches list does not
10 include housing providers who indicated
11 a sexual orientation preference that does
12 not include the sexual orientation that the
13 homeseeker entered on the About Me
14 webpage).

15
16 88 Through the My Matches function,
17 roommates.com provides homeseekers
18 (i.e., users who click on the “I NEED a
19 place to live” option) with a list of
20 potential roommates.

21 Defendant Roommate.Com, LLC’s
22 Objections and Responses to Second
23 Interrogatories Propounded by Plaintiff
24 Fair Housing Council of San Diego,
25 attached as Exhibit 9 to the Brancart
26 Decl. [hereinafter “Defendant’s
27 Responses to Plaintiff’s Second
28 Interrogatories”], Response to
Interrogatory No. 26.

89 Through the My Matches function,
roommates.com provides homeseekers

Defendant’s Responses to Plaintiff’s
Second Interrogatories, Response to

1 (i.e., users who click on the “I NEED a Interrogatory No. 26.
2 place to live option) with a list of
3 potential roommates based upon their
4 responses to the About Me form and the
5 other forms completed during the
6 registration process.
7

8 90 The operation of the My Matches 2008 Peters depo. at 117:16-21, 118:11-
9 function has not changed between 2004 25.
10 and the present.
11

12 91 Roommates.com sends email messages Massa Decl. ¶ 122; 2008 Peters Depo. at
13 to homeseekers who are members of 156:5-7 (a new match notification is an
14 roommates.com, notifying them of email that is sent out to users to let them
15 housing listings. know of new matches).
16

17 92 Exhibit 27 to the Declaration of Justin Massa Decl. ¶ 125.
18 Massa is a true and correct example of
19 the email messages that homeseekers
20 receive from roommates.com notifying
21 them of matching housing providers.
22

23 93 A homeseeker does not receive email Massa Decl. ¶¶ 126-127.
24 notification of listings by housing
25 providers who have indicated a
26 dispreference for the homeseeker’s age,
27 sex, sexual orientation, or familial
28 status.

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94 Roommates.com’s email notification 2008 Peters Depo. at 120:4-7.
function has not changed between 2004
and the present.

95 To screen means, inter alia, to separate Merriam-Webster Online Dictionary,
with or as if with a screen, to examine available at <<http://www.merriam-webster.com/dictionary>>.
usually methodically in order to make a
separation into different groups, to
select or eliminate by a screening
process.

96 Screening includes using “[a] system American Heritage Dictionary of the
for preliminary appraisal and selection English Language (4th ed. 2000),
of personnel as to their suitability for available at
particular jobs [or housing].” <<http://www.bartleby.com/61/>>.

97 Once a housing provider completes a Massa Decl. ¶ 203.
personal profile, including the About
Me form, Roommates.com provides a
list of available homeseekers to the
housing provider.

98 Housing providers who are members of Massa Decl. ¶ 204.
roommates.com and who are logged
onto roommates.com can access their
Match lists by clicking on the My
Matches tab located near the top of

1 many roommates.com webpages.

2

3 99 A housing provider's Matches list Massa Decl. ¶ 203.

4 contains lists of homeseekers.

5

6 100 Exhibit 48 to the Declaration of Justin Massa Decl. ¶ 205.

7 Massa is a true and correct copy of the

8 first page of a Match list of

9 homeseekers that roommates.com

10 provides to a housing provider.

11

12 101 A housing provider's Matches list does Massa Decl. ¶¶ 209-210.

13 not contain homeseekers who have

14 disclosed an age, sex, sexual

15 orientation, or familial status contrary to

16 the preferences selected by the housing

17 provider on the My Roommate

18 Preferences from.

19

20 102 Through the My Matches function, Defendant's Responses to Plaintiff's

21 roommates.com provides housing Second Interrogatories, Response to

22 providers (i.e., users who click on the "I Interrogatory No. 26.

23 HAVE a place available" option) with a

24 list of potential roommates.

25

26 103 Through the My Matches function, Defendant's Responses to Plaintiff's

27 roommates.com provides housing Second Interrogatories, Response to

28 providers (i.e., users who click on the "I Interrogatory No. 26; 2008 Peters Depo.

1 HAVE a place available” option) with a at 151:2-19 (matches provided to user
2 list of potential roommates based upon are determined by preferences, such as
3 their responses to the My Roommate sexual orientation and children
4 Preferences form and the other forms preferences, indicated on My Roommate
5 completed during the registration Preferences form).
6 process.

7
8 104 Roommates.com sends email messages Massa Decl. ¶¶ 230, 232.
9 to housing providers who are members
10 of roommates.com, notifying them of
11 homeseekers.

12
13 105 Under default settings, a housing Defendant’s Responses to Plaintiff’s
14 provider who completes the registration Second Request for Admissions,
15 process and becomes a member of Response to Request No. 177.
16 roommates.com receives match
17 notifications automatically.

18
19 106 A housing provider’s email Massa Decl. ¶¶ 233-235.
20 notifications do not include
21 homeseekers who have disclosed an
22 age, sex, sexual orientation, or familial
23 status contrary to the preferences
24 selected by the housing provider on the
25 My Roommate Preferences from.

26
27 107 Exhibit 53 to the Declaration of Justin Massa Decl. ¶ 233.
28 Massa is a true and correct example of

1 the email messages that roommates.com
2 sends to housing providers, notifying
3 them of homeseeker matches.
4

5 108 Roommates.com provides a housing
6 provider who is a member of
7 roommates.com the ability to conduct
8 searches of roommates.com’s database
9 of homeseekers.

Massa Decl. ¶¶ 218-219; Defendant’s
Responses to Plaintiff’s Second Request
for Admissions, Response to Request
No. 174 (admitting that a housing
provider who is “logged onto
roommates.com can gain access to
certain other users’ member profiles by
clicking on the tab with the phrase
‘Power Search’ and conducting a search
from the Search the database webpage”),
Response to Request No. 344 (admitting
that housing providers can use the
Search the database page to search for
users “who provided the response ‘I
NEED a place to live’ in the member
profile”).

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22 109 “Upon request, the Site’s search engine
23 uses search criteria (such as location) to
24 create a list of available homes or
25 roommates that meet that criteria.”
26

Bryan Peters Decl. ¶ 9.

27 110 Exhibit 49 to the Declaration of Justin
28

Massa Decl. ¶ 220.

1 Massa is a true and correct copy of the
2 Search the database form.

3
4 111 The Search the database form allows
5 the housing provider to select search
6 criteria on the basis of sex, sexual
7 orientation, age, and familial status.

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10 Massa Decl. Exhibits 49 and 51
11 (authenticated at ¶¶ 221 and 228 of the
12 Massa Decl. as true and correct copies of
13 the Search the database page) (showing
14 the user’s option of checking/unchecking
15 boxes to select search criteria based on
16 sex and sexual orientation; Massa Decl.
17 Exhibit 53 (authenticated at ¶ 229 of the
18 Massa Decl. as a true and correct cop of
19 the Search the database page) (showing
20 the user’s option of selecting a search
21 criterion on the basis of familial status);
22 Massa Decl. 50 (authenticated at ¶ 223
23 of the Massa Decl. as a true and correct
24 copy of the Search the database page)
25 (showing the user’s option to select
26 search criteria based on age); Massa
27 Decl. ¶¶ 222, 224-225.

28
29 112 Through the search function,
30 roommates.com provides housing
31 providers with lists of homeseekers
32 based on the homeseekers’ age, sex,
33 sexual orientation, and familial status.

34 Defendant’s Responses to Plaintiff’s
35 Second Request for Admissions,
36 Response to Request No. 345 & 352
37 (admitting that, “for users who provide
38 the response ‘I HAVE a place available’

1 on the Free Membership webpage, the
2 Search the database webpage allows the
3 user to search for other users who
4 provide the response ‘I NEED a place to
5 live’ on the Free Membership webpage
6 based on” (a) “whether those certain
7 other users provided in their About Me
8 webpage that they are ‘Straight female,’
9 ‘Lesbian,’ ‘Straight male,’ or ‘Gay
10 male’” and (b) “what age those certain
11 other users provided on the About Me
12 webpage”); Response to Request No.
13 349 (admitting that, “for users who
14 provide the response ‘I HAVE a place
15 available’ on the Free Membership
16 webpage, the Search the database
17 webpage allows the user to provide a
18 response from a drop down menu
19 containing the following choices:
20 ‘Children present,’ or ‘Children not
21 present’”).

22
23 113 Roommates.com produces search
24 results for housing providers that
25 exclude homeseekers on the basis of
26 homeseekers’ age, sex, sexual
27 orientation, and familial status.
28

Massa Decl. ¶ 227.

- 1 114 The Search the database form allows
2 the housing provider to select search
3 criteria on the basis of occupation.
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10 115 Roommates.com formats the Search the
11 database page. Bryan Peters Decl. ¶ 9.
12
13 116 A housing provider (i.e., a person who
14 indicated “I have a place available for
15 rent” on the Free Membership page) can
16 use the Search the database page to
17 limit results by age. 2008 Peters Depo. 112:20-24, 114:12-
18 18.
19 117 A housing provider (i.e., a person who
20 indicated “I have a place available for
21 rent” on the Free Membership page) can
22 use the Search the database page to
23 limit results by, for example, selecting
24 straight female professionals. 2008 Peters Depo. 114:19-25.
25
26 118 Housing providers’ member profiles
27 include a section labeled “[user
28 nickname]’s Preferences.” Bryan Peters Decl. Exhibit AA
(authenticated at ¶ 28 of the Bryan Peters
Decl.), at, e.g., pp. 89 (profile of

1 cfb1972), 91 (profile of dslRockin), 93
2 (profile of jamescabinet).
3
4 119 The Preferences section of a housing Massa Decl. ¶¶ 110-115.
5 provider’s member profile indicates the
6 housing provider’s homeseeker
7 preferences based on age, sex, sexual
8 orientation, and familial status.
9
10 120 The Preferences section of the profile 2004 Peters Depo., Exhibit 9
11 for a housing provider with the (authenticated at 2004 Peters Depo.
12 roommates.com nickname of **johnny25**, 112:22 – 113:9).
13 for example, indicates preferences
14 based on age, sex, sexual orientation,
15 and familial status.
16
17 121 The Preferences section of johnny25’s 2004 Peters Depo., Exhibit 9
18 profile states “**Age group: 25-40.**” (authenticated at 2004 Peters Depo.
19 112:22 – 113:9).
20
21 122 On its face, johnny25’s profile indicates 2004 Peters Depo., Exhibit 9
22 a preference for homeseekers age 25-40 (authenticated at 2004 Peters Depo.
23 and a dispreference for homeseekers 112:22 – 113:9).
24 younger than age 25 and older than age
25 40.
26
27 123 The Preferences section of johnny25’s 2004 Peters Depo., Exhibit 9
28 profile states “**Gender: Female** (authenticated at 2004 Peters Depo.

1 (straight).” 112:22 – 113:9).
2
3 124 On its face, johnny25’s profile indicates 2004 Peters Depo., Exhibit 9
4 a preference for female homeseekers (authenticated at 2004 Peters Depo.
5 and a dispreference for male 112:22 – 113:9).
6 homeseekers.
7
8 125 On its face, johnny25’s profile indicates 2004 Peters Depo., Exhibit 9
9 a preference for straight homeseekers (authenticated at 2004 Peters Depo.
10 and a dispreference for lesbian 112:22 – 113:9).
11 homeseekers.
12
13 126 The Preferences section of johnny25’s 2004 Peters Depo., Exhibit 9
14 profile states “**Children: no children** (authenticated at 2004 Peters Depo.
15 **please.**” 112:22 – 113:9).
16
17 127 On its face, johnny25’s profile indicates 2004 Peters Depo., Exhibit 9
18 a preference for homeseekers who will (authenticated at 2004 Peters Depo.
19 not be living with children and a 112:22 – 113:9).
20 dispreference for homeseekers who will
21 be living with children.
22
23 128 The Preferences section of the profile 2004 Peters Depo., Exhibit 9
24 for a housing provider with the (authenticated at 2004 Peters Depo.
25 roommates.com nickname of **rob**, for 112:22 – 113:25).
26 example, indicates preferences based on
27 age, sex, and familial status.
28

1 129 The Preferences section of rob’s profile 2004 Peters Depo., Exhibit 9
2 states “Age group: 18-25.” (authenticated at 2004 Peters Depo.
3 112:22 – 113:25).
4

5 130 On its face, rob’s profile indicates a 2004 Peters Depo., Exhibit 9
6 preference for homeseekers age 18-25 (authenticated at 2004 Peters Depo.
7 and a dispreference for homeseekers 112:22 – 113:25).
8 older than age 25.
9

10 131 The Preferences section of rob’s profile 2004 Peters Depo., Exhibit 9
11 states “Gender: Male (straight or gay).” (authenticated at 2004 Peters Depo.
12 112:22 – 113:25).
13

14 132 On its face, rob’s profile indicates a 2004 Peters Depo., Exhibit 9
15 preference for male homeseekers and a (authenticated at 2004 Peters Depo.
16 dispreference for female homeseekers. 112:22 – 113:25).
17

18 133 The Preferences section of rob’s profile 2004 Peters Depo., Exhibit 9
19 states “Children: no children please.” (authenticated at 2004 Peters Depo.
20 112:22 – 113:25).
21

22 134 On its face, rob’s profile indicates a 2004 Peters Depo., Exhibit 9
23 preference for homeseekers who will (authenticated at 2004 Peters Depo.
24 not be living with children and a 112:22 – 113:25).
25 dispreference for homeseekers who will
26 be living with children.

27 135 Roommates.com makes housing Massa Decl. ¶ 117; Answer , ¶ 8
28

1 providers' member profiles available (admitting that users of roommates.com
2 for homeseekers to view on the view listings for shared housing).
3 roommates.com website.
4

5 136 "[A]s soon as a new member completes Bryan Peters Decl. ¶ 30.
6 the questionnaire, the resulting profile is
7 made available online to other
8 members."
9

10 137 Members of roommates.com can view 2008 Peters Depo. at 154:19 to 156:4;
11 other members' member profiles Massa Decl. ¶ 117.
12 through the My Matches lists, by
13 searching for a member using the
14 member's nickname, by performing a
15 power search, or by clicking links on
16 mail messages in the mail center, or by
17 clicking on links on email messages
18 containing match notifications.
19

20 138 The age, sex, sexual orientation, and 2008 Peters Depo. at 153:23 to 154:7;
21 familial status preferences indicated in Massa Decl. ¶¶ 118-121.
22 the Preferences section of a housing
23 provider's member profile are drawn
24 from the preferences that the housing
25 provider indicates in response to the
26 questions on the My Roommate
27 Preferences form.
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139 Exhibit 25 to the Declaration of Justin Massa Decl. ¶ 119.
Massa is a copy of the My Roommate Preferences form showing a housing provider’s selections for age (range of 25-25 selected), sex and sexual orientation (“No females” and “Straight” male selected), and familial status (“I will not live with children” selected).

140 Exhibit 26 to the Declaration of Justin Massa Decl. ¶¶ 120-121.
Massa is a copy of a member profile for a housing provider who made the About Me form selections indicated in Exhibit 25. The Preferences section of the housing provider’s member profile states in pertinent part: “Age range: 25-30,” “Gender: Male (straight),” “Children: No children please.”

141 As of 2004, Roommates.com’s Bryan Peters Decl. Exhibit B, at p. 30
homepage, www.roommates.com/, (authenticated at ¶ 6 of the Bryan Peters
stated “157,034 Roommates, *Rooms for Decl.) (emphasis added).*
Rent.”

142 As of 2004, Roommates.com’s Bryan Peters Decl. Exhibit B, at p. 30
homepage stated, “Let us help you find (authenticated at ¶ 6 of the Bryan Peters

1 the perfect roommate and/or *room for* Decl.) (emphasis added).
2 *rent.*”

3
4 143 Roommates.com “has approximately Bryan Peters Decl. ¶ 4 (emphasis added).
5 150,000 active listings for roommates
6 and *rooms for rent.*”

7
8 144 “Of [roommates.com’s] 150,000 Bryan Peters Decl. ¶ 10 (emphasis
9 members, approximately 40,000 are added).
10 *offering rooms for rent.*”

11
12 145 “A user of Roommates.com may ... *list* Bryan Peters Decl. ¶ 23 (emphasis
13 *a room for rent.*” added).

14
15 146 “[W]hen *listing a room for rent*, the Bryan Peters Decl. ¶ 23 (emphasis
16 user responds to prompts on several added).
17 pages that result in the posting of
18 specific information about the location
19 of the *room for rent*, ... a description of
20 the *room for rent* and amenities
21 included, *rental and deposit*
22 *information*, and utility and occupancy
23 *information.*”

24
25 147 As of 2004, roommates.com’s Free Bryan Peters Decl. Exhibit H, at p. 48
26 Membership page prompted a user to (authenticated at ¶ 12 of the Bryan Peters
27 select either “I’m looking for a place to Decl.) (emphasis added).
28 live” or “I have a place available *for*

1 *rent.*”
2
3 148 When roommates.com changed the 2008 Peters Depo. at 66:19 to 67:10.
4 language of the Free Membership page
5 from “I have a place available for rent”
6 to “I have a place available,” it was
7 most likely just a word change.
8
9 149 As of 2004, roommates.com prompted Bryan Peters Decl. ¶ 16 (emphasis
10 users looking for a room to complete a added).
11 page “entitled ‘My *Rental*
12 Preferences.’”
13
14 150 On the My Rental Preferences page, Bryan Peters Decl. ¶ 16 (emphasis
15 “the user supplies criteria concerning ... added).
16 [the] *maximum rent* the user wishes to
17 pay.”
18
19 151 On the My Rental Preferences page, Bryan Peters Decl. ¶ 16 (emphasis
20 “the user supplies criteria concerning ... added).
21 [the] *lease period.*”
22
23 152 The “My Rental Preferences Page” Bryan Peters Decl. Exhibit L, at p. 58
24 prompted the user to indicate a (authenticated at ¶ 16 of the Bryan Peters
25 “*Maximum rent*” – the “Maximum
26 dollar amount you are willing to spend
27 *for rental.*”
28

1 153 The “My Rental Preferences Page” Bryan Peters Decl. Exhibit L, at p. 58
2 prompted the user to indicate a “*Lease* (authenticated at ¶ 16 of the Bryan Peters
3 *period*” – the “Term of monetary Decl.) (emphasis added).
4 responsibility.”

5
6 154 Currently, Roommates.com prompts a Massa Decl. ¶ 22.
7 homeseeker to complete a My Space
8 Preferences page [formerly dubbed a
9 My Rental Preferences page] in order to
10 become a member of roommates.com.

11
12 155 The My Space Preferences form asks a Massa Decl. Exhibit 3 (authenticated at ¶
13 homeseeker to indicate the “*Maximum* 24 of the Massa Decl.) (emphasis
14 *rent*” – the “Maximum dollar amount added); Massa Decl. ¶ 28; Defendant’s
15 you are willing to spend *for rental.*” Responses to Plaintiff’s Second Request
16 for Admissions, Response to Request
17 No. 38 (“Admitted that, for users who
18 provide the response ‘I NEED a place to
19 live’ on the Free Membership webpage,
20 the third place for the user to provide
21 information on the My Space
22 Preferences webpage allows the user to
23 provide the maximum rent he or she
24 would be willing to spend”).

25
26 156 The options on the My Space Massa Decl. Exhibit 4 (authenticated at ¶
27 Preferences form require a homeseeker 29 of the Massa Decl.); Massa Decl. ¶
28

1 to select a maximum rent of at least
2 \$200 per month.

29; Defendant’s Responses to Plaintiff’s
Second Request for Admissions,
Response to Request No. 40 (“Admitted
that, for users who provide the response
‘I NEED a place to live’ on the Free
Membership webpage, the options in the
drop down menu on the third place for
the user to provide information on the
My Space Preferences webpage include
the following: \$200, \$300, \$400, \$500,
\$600, \$700, \$800, \$900, \$1000, \$1500,
\$2000+”).

13
14 157 A homeseeker must respond to the
15 maximum rent question on the My
16 Space Preferences form.

Massa Decl. ¶ 30; 2008 Peters Depo. at
58:19 to 61:7, 63:2-7 (user cannot
continue with the registration process
unless a maximum rent is indicated).

17
18
19 158 The My Space Preferences form asks a
20 homeseeker to indicate a “term of
21 monetary responsibility.”

Massa Decl. Exhibit 3 (authenticated at ¶
24 of the Massa Decl.); Massa Decl. ¶
31; Defendant’s Responses to Plaintiff’s
Second Request for Admissions,
Response to Request No. 41 (“Admitted
that, for users who provide the response
‘I NEED a place to live’ on the Free
Membership webpage, the fourth place
for the user to provide information on

1 the My Space Preferences webpage
2 allows the user to provide a preference
3 regarding ‘Term of monetary
4 responsibility’”).

5
6 159 The options on the My Space
7 Preferences form require a homeseeker
8 to select a term of financial
9 responsibility of at least month to
10 month.

11 Massa Decl. Exhibit 6 (authenticated at ¶
12 32 of the Massa Decl.); Massa Decl. ¶
13 32; Defendant’s Responses to Plaintiff’s
14 Second Request for Admissions,
15 Response to Request No. 43 (“Admitted
16 that, for users who provide the response
17 ‘I NEED a place to live’ on the Free
18 Membership webpage, the drop down
19 menu on the fourth place for the user to
20 provide information on the My Space
21 Preferences webpage includes the
22 following options: “12 months or less,”
23 “9 months or less,” “6 months or less,”
24 “3 months or less,” “Month to month”).

25
26 160 A homeseeker must respond to the term
27 question on the My Space Preferences
28 form.

21 Massa Decl. ¶ 33; 2008 Peters Depo. at
22 61:23 to 62:20 (user cannot continue
23 with the registration process unless a
24 term is indicated).

25
26 161 The word “term” on the My Space
27 Preferences form used in 2008 is meant

26 2008 Peters Depo. at 57:12-15, 57:23 to
27 58:1.

1 to reflect the same information as the
2 phrase “lease period” on the My Rental
3 Preferences” page used in 2004.

4 162 As of 2004, roommates.com prompted a Bryan Peters Decl. ¶ 11, 22, 23.
5 housing provider to complete a “Rental
6 Details” page in order to become a
7 member of roommates.com.

8
9 163 The “Rental Details” page prompted a Bryan Peters Decl. Exhibit U, at p. 76
10 housing provider to indicate a “*Monthly* (authenticated at ¶ 23 of the Bryan Peters
11 *rent*” – the “*Dollar amount you will* Decl.) (emphasis added).
12 *charge monthly for rental.*”

13
14 164 The “Rental Details” page prompted a Bryan Peters Decl. Exhibit U, at p. 76
15 housing provider to indicate a (authenticated at ¶ 23 of the Bryan Peters
16 “*Deposit*” – the “Initial refundable fee.” Decl.) (emphasis added).

17
18 165 The “Rental Details” page prompted a Bryan Peters Decl. Exhibit U, at p. 76
19 housing provider to indicate a “*Lease* (authenticated at ¶ 23 of the Bryan Peters
20 *period*” – the “Term of *lessee’s* Decl.) (emphasis added).
21 monetary obligation.”

22
23 166 The “Rental Details” page prompted a Bryan Peters Decl. Exhibit U, at p. 76
24 housing provider to indicate a “Date (authenticated at ¶ 23 of the Bryan Peters
25 available” – the “Date *rental* will be Decl.) (emphasis added).
26 available for occupancy.”

27
28 167 Currently, Roommates.com prompts a Massa Decl. ¶ 142.

1 housing provider to complete a Space
2 Details page [formerly dubbed a Rental
3 Details page] in order to become a
4 member of roommates.com.
5

6 168 A user who indicates “I have a place 2008 Peters Depo. at 136:24 - 137:2.
7 available” on the Free Membership
8 page is required to complete the Space
9 Details page to register and become a
10 member of roommates.com.
11

12 169 The Space Details page prompts a Massa Decl. Exhibit 31 (authenticated at
13 housing provider to indicate the ¶ 142 of the Massa Decl.) (emphasis
14 “*Monthly fee*” – the “Dollar amount you added); Massa Decl. ¶ 145-146.
15 will *charge monthly for space.*”
16

17 170 The Space Details page prompts a Massa Decl. Exhibit 31 (authenticated at
18 housing provider to indicate the ¶ 142 of the Massa Decl.) (emphasis
19 “*Deposit*” – the “*Initial refundable fee*” added); Massa Decl. ¶ 147.
20 – he or she will charge a homeseeker in
21 connection with the rental.
22

23 171 The Space Details page prompts a Massa Decl. Exhibit 31 (authenticated at
24 housing provider to indicate the “Term ¶ 142 of the Massa Decl.) (emphasis
25 of roommate’s *monetary obligation.*” added); Massa Decl. ¶ 148; Defendant’s
26 Responses to Plaintiff’s Second Request
27 for Admissions, Response to Request
28 No. 231 (admitting that the Space Details

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172 The options on the Space Details page require a housing provider to select a term of monetary obligation of at least month to month.

173 A housing provider must indicate a term in response to the term question on the Space Details page; he or she cannot leave the question blank.

174 Only 1.8% of the housing offered on roommates.com involves sharing a bedroom.

175 50% of the housing offered on roommates.com does not involve sharing a bathroom.

page “allows a user to provide the proposed term of any roommate’s monetary obligation”).
Massa Decl. Exhibit 32 (authenticated at ¶ 149 of the Massa Decl.); Massa Decl. ¶ 149; Defendant’s Responses to Plaintiff’s Second Request for Admissions, Response to Request No. 233 (admitting that “the third area to provide information on [the] Space Details webpage allows a user to provide a response stating “12 month,” “9 month,” “6 month,” “3 month,” or “month to month”).

Massa Decl. ¶ 150; 2008 Peters Depo. at 137:22 to 138:16, 138:21 to 139:6.

Defendant’s Responses to Plaintiff’s First Interrogatories, Response to Interrogatory No. 19.

Defendant’s Responses to Plaintiff’s First Interrogatories, Response to Interrogatory No. 17.

1 176 A testimonial published on the Declaration of Michael Evans, attached
2 roommates.com website states in as Exhibit 8 to the Brancart Decl.
3 pertinent part, “I just found another [hereinafter “Evans Decl.”], Exhibit 1
4 roommate for my friend on your (authenticated at ¶ 2 of the Evans Decl.)
5 website (StaciC). My friend owns a (Testimonial No. 115).
6 few houses and I fill the rooms for her.”
7

8 177 A testimonial published on the Evans Decl. Exhibit 2 (authenticated at ¶
9 roommates.com website states in 3 of the Evans Decl.) (Testimonial No.
10 pertinent part, “I’ve been using your 198).
11 site for almost 5 years – finding
12 roommates for myself and my friend (as
13 she has several large homes with
14 furnished bedrooms available[]).”
15

16 178 On September 2, 2008, the Declaration of Thomas Kayes, attached
17 roommates.com website included a as Exhibit 11 to the Brancart Decl.
18 posting for a housing provider with the [hereinafter “Kayes Decl.”], Exhibit 1
19 nickname carm54 who was an absentee (member profile of carm54)
20 landlord – i.e., this housing provider (authenticated at ¶ 1 of the Kayes Decl.).
21 was offering a room for rent in a house
22 in which the provider did not reside.
23

24 179 A testimonial published on the Kayes Decl. Exhibit 2 (Testimonial No.
25 roommates.com website states in 1675) (authenticated at ¶ 2 of the Kayes
26 pertinent part: “Great Job. I’m a Decl.).
27 landlord. I joined to find a housemate
28

1 for the other two people in my rental
2 house to help lower the rent.”

3
4 180 Approximately 99% of the rooms in
5 Los Angeles offered for rent on
6 roommates.com on September 6, 2008
7 involved the granting of a right to
8 occupy residential space in exchange
9 for the payment of at least \$300 per
10 month in rent.

Massa Decl. ¶¶ 236-244 (of 258 housing
listings on roommates.com in Los
Angeles, CA, as of Sept. 6, 2008, 255
listings advertised rent of at least \$300
per month; 2 of the 3 remaining housing
providers appeared to be offering
housing in exchange for sex-related
consideration).

11
12
13 181 Roommates.com does not collect data
14 regarding the number of housing units
15 owned by housing providers who offer
16 housing on roommates.com.

Defendant’s Responses to Plaintiff’s
First Interrogatories, Response to
Interrogatory No. 13.

17
18 182 Roommates.com does not use any
19 process to determine whether a
20 particular unit of housing offered by
21 housing providers on roommates.com
22 satisfies the specific criteria to qualify
23 for the exemptions from the Fair
24 Housing Act under 42 U.S.C. §
25 3603(b)(1)-(b)(2).

Defendant’s Responses to Plaintiff’s
First Interrogatories, Response to
Interrogatory No. 15.

26
27 183 The Comments section of **KentC’s**
28 member profile states in pertinent part:

2004 Peters Depo., Exhibit 9
(authenticated as a true and accurate

1 “I am looking for a responsible person
2 who minds there [sic] own business.”

representation of a member profile from
roommates.com at 112:14 to 114:2 of the
2004 Peters Depo.).

3
4
5 184 The Comments section of **GKaven’s**
6 member profile states in pertinent part:
7 “I’m Independent, have my own life
8 and am generally low maintenance.”

2004 Peters Depo., Exhibit 10, at pp. 10-
1 to 10-2 (authenticated as a true and
accurate representation of a member
profile from roommates.com at 112:14 to
114:11 of the 2004 Peters Depo.).

9
10
11 185 The Comments section of **BethP57’s**
12 member profile states in pertinent part:
13 “I’d like someone who likes to keep to
14 him/herself, doesn’t cook much and has
15 a busy schedule. Would like for the
16 person to feel we can be housemates
17 and help each other out if needed but no
18 need to socialize together or try to be
19 friends.”

2004 Peters Depo., Exhibit 10, at pp. 10-
13 to 10-14 (authenticated as a true and
accurate representation of a member
profile from roommates.com at 112:14 to
114:11 of the 2004 Peters Depo.).

20
21 186 The Comments section of **flavord’s**
22 member profile states in pertinent part:
23 “I’m looking for someone who won’t
24 come to me for rent money and will
25 respect people’s space and belongings.
26 Not a lot needed, just some
27 responsibility and consideration.”

2004 Peters Depo., Exhibit 10, at pp. 10-
20 to 10-21 (authenticated as a true and
accurate representation of a member
profile from roommates.com at 112:14 to
114:11 of the 2004 Peters Depo.).

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187 Roommates.com has not made changes 2008 Peters Depo. at 192:21-25.
in the manner that it collects data from
users between 2004 and the present.

188 Roommates.com has not made changes 2008 Peters Depo. at 193:2-5.
in the manner that it sorts data from
users between 2004 and the present.

189 On September 9, 2008, after the Exhibit 12 to the Brancart Decl. (Bates
discovery cutoff date, roommates.com No. R0047).
produced a document that appears to be
a comment from a user that states in
pertinent part: "I really resent that I am
forced (if I want to participate) to reveal
my sexual orientation. It is irrelevant to
what I do, how I behave, or how
responsible I am. Plus - if you were gay
you would realize this - 'coming out'
puts me at risk of prejudice in a way
that a straight person is never at risk,
and makes me vulnerable to
discrimination.... [T]his part of my
identity is never the part I think other
people need to encounter first. I hardly
have a chance to make a first
impression when 80% of the U.S.

1 population will pre-judge my
2 character.... Your profile question
3 about sexual orientation reduces a
4 personality to shallowness.”

5
6 190 “Defendant Roommate.com, LLC *Fair Housing Council of San Fernando*
7 (‘Roommate’) operates a website *Valley v. Roommate.Com, LLC*, 521 F.3d
8 designed to match people renting out 1157, 1161 (9th Cir. 2008) (en banc).
9 spare rooms with people looking for a
10 place to live.”

11
12 191 “Roommate seeks to profit by collecting *Roommate*, 521 F.3d at 1161.
13 revenue from advertisers and
14 subscribers.”

15
16 192 “Before subscribers can search listings *Roommate*, 521 F.3d at 1161.
17 or post housing opportunities on
18 Roommate’s website, they must create
19 profiles, a process that requires them to
20 answer a series of questions. In
21 addition to requesting basic information
22 – such as name, location and email
23 address – Roommate requires each
24 subscriber to disclose his sex, sexual
25 orientation and whether he would bring
26 children to a household.”

27
28 193 “Roommate...forces users to answer *Roommate*, 521 F.3d at 1166 n.19.

1 certain questions and thereby provide
2 information that other clients can use to
3 discriminate unlawfully.”
4

5 194 “Each subscriber must also describe his *Roommate*, 521 F.3d at 1161.
6 preferences in roommates with respect
7 to the same three criteria: sex, sexual
8 orientation and whether they will bring
9 children to the household.”

10
11 195 “This is no different from a real estate *Roommate*, 521 F.3d at 1166.
12 broker in real life saying, ‘Tell me
13 whether you’re Jewish or you can find
14 yourself another broker.’”

15
16 196 “[Roommates.com] asks discriminatory *Roommate*, 521 F.3d at 1166.
17 questions.... The FHA makes it
18 unlawful to ask certain discriminatory
19 questions for a very good reason:
20 Unlawful questions solicit (a.k.a.
21 ‘develop’) unlawful answers. Not only
22 does Roommate ask these questions,
23 Roommate makes answering the
24 discriminatory questions a condition of
25 doing business.”

26
27 197 “[T]he part of the profile that is alleged *Roommate*, 521 F.3d at 1166.
28 to offend the Fair Housing Act and state

1 housing discrimination laws – the
2 information about sex, family status and
3 sexual orientation – is provided by
4 subscribers in response to Roommate’s
5 questions, which they cannot refuse to
6 answer if they want to use defendant’s
7 services. By requiring subscribers to
8 provide the information as a condition
9 of accessing its service, and by
10 providing a limited set of pre-populated
11 answers, Roommate...becomes the
12 developer, at least in part, of that
13 information.”

14
15 198 “After a new subscriber completes the *Roommate*, 521 F.3d at 1161-62.
16 application, Roommate assembles his
17 answers into a ‘profile page.’ The
18 profile page displays the subscriber’s
19 pseudonym, his description and his
20 preferences, as divulged through
21 answers to Roommate’s questions.”

22
23 199 “Roommate publishes a ‘profile page’ *Roommate*, 521 F.3d at 1165.
24 for each subscriber on its website.

25
26 200 “The [profile] page describes the *Roommate*, 521 F.3d at 1165.
27 client’s personal information – such as
28

1 his sex, sexual orientation and whether
2 he has children – as well as the
3 attributes of the housing situation he
4 seeks.”

5
6 201 “The content of [member profile] pages *Roommate*, 521 F.3d at 1165.
7 is drawn directly from the registration
8 process: For example, Roommate
9 requires subscribers to specify, using a
10 drop-down menu provided by
11 Roommate, whether they are “Male” or
12 “Female” and then displays that
13 information on the profile page.”

14
15 202 Subscribers of roommates.com can *Roommate*, 521 F.3d at 1162.
16 “receive periodic emails from
17 Roommate, informing them of available
18 housing opportunities matching their
19 preferences.”

20
21 203 Roommates.com’s “email notification *Roommate*, 521 F.3d at 1167.
22 system...directs emails to subscribers
23 according to discriminatory criteria.”

24
25 204 “Roommate created the questions and *Roommate*, 521 F.3d at 1164.
26 choice of answers [on the About Me
27 form], and designed its website
28 registration process around them.”

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205 Roommates.com “uses...information *Roommate*, 521 F.3d at 1165.
[disclosed by users during the
registration process] to channel
subscribers away from listings where
the individual offering housing has
expressed preferences that aren’t
compatible with the subscriber’s
answers.”

206 “For example, a subscriber who self- *Roommate*, 521 F.3d at 1167.
identifies as a ‘Gay male’ will not
receive email notifications of new
housing opportunities supplied by
owners who limit the universe of
acceptable tenants to ‘Straight male(s),’
‘Straight female(s)’ and ‘Lesbian(s).’”

207 “Similarly, subscribers with children *Roommate*, 521 F.3d at 1167.
will not be notified of new listings
where the owner specifies ‘no
children.’”

208 “Roommate designed its search system *Roommate*, 521 F.3d at 1167.
so it would steer users based on the
preferences and personal characteristics
that Roommate itself forces subscribers
to disclose.”

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209 “Roommate’s search function *Roommate*, 521 F.3d at 1167.
is...designed to steer users based on
discriminatory criteria.”

210 “Roommate’s search engine...differs *Roommate*, 521 F.3d at 1167.
materially from generic search engines
such as Google, Yahoo! and MSN Live
Search, in that Roommate designed its
system to use allegedly unlawful criteria
so as to limit the results of each search,
and to force users to participate in its
discriminatory process.”

211 Exhibit 9 to the Declaration of Justin *Massa Decl.* ¶ 57.
Massa is a true and correct copy of the
About Me page.

212 On March 16, 2005, Sandra Couch *Declaration of Sandra Couch*, attached as
conducted a test of the roommates.com *Exhibit 13 to the Brancart Decl.*
website to determine whether *[hereinafter “Couch Decl.”]*, ¶ 2.
roommates.com steers homeseekers on
the basis of protected status through its
My Matches service.

213 Posing as a homeseeker, Ms. Couch *Couch Decl* ¶ 3.
created a member profile on
roommates.com as a homeseeker

1 (referred to herein as “Homeseeker 1”).

2 On the About Me form, Ms. Couch
3 indicated that she was Age 24, Male,
4 Straight, Without Children.

5
6 214 Posing as a second homeseeker, Ms. Couch Decl ¶ 5.

7 Couch created a second member profile
8 on roommates.com as a homeseeker
9 (referred to herein as “Homeseeker 2”).

10 On the About Me form, Ms. Couch
11 indicated she was Age 24, Male,
12 Gay/Lesbian, Without Children.

13
14 215 The member profiles Ms. Couch created Couch Decl ¶ 7.

15 for Homeseeker 1 and Homeseeker 2
16 were identical in every respect, except
17 that, in response to the Sexual
18 Orientation question on the About Me
19 form, Ms. Couch indicated that
20 Homeseeker 1 was Straight and that
21 Homeseeker 2 was Gay/Lesbian.

22
23 216 After Ms. Couch created Homeseeker Couch Decl ¶ 8.

24 1’s member profile, she clicked on the
25 Matches tab on the roommates.com
26 website and reviewed the list of
27 matching housing providers that

28

1 roommates.com generated for me. The
2 Match list included 58 housing
3 opportunities.
4

5 217 After Ms. Couch created Homeseeker Couch Decl ¶ 10.
6 2's member profile, she clicked on the
7 Matches tab on the roommates.com
8 website and reviewed the list of
9 matching housing providers that
10 roommates.com generated for me. The
11 Match list included 32 housing
12 opportunities.
13

14 218 Because, with the exception of Ms. Couch Decl ¶ 12.
15 Couch's responses to the Sexual
16 Orientation question on the About Me
17 form, Ms. Couch entered precisely the
18 same information in creating a profile
19 for Homeseeker 1 and Homeseeker 2,
20 Homeseeker 2's Match list contained
21 fewer housing opportunities (32 versus
22 58) because of Homeseeker 2's
23 disclosed sexual orientation.
24

25 219 With respect to each of the member Couch Decl ¶ 13.
26 profiles of the 32 housing providers on
27 Homeseeker 2's Match list, the
28

1 preferences expressed on the
2 “Preferences” section were consistent
3 with the age, sex, sexual orientation,
4 and familial status that Ms. Couch had
5 disclosed for Homeseeker 2 on the
6 About Me form.

7
8 220 None of the 32 housing providers Couch Decl ¶ 14.
9 included on Homeseeker 2’s Match list
10 indicated a dispreference for male
11 homeseekers, gay homeseekers, or
12 homeseekers age 24. Homeseeker 2
13 received information about only those
14 housing providers for whom
15 Homeseeker 2’s age, sex, sexual
16 orientation, and familial status were
17 preferred.

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20 * * *

21 Based on the foregoing Uncontroverted Facts, the Court now makes its

22 **CONCLUSIONS OF LAW**

23 **I. Plaintiffs’ First Claim: Federal Fair Housing Act.**

24 1. Defendant Roommate.Com, LLC (“Roommate”), has violated the federal Fair
25 Housing Act by making inquiries into homeseekers’ sex and familial status. 42 U.S.C.
26 §3604(c); 24 C.F.R. §100.75(a).

27 2. Roommate has violated the Fair Housing Act by causing housing providers to
28

1 express statements indicating preferences for homeseekers on the basis of sex and familial
2 status. 42 U.S.C. §3604(c); 24 C.F.R. §100.75(a).

3 3. Roommate has violated the Fair Housing Act by steering homeseekers to particular
4 housing opportunities on the basis of homeseekers' sex and familial status. 42 U.S.C.
5 §3604(a); 24 C.F.R. §§100.70(a), 100.75(c)(1), (c)(4), 100.80(b)(4).

6 4. Roommate has violated the Fair Housing Act by making statements that indicate
7 an intention to steer homeseekers on the basis of sex and familial status. 42 U.S.C. §3604(c);
8 24 C.F.R. §100.75(a).

9 5. Roommate has violated the Fair Housing Act by screening homeseekers on the
10 basis of sex and familial status. 42 U.S.C. §3604(a); 24 C.F.R. §§100.70(b), (d)(2),
11 100.75(c)(1), 100.80(b)(4).

12 6. Roommate has violated the Fair Housing Act by making statements that indicate
13 an intention to screen homeseekers on the basis of sex and familial status. 42 U.S.C. §3604(c);
14 24 C.F.R. §100.75(a).

15 7. Roommate has violated the Fair Housing Act by printing and publishing housing
16 providers' member profiles that indicate a preference, limitation, or discrimination on the basis
17 of sex and familial status. 42 U.S.C. §3604(c); 24 C.F.R. §100.75(a), (c)(1), (c)(2).

18 **II. Plaintiffs' Second Claim: California Fair Employment and Housing Act.**

19 8. Roommate has violated the California Fair Employment and Housing Act (FEHA)
20 by making inquiries into homeseekers' sex, sexual orientation, and familial status. Cal. Gov't
21 Code §12955(c); 24 C.F.R. §100.75(a); Cal. Gov't Code §§12955.6, 12955(b).

22 9. Roommate has violated FEHA by causing housing providers to express statements
23 indicating preferences for homeseekers on the basis of sex, sexual orientation, and familial
24 status. Cal Gov't Code §12955(c); 24 C.F.R. §100.75(a); Cal. Gov't Code §12955.6.

25 10. Roommate has violated FEHA by steering homeseekers to particular housing
26 opportunities on the basis of homeseekers' sex, sexual orientation, and familial status. Cal
27 Gov't Code §12955(k); 24 C.F.R. §§100.70(a), 100.75(c)(1), (c)(4), 100.80(b)(4); Cal. Gov't
28

1 Code §12955.6.

2 11. Roommate has violated FEHA by making statements that indicate an intention to
3 steer homeseekers on the basis of sex, sexual orientation, and familial status. Cal Gov't Code
4 §12955(c); 24 C.F.R. §100.75(a); Cal. Gov't Code §12955.6.

5 12. Roommate has violated FEHA by screening homeseekers on the basis of sex,
6 sexual orientation, and familial status. Cal Gov't Code §12955(k); 24 C.F.R. §§100.70(b),
7 (d)(2), 100.75(c)(1), 100.80(b)(4); Cal. Gov't Code §12955.6.

8 13. Roommate has violated FEHA by making statements that indicate an intention to
9 screen homeseekers on the basis of sex, sexual orientation, and familial status. Cal Gov't Code
10 §12955(c); 24 C.F.R. §100.75(a); Cal. Gov't Code §12955.6.

11 14. Roommate has violated FEHA by printing or publishing housing providers'
12 member profiles that indicate a preference, limitation, or discrimination on the basis of sex,
13 sexual orientation, and familial status. Cal Gov't Code §12955(c); 24 C.F.R. §100.75(a), (c)(1),
14 (c)(2); Cal. Gov't Code §12955.6.

15 15. Roommate has violated FEHA by aiding housing providers to violate §12955(k)
16 (screening homeseekers on the basis of sex, sexual orientation, and familial status) and
17 §12955(c) (making statements indicating preferences for homeseekers on the basis of sex,
18 sexual orientation, and familial status). Cal. Gov't Code §12955(g).

19 **III. Plaintiffs' Third Claim: Unruh Civil Rights Act.**

20 16. The Unruh Civil Rights Act, Cal. Civ. Code §51(b), prohibits discrimination on
21 the basis of sex, sexual orientation, age, familial status, and occupation. Cal. Civ. Code §51(b)
22 (sex and sexual orientation); Cal. Civ. Code §51.2(a) (age); *Marina Point, Ltd. v. Wolfson*, 640
23 P.2d 115, 124 (Cal. 1982) (familial status); *Sisemore v. Master Financial, Inc.*, 60 Cal. Rptr.
24 3d 719, 734 (Cal. App. 2007) (occupation).

25 17. Roommate has violated the Unruh Act by making inquiries into homeseekers' age,
26 sex, sexual orientation, familial status, and occupation. Cal. Civ. Code §51(b).

27 18. Roommate has violated the Unruh Act by causing housing providers to express
28

1 statements indicating preferences for homeseekers on the basis of age, sex, sexual orientation,
2 and familial status. Cal. Civ. Code §51(b).

3 19. Roommate has violated the Unruh Act by steering homeseekers to particular
4 housing opportunities on the basis of homeseekers' age, sex, sexual orientation, and familial
5 status. Cal. Civ. Code §51(b).

6 20. Roommate has violated the Unruh Act by screening homeseekers on the basis of
7 sex, sexual orientation, familial status, and, in the case of roommates.com's search function,
8 occupation. Cal. Civ. Code §51(b).

9

10 DATED: _____

Hon. Percy Anderson
United States District Judge

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CERTIFICATE OF SERVICE

On September 15, 2008 I served a true and correct copy of the following documents entitled:

- (1) Plaintiffs’ Notice of Motion and Motion for Partial Summary Judgment, or in the Alternative for Summary Adjudication of Issues;**
- (2) Memorandum of Points and Authorities in Support of Plaintiffs’ Motion for Partial Summary Judgment, or in the Alternative Summary Adjudication of Issues;**
- (3) Plaintiffs’ Separate Statement of Uncontroverted Facts and Conclusions of Law;**
- (4) Declaration of Christopher Brancart in Support of Plaintiffs’ Motion for Partial Summary Judgment or in the Alternative Summary Adjudication of Issues; Exhibits 1 Through 13;**
- (5) [Proposed] Order Granting Plaintiffs’ Motion for Partial Summary Judgment**

upon the following person(s):

Mr. Timothy L. Alger
 Quinn, Emanuel, Urquhart, Oliver &
 Hedges
 865 South Figueroa Street, 10th Floor
 Los Angeles, CA 90017

X	BY ELECTRONIC MAIL: By transmitting the above document(s) to the email address of the person designated above, or by electronically filing the documents on the Court’s ECF system.
	BY MAIL: By placing a copy thereof enclosed in a sealed envelope, with postage thereon fully prepaid, in the United States mail at Loma Mar, California, addressed as set forth above.
	BY HAND DELIVERY: By causing such document(s) to be delivered by hand to the above person(s) at the address(es) set forth above.
	BY THIRD-PARTY COMMERCIAL CARRIER (OVERNIGHT DELIVERY): By delivering a copy thereof to a third-party commercial carrier, addressed as set forth above, for delivery on the next business day.
	BY FACSIMILE: By transmitting the above document(s) to the facsimile number(s) of the addressee(s) designated above.

I certify that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on September 15, 2008, Loma Mar, California.

/s/ Christopher Brancart

 Christopher Brancart