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**United States District Court
Central District of California**

HOMEAWAY.COM, INC.
Plaintiff,

v.

CITY OF SANTA MONICA,
Defendant.

Case Nos. 2:16-cv-06641-ODW (AFM)
2:16-cv-06645-ODW (AFM)

AIRBNB, INC.,
Plaintiff,

v.

CITY OF SANTA MONICA,
Defendant.

**ORDER GRANTING
DEFENDANT’S MOTION TO
DISMISS [75]**

I. INTRODUCTION

Plaintiffs Airbnb, Inc. and Homeaway.com, Inc. (collectively “Plaintiffs”) challenge the City of Santa Monica’s (the “City”) Ordinance Number 2535 prohibiting short-term housing rentals (the “Ordinance”). The City moves to dismiss Plaintiffs’ federal-law claims and requests that the Court decline supplemental jurisdiction over the remaining state-law claim. For the following reasons, the Court **GRANTS** the

1 City's Motion.¹ (Mot., ECF No. 75.)

2 II. BACKGROUND

3 Plaintiffs operate websites that allow individuals seeking, and persons listing,
4 accommodations (“*guests*” and “*hosts*,” respectively) to find each other and enter into
5 agreements to reserve and book accommodations. (Airbnb First Am. Compl. (“ABB
6 FAC”) ¶¶ 27–28, Case No. 2:16-cv-6645 ECF No. 49; HomeAway First Am. Compl.
7 (“HA FAC”) ¶¶ 18–20, Case No. 2:16-cv-6641 ECF No. 55.)² Hosts provide the
8 content of their listings, such as description, price, and availability, (ABB FAC ¶¶ 31–
9 32; HA FAC ¶ 19) and “are responsible for their Listings,” (ABB FAC ¶ 9; *see* HA
10 FAC ¶ 23). Plaintiffs do not generally review listings before they are posted, so
11 listings appear on their websites almost immediately after hosts post them. (ABB
12 FAC ¶ 32; HA FAC ¶ 19.)

13 Airbnb and HomeAway operate with different business models. Airbnb
14 provides payment processing services that permit hosts to receive payments
15 electronically. (ABB FAC ¶ 28.) Airbnb receives a fee from the guest and host,
16 which covers its listing services, calculated as a percentage of the booking fee. (*Id.*
17 ¶ 29.) HomeAway hosts pay for services in one of two ways: a pay-per-booking
18 option based on a percentage of the amount charged by the host, or buying a
19 subscription to advertise properties for a set period. (HA FAC ¶ 21.) Travelers using
20 HomeAway pay hosts directly or through third-party payment processors. (*Id.* ¶ 20.)

21 In May 2015, the City adopted Ordinance 2484CCS (the “Original Ordinance”),
22 adding Chapter 6.20 to the Municipal Code. (ABB FAC ¶ 43; HA FAC ¶ 24.) The
23 Original Ordinance prohibited “Vacation Rentals,” which were defined as rentals of
24 residential property for thirty consecutive days or less, where residents do not remain
25 within their units to host guests. Santa Monica Municipal Code (“SMMC”)

26
27 ¹ After carefully considering the papers filed in support of and in opposition to the Motion, the Court
deems the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; L.R. 7-15.

28 ² Unless specifically noted otherwise, citations to the docket are from the lead case No. 2:16-cv-
6641.

1 §§ 6.20.010(a), 6.20.020(a). The Original Ordinance permitted residents to host
2 visitors for compensation for a period of less than thirty-one days, so long as residents
3 obtained a business license and remained on-site throughout the visitor's stay. SMMC
4 § 6.20.010(a). The City claims that the Original Ordinance expressly adopted and
5 reaffirmed the City's longstanding prohibition on short-term rentals.³ (Mot. 4.)
6 Plaintiffs argue that that the Original Ordinance marked a change in the law, because
7 before it was passed, the City never directly banned short-term rentals. (*See* Opp'n 3,
8 ECF No. 80.)

9 The Original Ordinance also regulated "Hosting Platforms" like Plaintiffs, by
10 barring them from "advertis[ing]" or "facilitat[ing]" rentals that violated the City's
11 short-term rental laws. SMMC § 6.20.030. It also required them to (1) collect and
12 remit to the City applicable Transient Occupancy Tax revenue and (2) disclose certain
13 information about listings to the City, including the names of the persons responsible
14 for each listing, the address, the length of stay, and the price paid for each stay.
15 SMMC §§ 6.20.030, 6.20.050. The City issued Plaintiffs several citations pursuant to
16 the Original Ordinance, which Plaintiffs paid under protest. (ABB FAC ¶ 50; HA
17 FAC ¶ 27.)

18 When the City increased its enforcement efforts, Plaintiffs filed the instant case
19 on September 2, 2016. (*See* Compl., ECF No. 1.) On September 21, 2016, the parties
20 stipulated to stay the case to allow the City to prepare and consider amendments to the
21 Original Ordinance to address the legal challenges Plaintiffs raised. (ECF No. 20.)

22 On January 24, 2017, the City adopted the Ordinance, which amended the
23 Original Ordinance. The Ordinance does not prohibit the publication, or require the
24 removal of, content provided to Plaintiffs by hosts, nor does it require Plaintiffs to
25 verify content provided by hosts to ensure that short-term rental hosts comply with the

26
27 ³ According to the City, the City's Zoning Ordinance identifies the uses that are specifically
28 permitted in each district. (Mot. 4.) Under this permissive zoning scheme, if a use is not listed, it is
prohibited. (*Id.*) The City claims that the legislative record shows that vacation rentals have not
been a permitted use in any residential zoning district since at least 1988. (*Id.*)

1 law. *See* SMMC § 6.20.050(c). Rather, the Ordinance prohibits Hosting Platforms
2 from “complet[ing] any booking transaction for any residential property or unit unless
3 it is listed on the City’s registry [of licensed home-sharing hosts] at the time the
4 hosting platform receives a fee for the booking transaction.” *Id.* A “booking
5 transaction” is “[a]ny reservation or payment service provided by a person who
6 facilitates a home-sharing or vacation rental transaction between a prospective
7 transient user and a host.” *Id.* § 6.20.010(d). Further, the Ordinance permits the City
8 to “issue and serve administrative subpoenas as necessary to obtain specific
9 information regarding home-sharing and vacation rental listings located in the City,
10 including but not limited to” the information in Section 6.20.050(b). *Id.*
11 § 6.20.100(e). Each violation of the Ordinance is an infraction, punishable by a fine
12 of up to \$250, or a misdemeanor, punishable by a fine up to \$500, imprisonment of up
13 to six months, or both. *Id.* § 6.20.100(a). The Ordinance provides that the duties
14 imposed on hosting platforms “will not apply if determined by the City to be in
15 violation of, or preempted by” state or federal laws. *Id.* § 6.20.050(f).

16 On December 13, 2017, Plaintiffs filed a First Amended Complaint, alleging
17 that the Ordinance violates the Communications Decency Act (“CDA”), 47 U.S.C.
18 § 230, the First, Fourth, and Fourteenth Amendments of the U.S. Constitution, the
19 Stored Communications Act, 18 U.S.C. § 2701 *et seq.*, and the California Coastal Act,
20 Cal. Pub. Res. Code § 30500 *et seq.* The City moved to dismiss on February 15,
21 2018.

22 III. LEGAL STANDARD

23 A complaint must “contain sufficient factual matter, accepted as true, to state a
24 claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678
25 (2009). The determination whether a complaint satisfies the plausibility standard is a
26 “context-specific task that requires the reviewing court to draw on its judicial
27 experience and common sense.” *Id.* at 679. A court is generally limited to the
28 pleadings and must construe all “factual allegations set forth in the complaint . . . as

1 true and . . . in the light most favorable” to the plaintiff. *Lee v. City of Los Angeles*,
2 250 F.3d 668, 688 (9th Cir. 2001). But a court need not blindly accept conclusory
3 allegations, unwarranted deductions of fact, and unreasonable inferences. *Sprewell v.*
4 *Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). The court must dismiss a
5 complaint that does not assert a cognizable legal theory or fails to plead sufficient
6 facts to support an otherwise cognizable legal theory. Fed. R. Civ. P. 12(b)(6);
7 *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990).

8 **IV. REQUESTS FOR JUDICIAL NOTICE**

9 The Court first addresses the City’s pending requests for judicial notice. (Req.
10 Judicial Notice, ECF No. 76.) While a district court generally may not consider any
11 material beyond the pleadings in ruling on a Rule 12(b)(6) motion, a court may
12 consider any documents referenced in the complaint, and may take judicial notice of
13 matters in the public record, without converting a motion to dismiss into one for
14 summary judgment. *See Lee*, 250 F.3d at 688–89. However, the Court can only take
15 judicial notice of the existence of these documents, not the truth of the matters
16 contained therein. *See id.* at 690 (explaining that when taking the judicial notice of
17 public documents, the district court should do so “not for the truth of the facts recited
18 therein,” but for the existence of the document).

19 The City requests the Court to take judicial notice of the following:

20 Exhibit Q: The Ellis Act and its Effects on Rent-Stabilized
21 Housing in Santa Monica, a Study of Factors Leading to
22 Withdrawal and Possible Mitigation Strategies, Presented to the
23 Santa Monica Rent Control Board as Item 12a at the November
24 9, 2017 Regular Meeting of the Santa Monica Rent Control
25 Board;

26 Exhibit R: Information Item – Short-Term Rental Program
27 Update, from David Martin, Director of Planning and
28 Community Development for the Mayor and City Council,

1 prepared by the Office of the City Manager, dated February 9,
2 2018;

3 Exhibit S: California’s Housing Future: Challenges and
4 Opportunities, Public Draft – Statewide Housing Assessment
5 2025, prepared by the State of California, California Business,
6 Consumer Services and Housing Agency, California
7 Department of Housing and Community Development.

8 The City claims that these exhibits are public documents, maintained as part of
9 the City’s files regarding short-term rentals and their effect on the City’s housing.
10 (Req. Judicial Notice 3.) Plaintiffs do not oppose the City’s Requests. Therefore, the
11 Court takes judicial notice of Exhibits Q–S as to their existence in the City’s files
12 regarding short-term rentals, but not for the truth of the matters asserted therein.

13 **V. ANALYSIS**

14 The City argues that Plaintiffs cannot prevail on their federal claims and the
15 Court should decline to exercise jurisdiction over the remaining state-law claims. The
16 Court addresses each claim in turn.

17 **A. Communications Decency Act**

18 Plaintiffs allege that the Ordinance violates the CDA, 47 U.S.C. § 230, because
19 the Ordinance treats Plaintiffs as the publisher or speaker of information provided by
20 the hosts, who are third-party content providers. (HA FAC ¶ 41; ABB FAC ¶ 93.)

21 Under the CDA, “no provider or user of an interactive computer service shall be
22 treated as the publisher or speaker of any information provided by another information
23 content provider.” 47 U.S.C. § 230(c)(1). Plaintiffs argue that, by requiring them to
24 verify whether a listing is included on the City’s registry before completing a booking
25 transaction, the Ordinance imposes liability on them based on content supplied by
26 third parties. (Opp’n 14–15.) The City argues that Plaintiffs’ CDA claims must be
27 dismissed because the Ordinance targets unlawful conduct that is unrelated to
28 publishing activities. (Mot. 11.)

1 The parties fully addressed these arguments previously in response to Plaintiffs’
2 Motion for Preliminary Injunction. In the Court’s Order denying the preliminary
3 injunction, the Court agreed with the City, finding that the Ordinance does not
4 penalize Plaintiffs’ publishing activities; rather, it seeks to keep them from facilitating
5 business transactions on their sites that violate the law. (ECF No. 81.) In reaching
6 this decision, the Court followed a decision in a similar case from the Northern
7 District of California in *Airbnb, Inc. v. City and County of San Francisco*, 217 F.
8 Supp. 3d 1066, 1072 (N.D. Cal. 2016) (the “San Francisco Decision”).

9 The Court finds no reason to alter its previous reasoning on Plaintiffs’ CDA
10 claim. As a new argument, however, Plaintiffs point out the different standard of
11 proof for establishing entitlement to a preliminary injunction as compared to opposing
12 a motion to dismiss. They argue that for the purposes of the Motion to Dismiss the
13 Court must accept as true their allegations that the Ordinance will require them to
14 “monitor and screen listings prior to publication” to “avoid the risk of significant
15 criminal and civil penalties.” (Opp’n 15 (citing ABB FAC ¶¶ 75, 95 and HA FAC
16 ¶¶ 9, 37).) According to Plaintiffs, monitoring and screening are “core publisher
17 functions, which Section 230 immunizes from regulation.” (Opp’n 15.) Plaintiffs ask
18 the Court to ignore the San Francisco Decision and instead rely on *Doe v. Internet*
19 *Brands, Inc.*, 824 F.3d 846 (9th Cir. 2016), *Barnes v. Yahoo! Inc.*, 570 F.3d 1096 (9th
20 Cir. 2009), and *Green v. Am. Online*, 318 F.3d 465, 471 (3d Cir. 2003).

21 The cases Plaintiffs urges the Court to follow, however, were not answering the
22 same question as the one presented here and are distinguishable. In *Internet Brands*, a
23 Jane Doe plaintiff brought a claim for negligent failure to warn against the operator
24 and owner of a networking website. In adjudicating the defendant’s motion to
25 dismiss, the court found that the plaintiff’s claim was not barred by the CDA because
26 it was unrelated to the defendant’s publishing activities; rather, she claimed that the
27 defendant should have warned her about information it obtained from an outside
28 source about “how third parties targeted and lured victims through” the website.

1 *Internet Brands*, 824 F.3d at 851. The *Internet Brands* court found that the plaintiff's
2 negligent-failure-to-warn claim survived because it did "not seek to hold [the
3 defendant] liable as the publisher or speaker of any information provided by another
4 information content provider." *Id.* (internal quotation and citation omitted). While the
5 court noted that the plaintiff's claim "has nothing to do with [the defendant's] efforts,
6 or lack thereof, to edit, monitor, or remove user generated content," it did not hold that
7 "monitoring" alone, without further editing or decision-making regarding posting or
8 removal of content, was a protected publishing activity. *See id.* at 852.

9 In *Barnes*, the issue presented was whether the CDA protects an internet service
10 provider from suit where it undertook to remove from its website material harmful to
11 the plaintiff but failed to do so. 570 F.3d at 1098. The plaintiff's ex-boyfriend created
12 fake profiles for her, which contained nude photographs, on a website run by the
13 defendant. The plaintiff demanded the defendant take down the fake profiles. The
14 defendant told her that they would take steps to remove the content, but they never
15 did. The court affirmed the district court's dismissal of the plaintiff's negligent-
16 provision-of-services claim, but allowed her promissory estoppel claim to proceed.
17 The difference, the court explained, was the first claim sought liability based on "the
18 defendant's status or conduct as a publisher or speaker" and the latter claim, based on
19 quasi-contract principles, did not. *See id.* at 1107.

20 The *Barnes* court's description of what constitutes a publisher is helpful. The
21 court provided that "publication involves reviewing, editing, and deciding whether to
22 publish or to withdraw from publication third-party content." *Id.* at 1101. For this
23 proposition, the court cited *Fair Housing Council of San Francisco Valley v.*
24 *Roommates.com, LLC*, which held that "any activity that can be boiled down to
25 deciding whether to exclude material that third parties seek to post online is perforce
26 immune under section 230." *Id.* at 1102 (citing 521 F.3d 1157, 1170–71 (9th Cir.
27 2008)). The *Barnes* court ultimately concluded that "a publisher reviews material
28 submitted for publication, perhaps edits it for style or technical fluency, and then

1 decides whether to publish it.” *Barnes*, 570 F.3d at 1102. Here, Plaintiffs are not
2 being punished for their editorial decisions, such as which listings are published or
3 how properties are advertised. The Ordinance only prohibits the illegal transactions.

4 In *Green*, the plaintiff sought damages against America Online (“AOL”) for
5 refusing to take action against John Does 1 and 2, who allegedly transmitted harmful
6 online messages to the plaintiff and others. 318 F.3d 464, 468 (3d Cir. 2003). The
7 Third Circuit affirmed the district court’s dismissal of the claims, because the liability
8 the plaintiff sought to impose would treat AOL as the publisher or speaker of the
9 harmful content. *Id.* at 470. The court found that section 230 “bars lawsuits seeking
10 to hold a service provide liable for its exercise of traditional editorial functions – such
11 as deciding whether to publish, withdraw, postpone, or alter content.” *Id.* at 471
12 (quoting *Zeran v. Am. Online, Inc.*, 129 F.3d 327, 330 (4th Cir. 1997)). Similar to the
13 situation in *Barnes*, the *Green* plaintiff sought damages for the defendant’s failure to
14 remove harmful content. This is a different scenario than the one at issue here, where
15 the Ordinance does not require Plaintiffs to remove any particular listing or content.

16 Plaintiffs argue the Ordinance requires them to “monitor and screen” listings,
17 which they argue are “publishing” activities, and thus, the Ordinance runs afoul of the
18 CDA. Ultimately, the Court disagrees that the conduct regulated by the Ordinance is a
19 publishing activity and finds that neither *Barnes*, *Internet Brands*, nor *Green* dictate a
20 different result. The Ordinance prevents Plaintiffs from facilitating booking
21 transactions for illegal rentals. It does not require Plaintiffs to edit or exclude any
22 content on their websites. In the San Francisco Decision, the court distinguished
23 between a hypothetical unlawful regulation that “regulate[s] what can or cannot be
24 said or posted in the listings” and a permissible regulation that “held plaintiffs liable
25 for their own conduct, namely for providing, and collecting a fee for, Booking
26 Services in connection with an unregistered unit.” 217 F. Supp. 3d at 1073. The
27 Court agrees with this reasoning and finds that the Ordinance does not impose liability

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1 on Plaintiffs’ for publishing activities. Therefore, the Court **DISMISSES** Plaintiffs’
2 CDA claim—Airbnb’s Claim No. 3 and HomeAway’s Claim No. 1—with prejudice.

3 **B. First Amendment**

4 Plaintiffs allege that the Ordinance is a content-based restriction that burdens
5 and impermissibly chills their protected commercial speech and, therefore, violates the
6 First Amendment. (ABB FAC ¶ 103; HA ¶ 45.) Plaintiffs incorporate their arguments
7 in support of their Motion for Preliminary Injunction in their Opposition. (Opp’n 18.)
8 In the Order denying Plaintiffs’ Motion for Preliminary Injunction, the Court found
9 that the Ordinance regulates conduct, not speech, and that the conduct banned by the
10 Ordinance—booking transactions for residential properties not listed on the City’s
11 registry—does not have such a “significant expressive element” as to draw First
12 Amendment protection. The Court sees no reason to revisit the reasoning set out in its
13 previous order, which addressed the arguments presented in relation to the Motion for
14 Preliminary Injunction. Instead, the Court addresses only the new arguments
15 Plaintiffs raise in their Opposition to the City’s Motion to Dismiss.

16 Plaintiffs focus on three additional cases cited by the City: *Central Hudson Gas*
17 *& Electric Corp. v. Public Service Commission of New York*, 447 U.S. 557, 564
18 (1980); *United States v. Williams*, 553 U.S. 285, 297–98 (2008); and *Valle Del Sol Inc.*
19 *v. Whiting*, 709 F.3d 808, 822 (9th Cir. 2013). (Opp’n 18–20.)

20 The City cites *Central Hudson* for the proposition that even if the Ordinance
21 were construed to restrict commercial speech, it would survive the intermediate
22 scrutiny called for in that case. (Mot. 16.) Plaintiffs argue that *Central Hudson*
23 confirms that the First Amendment protects commercial speech. (Opp’n 19.) In
24 *Central Hudson*, the Supreme Court applied intermediate scrutiny to overturn a
25 regulation from the Public Service Commission of the State of New York that banned
26 utility companies from advertising electricity services. 447 U.S. at 558–59. However,
27 the Court need not decide whether the Ordinance survives intermediate scrutiny,
28 because the Court concludes that the Ordinance does not regulate speech. The

1 Ordinance imposes no liability on Plaintiffs for the content of materials on their
2 websites. The Ordinance is quite different from the regulation at issue in *Central*
3 *Hudson*, which was a direct ban on a particular form of speech.

4 The City cites *Williams* and *Valle Del Sol* for its contention that the First
5 Amendment does not protect offers to engage in unlawful conduct. (Mot. 16.)
6 Plaintiffs reply that where, as here, a listing is not unlawful “on its face,” First
7 Amendment protection applies. (Opp’n 19 (citing *Braun v. Soldier of Fortune*
8 *Magazine, Inc.*, 968 F.2d 1110, 1117–19 (11th Cir. 1992)).) The Court agrees with the
9 City that the First Amendment does not protect speech proposing an illegal
10 transaction. *See, e.g., Pittsburgh Press Co. v Pittsburgh Comm’n on Human*
11 *Relations*, 413 U.S. 376, 388–89 (1973) (“Any First Amendment interest which might
12 be served by advertising an ordinary commercial proposal and which might arguably
13 outweigh the governmental interest supporting the regulation is altogether absent
14 when the commercial activity itself is illegal and the restriction on advertising is
15 incidental to a valid limitation on economic activity.”). There can be no dispute that it
16 is illegal in Santa Monica to rent a unit that does not comply with the Ordinance.
17 Therefore, Plaintiffs cannot use the First Amendment as a shield to allow them to
18 communicate offers to rent illegal units. *See Airbnb*, 217 F. Supp. 3d at 1079.

19 *Braun* does not require a different result. The City points out that the *Braun*
20 court did not hold that the First Amendment protected advertisement of illegal conduct
21 unless the illegality appeared “on its face.” (Reply 10, ECF No. 82.) The Court
22 agrees. In *Braun*, the court simply found that under the Georgia negligence standard it
23 may be appropriate to impose tort liability on a publisher when an advertisement “on
24 its face” clearly made it apparent that there was a substantial risk of harm to the
25 public. 968 F.2d at 1118. The court also recognized that “[i]t is well-settled that the
26 First Amendment does not protect commercial speech ‘related to illegal activity’ and,
27 thus, there is no constitutional interest in publishing . . . ads that solicit criminal
28 activity.” *Id.* at 1117 (citing *Central Hudson*, 447 U.S. at 564, and *Pittsburgh Press*,

1 413 U.S. at 388).

2 For these reasons, the Court **DISMISSES** Plaintiffs’ First Amendment Claim—
3 Airbnb’s Claim No. 4 and HomeAway’s Claim No. 2—with prejudice.

4 **C. Fourteenth Amendment**

5 Plaintiffs allege that the Ordinance violates the Fourteenth Amendment because
6 it imposes strict criminal liability without proof of mens rea or scienter. (ABB FAC
7 ¶ 108, HA FAC ¶ 46.) The City now claims that it “will accept the imputation of a
8 requirement for scienter” and “nothing in the . . . Ordinance’s legislative record
9 suggests that the City Council intended to dispense with mens rea as an element.”
10 (Mot. 17.) The City also argues that the absence of a specified mens rea does not
11 invalidate a criminal statute; instead, scienter is an implied element for proving
12 criminal liability. (*Id.* (citing *Staples v. United States*, 511 U.S. 600, 605–06 (1994)).)
13 The Court agrees. In *Staples*, the Supreme Court explained that a mens rea element
14 can be implied and that in interpreting federal statutes, “some indication of
15 congressional intent, express or implied, is required to dispense with mens rea as an
16 element of a crime.” 511 U.S. 600, 606 (1994). California courts have taken a similar
17 approach and have read scienter into statutes with civil penalties. *See, e.g., People v.*
18 *Simon*, 9 Cal. 4th 493, 522 (1995); *Stark v. Superior Court*, 52 Cal. 4th 368, 393
19 (2011) (“In recent jurisprudence, we have construed criminal statutes to include a
20 guilty knowledge requirement even though the statutes did not expressly articulate
21 such a requirement”); *People v. Salas*, 37 Cal. 4th 967, 978 (2006). Therefore, the
22 Court construes the Ordinance as requiring scienter. *See Airbnb*, 217 F. Supp. 3d at
23 1080. The Court **DISMISSES** Plaintiffs’ Fourteenth Amendment Claim—Airbnb’s
24 Claim No. 5 and HomeAway’s Claim No. 2—with prejudice.

25 **D. Stored Communications Act and Fourth Amendment**

26 Plaintiffs allege that the Ordinance’s requirement that they regularly disclose
27 private user information to the City, without any subpoena or other form of legal
28

1 process, violates the Stored Communications Act (“SCA”) and the Fourth
2 Amendment. (HA FAC ¶¶ 47–52; ABB FAC ¶¶ 111–22.)

3 The Ordinance provides that, “[s]ubject to applicable laws, hosting platforms
4 shall disclose to the City on a regular basis each home-sharing and vacation rental
5 located in the City, the names of the persons responsible for each such listing, the
6 address of each such listing, the length of stay for each such listing and the price paid
7 for each stay.” SMMC § 6.20.050(b). The City argues that the “applicable laws”
8 provision means that the Ordinance must comply with the SCA, the Fourth
9 Amendment, and SMMC § 6.20.100(e), which outlines an administrative subpoena
10 process for the City to obtain the information described above. Section 6.20.100(e)
11 provides:

12 The City may issue and serve administrative subpoenas as
13 necessary to obtain specific information regarding home-
14 sharing and vacation rental listings located in the City,
15 including, but not limited to, the names of the persons
16 responsible for each such listing, the address of each such
17 listing, the length of stay for each such listing and the price paid
18 for each stay, to determine whether the home-sharing and
19 vacation rental listings comply with this Chapter. Any
20 subpoena issued pursuant to this section shall not require the
21 production of information sooner than thirty days from the date
22 of service. A person that has been served with an
23 administrative subpoena may seek judicial review during that
24 thirty-day period.

25 The City also points to § 6.20.050(f), which requires that “[t]he provisions of
26 this Section shall be interpreted in accordance with otherwise applicable State and
27 Federal law(s) . . .”

28 The SCA “protects users whose electronic communications are in electronic
storage with an [internet service provider] or other electronic communications
facility.” *Theofel v. Farley-Jones*, 359 F.3d 1066, 1072–73 (9th Cir. 2004). The SCA
allows for a governmental entity to require an internet service provider to disclose

1 contents of the communications protected by the Act, if the governmental entity
2 obtains a warrant, an administrative subpoena, or a court order. 18 U.S.C. § 2703(b).

3 Additionally, the Fourth Amendment requires that the subject of an
4 administrative search must be afforded an opportunity to obtain pre-compliance
5 review before a neutral decision-maker. *City of Los Angeles v. Patel*, 135 S. Ct. 2443,
6 2452 (2015). Plaintiffs assert a facial and an as-applied challenge to the Ordinance.
7 A facial challenge is an attack on a statute or regulation itself as opposed to a
8 particular application. *Id.* at 2449. In analyzing such a challenge, the Court analyzes
9 the statute or regulation at issue and considers whether applications of that law,
10 permitted on its face, violate the Constitution. *See id.* at 2451.

11 Plaintiffs primarily rely on *Patel* to support their Fourth Amendment claim. In
12 that case, the Supreme Court found that a Los Angeles regulation requiring hotel
13 owners to divulge registration information to police officers on demand to be facially
14 invalid under the Fourth Amendment. *Id.* at 2453. The court noted that the City of
15 Los Angeles did “not even attempt to argue that [the regulation] affords hotel
16 operators any opportunity [for pre-compliance review] whatsoever.” *Id.* Here, on the
17 contrary, the City argues that the Ordinance expressly permits Hosting Platforms a
18 period of time to review the administrative subpoena requesting the information and
19 seek judicial review under § 6.20.100(e). (Mot. 23.) Plaintiffs respond that they are
20 not challenging § 6.20.100(e), but § 6.20.050(b), which does not mention
21 administrative subpoenas or judicial review. The latter section, however, includes a
22 qualifier that it is “subject to applicable laws,” which the Court interprets to include
23 the subpoena and review provisions in § 6.20.100(e), the SCA, and the Fourth
24 Amendment. Therefore, the Court finds that the Ordinance does not violate the SCA
25 or the Fourth Amendment on its face.

26 The Court also finds that Plaintiffs have not adequately pleaded an as-applied
27 challenge to the Ordinance. Plaintiffs make no allegation that the City has attempted
28 to enforce § 6.20.050(b) at all, with or without the use of an administrative subpoena.

1 Therefore, Plaintiffs have not alleged that the disclosure provision in the Ordinance
2 has been applied to them. *See Foti v. City of Menlo Park*, 146 F.3d 629, 635 (9th Cir.
3 1998) (“An as-applied challenge contends that the law is unconstitutional as applied to
4 the [plaintiff’s] particular . . . activity, even though the law may be capable of valid
5 application to others.”). The Court finds that Plaintiffs have failed to state a claim for
6 violation of the SCA and/or the Fourth Amendment—Airbnb’s Claims Nos. 6 and 7
7 and HomeAway’s Claims Nos. 3 and 4—and **DISMISSES** those claims with
8 prejudice.

9 **E. California Coastal Act**

10 Because the Court has dismissed all of Plaintiffs’ pending federal claims, the
11 Court declines to exercise supplemental jurisdiction over the remaining state-law
12 claims under the California Coastal Act. *See* 28 U.S.C. § 1367(c)(3); *see also United*
13 *Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 726 (1966) (“Needless decisions of state
14 law should be avoided both as a matter of comity and to promote justice between the
15 parties, by procuring them for a surer-footed reading of applicable law. Certainly, if
16 the federal law claims are dismissed before trial, even though not insubstantial in a
17 jurisdictional sense, the state claims should be dismissed as well.”) Therefore, the
18 Court dismisses Plaintiffs’ California Coastal Act Claims—Airbnb’s Claims Nos. 1
19 and 2 and HomeAway’s Claims No. 5—without prejudice.

20 **F. Declaratory Relief**

21 As discussed above, the Court finds that Plaintiffs have failed to state a claim
22 for their federal causes of action and declines to exercise jurisdiction over their state-
23 law claims. Therefore, Plaintiffs cannot sustain an action for declaratory relief.

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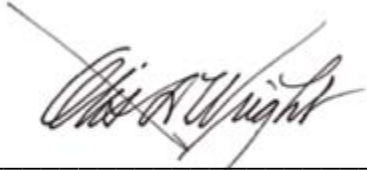
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VI. CONCLUSION

For the foregoing reasons, the Court **GRANTS** the City’s Motion to Dismiss. (ECF No. 75.) The Court **DISMISSES** Plaintiffs’ California Coastal Act Claim **WITHOUT PREJUDICE** and **DISMISSES WITH PREJUDICE** all other claims. The Clerk of the Court shall close the case.

IT IS SO ORDERED.

June 14, 2018



OTIS D. WRIGHT, II
UNITED STATES DISTRICT JUDGE