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21 Airbnb, Inc.

22 **UNITED STATES DISTRICT COURT**  
23 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
24 **SAN FRANCISCO DIVISION**

25 AIRBNB, INC.,

26 Plaintiff,

27 v.

28 NGD HOMESHARING, LLC, a Florida  
limited liability company,  
and HARVEY HERNANDEZ, an individual,

Defendants.

Civil Case No.:

**COMPLAINT**

**JURY DEMAND**

1 Plaintiff, Airbnb, Inc. (“Airbnb”), brings this Complaint for monetary damages and other relief  
2 against Defendants NGD Homesharing, LLC (“NGD”), and Harvey Hernandez. In support of its  
3 Complaint, Airbnb alleges as follows:

#### 4 INTRODUCTION

5 1. A little more than one year ago, Airbnb—relying on representations and promises made  
6 by NGD and its CEO, Harvey Hernandez—invested approximately \$11 million in NGD. In sum,  
7 Airbnb was providing capital, expertise, and brand recognition to NGD and Hernandez, who were  
8 supposed to manage, operate, and market rental properties throughout the United States. This  
9 investment was designed to create more homesharing accommodations for the Airbnb community,  
10 particularly in urban, multi-family buildings. Airbnb recently learned, however, that during the parties’  
11 business relationship, NGD and Hernandez stole funds, made unauthorized loans to other Hernandez-  
12 controlled companies, fraudulently backdated documents, breached contracts, and then lied repeatedly in  
13 an attempt to cover their tracks. As a result, Airbnb files this Complaint.

14 2. Airbnb recently discovered that, unbeknownst to Airbnb, defendants misrepresented and  
15 concealed facts to induce Airbnb’s investment. Then, after the business relationship was established,  
16 defendants repeatedly violated the terms of the parties’ agreements and otherwise acted in bad faith. For  
17 example, defendants siphoned at least \$1 million from the parties’ joint business interests without  
18 authorization. When confronted about this unauthorized diversion of funds, defendants responded with  
19 delay, misdirection, and false promises of repayment. Furthermore, in their frantic efforts to conceal  
20 their duplicity, defendants eventually produced fraudulent and backdated documentation of an  
21 unauthorized “loan”—reflecting Hernandez as the signatory on behalf of both borrower and lender—as  
22 purported justification for diverting the funds. The entire principal of and interest on this purported  
23 “loan” remains unpaid and is in default.

24 3. In return for its investment of approximately \$11 million, Airbnb negotiated for and  
25 received significant commitments and representations from NGD. Among other things, NGD  
26 represented that the calculation of another investor’s warrants for units in NGD would be on a class  
27 basis, not a fully diluted basis. Months after defendants had obtained Airbnb’s investment, however,  
28

1 defendants admitted that they had orally promised the other investor that these warrants were exercisable  
2 for units calculated on a fully diluted basis, effectively altering the value of Airbnb's investment.

3 4. Finally, NGD utterly failed to deliver on the core purpose of this partnership: creating  
4 more homesharing accommodations for the Airbnb community, particularly in urban, multi-family  
5 buildings. Importantly, NGD committed to open at least seven real estate projects in 2019. This  
6 commitment was so central to the parties' relationship that Airbnb could terminate the parties'  
7 Collaboration Agreement if NGD failed to open seven projects. NGD failed to open a single project in  
8 2019. Furthermore, in connection with previous projects in development, NGD also repeatedly violated  
9 its agreement to incorporate Airbnb's input as to design, apparently sold units without Airbnb's requisite  
10 written approval, and misused Airbnb's name and trademarks.

11 5. As a result, and as set forth below, Airbnb brings this action to terminate its relationship  
12 with defendants and to seek monetary recovery in excess of \$11 million, plus fees and costs from having  
13 to prosecute this action.

#### 14 **PARTIES**

15 6. Airbnb is a Delaware corporation with its principal place of business at 888 Brannan  
16 Street, San Francisco, California, 94103.

17 7. NGD is a Florida limited liability company with its principal place of business at 14 NE  
18 1st Avenue, Penthouse, Miami, Florida, 33132.

19 8. Harvey Hernandez is an individual residing, on information and belief, in Miami, Florida.

#### 20 **JURISDICTION AND VENUE**

21 9. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. § 1332  
22 because the parties are diverse and Airbnb's claim exceeds \$75,000, exclusive of interest and costs.

23 10. NGD is subject to personal jurisdiction within the Northern District of California because  
24 NGD does business in California; because its acts, misrepresentations, and omissions occurred in and  
25 harmed Airbnb in California; and because under the Collaboration Agreement, NGD expressly  
26 consented to the exclusive jurisdiction of federal or state courts in San Francisco, California.

27 11. Hernandez is subject to personal jurisdiction within the Northern District of California  
28 because he does business in California; because his acts, misrepresentations, and omissions occurred in

1 and harmed Airbnb in California; and because he is an alter ego of NGD. Hernandez and NGD share  
2 (a) such unity of interest and ownership that in reality no separate entities exist; and (b) failure to  
3 disregard the separate identities would result in fraud or injustice. Hernandez personally directed  
4 NGD's activities giving rise to the claims in this Complaint. Hernandez also purposefully availed  
5 himself of business opportunities in California, visiting from time to time in connection with his and  
6 NGD's business relationship with Airbnb.

7 12. Venue is proper under 28 U.S.C. §§ 1391(b) and (c) because a substantial part of the  
8 events and omissions giving rise to the claims in this Complaint occurred in the Northern District of  
9 California, where Airbnb maintains its headquarters.

#### 10 **INTRA-DISTRICT ASSIGNMENT**

11 13. A substantial part of the events or omissions giving rise to the claims in this Complaint  
12 occurred within San Francisco City and County. Accordingly, this case is rightfully assigned to the San  
13 Francisco division of this Court pursuant to Civil Local Rule 3-2, subsections (c) and (d).

#### 14 **FACTS ENTITLING AIRBNB TO RELIEF**

##### 15 **Airbnb's and NGD's Partnership and Contracts**

16 14. Airbnb operates an online platform that enables people to list, explore, and book both  
17 housing accommodations and experiences. Airbnb is one of the world's largest marketplaces for unique,  
18 authentic places to stay and things to do. Through its proprietary online platform, Airbnb offers more  
19 than 7 million accommodations and 40,000 handcrafted experiences, all powered by hosts. Airbnb  
20 allows people all over the world to open up their homes and to offer their time and expertise to others—  
21 so that instead of travelling to stay in the usual international chain hotels or pay for readymade activity  
22 packages, Airbnb's customers can stay where locals live and partake in one-of-a-kind experiences.

23 15. NGD purports to manage, operate, and market real estate. Hernandez is NGD's  
24 co-founder, sole manager, and CEO. According to NGD's 2019 Florida Limited Liability Company  
25 Annual Report, NGD's principal place of business is 14 NE 1st Avenue, Penthouse, Miami, FL 33132.  
26 NGD's registered agent is Hernandez, whose address is also 14 NE 1st Avenue, Penthouse, Miami, FL  
27 33132. Hernandez purports to own the largest interest in NGD.  
28

1           16. In 2016, Airbnb entered into an initial agreement with NGD to explore the possibility of  
2 developing residential homesharing-friendly properties in various cities. The parties contemplated that  
3 these properties would be co-branded projects, the first of their kind. After working together on pilot  
4 projects, in April 2018 Airbnb provided NGD with a \$1 million loan pursuant to a convertible  
5 promissory note. The principal and interest of that note would convert into equity securities in  
6 connection with, among other things, an equity financing of NGD.

7           17. The parties' initial agreement was subsequently superseded and replaced by the  
8 contractual agreements summarized below.

9           18. ***The Collaboration Agreement.*** On January 2, 2019, the parties entered into a  
10 Collaboration Agreement (the "Collaboration Agreement"). Under this agreement, NGD committed to  
11 work with Airbnb to create specialized real estate properties suited to the Airbnb community.  
12 Specifically, NGD committed to "open at least seven (7) Projects in each calendar year 2019 and 2020."  
13 If it failed to do so, Airbnb could terminate the contract. Collaboration Agreement § 7.3. NGD also was  
14 required to work in good faith with Airbnb to implement Airbnb's feedback and designs and to seek  
15 Airbnb's written approval before publishing any marketing or promotional materials with Airbnb's  
16 name or mark.

17           19. Section 10.4 of the Collaboration Agreement states that it is to be governed by California  
18 law, and Section 10.5 of the Collaboration Agreement provides as follows:

19                   Any legal action or proceeding arising out of or related to this Agreement,  
20 including any non- contractual claim, shall be brought exclusively in the  
21 federal or state courts located in San Francisco, California. Each party  
22 hereby consents to the exclusive jurisdiction of such courts. Each party  
23 hereby waives any venue or inconvenient forum defense to any claim filed  
24 and maintained in such courts and disclaims its right to initiate any action  
25 or proceeding arising out of or related to this Agreement in any other court  
26 or forum.

27           20. ***The Unit Purchase Agreement.*** On January 4, 2019, Airbnb and NGD entered into the  
28 Class A-1 Unit Purchase Agreement (the "Unit Purchase Agreement"). Under that contract, Airbnb  
purchased 3,407,785 Class A-1 Units in NGD, for a total of \$11,042,408.26, including conversion of  
Airbnb's April 2018 promissory note. The Unit Purchase Agreement explicitly prohibits the use of the  
proceeds for a distribution to any member. Unit Purchase Agreement § 1.2. The Unit Purchase

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