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THE JULIA CHILD FOUNDATION FOR
6 GASTRONOMY AND THE CULINARY ARTS

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County of Santa Barbara
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SANTA BARBARA

10 THE JULIA CHILD FOUNDATION FOR
11 GASTRONOMY AND THE CULINARY
12 ARTS, a Massachusetts charitable trust,
with its principal place of business located
13 in Santa Barbara, California,

14 Plaintiff,

15 v.

16
17 AIRBNB, INC., a Delaware corporation
with its principal place of business located
18 in San Francisco, California; DAN
KLORES COMMUNICATIONS, LLC, a
19 Delaware limited liability company; and
20 DOES 1-20, inclusive,

21 Defendants.

Case No. 16CV02626

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF FOR:**

**MISAPPROPRIATION OF RIGHT OF
PUBLICITY (CALIFORNIA CIVIL
CODE § 3344.1)**

DEMAND FOR JURY TRIAL

22
23 Plaintiff The Julia Child Foundation for Gastronomy and The Culinary Arts (herein,
24 "The Julia Child Foundation" or "Plaintiff") hereby alleges as follows:

25 **SUMMARY OF THE ACTION**

26 1. The Julia Child Foundation owns certain of the intellectual property rights,
27 including all rights of publicity, of and associated with legendary American cooking
28 teacher, author and television personality, Julia Child.

1 2. Julia Child's name, photograph and likeness have tremendous commercial
2 value, particularly in the industries associated with food, cooking and the culinary arts, and
3 travel and leisure.

4 3. Julia Child, throughout her entire career, which lasted in excess of forty (40)
5 years, famously refused to allow her name or image to be used to market or sell
6 commercial products, particularly culinary products such as pots, pans, stoves, food
7 brands, etc. The exception was the use of Mrs. Child's name and image on and in
8 connection with the many books that she wrote over her lifetime (primarily cookbooks)
9 and in connection with her television programs which were primarily broadcast on public
10 television. The Julia Child Foundation, which is charged with protecting the name, image,
11 reputation and legacy of Julia Child, likewise has adopted the same policy and generally
12 refuses all requests of companies and brands to allow her name or image to be used in
13 connection with their advertising, marketing or promotion.

14 4. In or about April, 2016, defendant Airbnb, Inc. ("Airbnb") contacted The
15 Julia Child Foundation regarding the commercial use of Mrs. Child's name and likeness in
16 connection with an online contest and promotion in which Airbnb sought to promote itself
17 and its brand, along with one of the rental properties being offered through the Airbnb
18 commercial website (a property in Provence, France called *La Pitchoune* which had been
19 used by Mrs. Child and her husband at various times throughout their lifetime).

20 5. Consistent with Mrs. Child's longstanding and widely-known policy of
21 politely refusing all requests to associate her name or image with commercial products and
22 brands, and The Julia Child Foundation's same well-publicized policy since her death in
23 August 2004, The Julia Child Foundation expressly denied Airbnb's request, declining to
24 grant permission to Airbnb to use Mrs. Child's name or likeness in connection with the
25 contest, or any related promotional or marketing materials, and emphasizing that "the
26 Foundation's purpose is not to help others benefit commercially from Julia's legacy."

27 6. Notwithstanding being expressly denied permission to do so, Airbnb, in
28 conjunction with its long-time public relations agency, defendant Dan Klores

1 Communications, LLC ("DKC"), engaged in a broad marketing and promotional
2 campaign, prominently using Julia Child's name, identity and persona in conjunction with
3 an online contest to win a free night at the "Former Julia Child Home," which promoted
4 both the Airbnb brand and business, as well as the rental of the La Pitchoune property from
5 which Airbnb also benefitted commercially.

6 7. Among other things, Airbnb and DKC used Mrs. Child's name, identity and
7 persona: (i) on Airbnb's commercial website, (ii) on Airbnb's own social media, including
8 Facebook and Instagram, and on the social media of paid endorsers who participated in the
9 promotional event at La Pitchoune over the Memorial Day holiday (enabling users to
10 distribute such marketing and promotional materials virally to their friends and followers),
11 and (iii) in an "email blast" sent by DKC to an extensive mailing list in which it expressly
12 promoted in both the title and email message that Airbnb was giving away a free night at
13 the "former home of Julia Child in Provence, France" where contest participants could
14 "imagine walking the halls of Julia Child's former home," "combing over the knick knacks
15 in her kitchen exactly as she left them," and "channeling the culinary genius of Julia
16 Child."

17 8. Airbnb and DKC did not ever obtain the permission of The Julia Child
18 Foundation to use the name, image and/or persona of Julia Child. Nor did Airbnb or DKC
19 ever pay The Julia Child Foundation compensation for the commercial use of such rights,
20 let alone compensation commensurate with the substantial commercial value of using Julia
21 Child's name, image or persona to market or promote a major multi-billion dollar brand
22 like Airbnb – commercial rights that have *never* been granted before by either Mrs. Child
23 or The Julia Child Foundation.

24 9. Based on the foregoing, The Julia Child Foundation seeks a preliminary and
25 permanent injunction to stop Airbnb and DKC (and the defendants identified herein as
26 Does 1-20) from all further and future uses of the Julia Child name, image or persona
27 and/or other publicity rights, and for monetary damages to compensate The Julia Child
28 Foundation for the unauthorized commercial use of such rights.

THE PARTIES

10. Plaintiff The Julia Child Foundation is a private charitable foundation with its principal place of business located in the County of Santa Barbara, State of California. The Julia Child Foundation is, and has been for years, registered with the California Attorney General's Office Registry of Charitable Trusts. The Julia Child Foundation is, and has been since 2004, registered with the California Secretary of State's Office as the "successor-in-interest" of the post-mortem rights of publicity of Julia Child pursuant to California Civil Code section 3344.1(h). The Julia Child Foundation files (and for years has filed) California state tax returns, and pays state taxes to the State of California.

11. Plaintiff is informed and believes and based thereon alleges that defendant Airbnb is, and at all times relevant hereto was, a corporation organized and existing under the laws of Delaware, with its principal place of business located at 888 Brannan Street, 4th Floor, San Francisco, CA 94107.

12. Plaintiff is informed and believes and based thereon alleges that defendant DKC is, and at all times relevant hereto was, a corporation organized and existing under the laws of Delaware, with offices throughout the United States, including in Los Angeles, New York, Chicago, Miami, San Francisco and Washington, D.C.

13. Plaintiff is informed and believes and based thereon alleges that the fictitiously-named defendants sued herein as Does 1 through 20, and each of them, are in some manner responsible or legally liable for the actions, events, transactions and circumstances alleged herein. The true names and capacities of such fictitiously-named defendants, whether individual, corporate, or otherwise, are presently unknown to Plaintiff, and Plaintiff will seek leave of Court to amend this Complaint to assert the true names and capacities of such fictitiously-named defendants when the same have been ascertained. For convenience, each reference to a named defendant herein shall also refer to Does 1 through 20. All defendants, including both Airbnb and DKC, and those referred to herein as Does 1 through 20, are sometimes collectively referred to herein as "Defendants."

14. Plaintiff is informed and believes and based thereon alleges that Defendants,

1 and each of them, were and are the agents, licensees, employees, partners, joint-venturers,
2 co-conspirators, owners, principals, and employers of the remaining Defendants, and each
3 of them are, and at all times herein mentioned were, acting within the course and scope of
4 that agency, license, partnership, employment, conspiracy, ownership, or joint venture.
5 Plaintiff further is informed and believes and based thereon alleges that the acts and
6 conduct herein alleged of each of the Defendants were known to, authorized by, and/or
7 ratified by the other Defendants, and each of them.

8 **JULIA CHILD**

9 15. Julia Child was born on August 15, 1912 in Southern California, and was
10 raised in Southern California. She lived in many places during her life besides California,
11 including New York, Washington D.C., Paris, France, and Cambridge, Massachusetts.
12 Mrs. Child owned a secondary residence in Santa Barbara County, California from 1981
13 through 2001 and, in late 2001, permanently relocated and retired to Santa Barbara
14 County, California, after donating her house in Cambridge to her *alma mater*, Smith
15 College, and her entire kitchen from that home to the Smithsonian Institution, both
16 donations being made in late 2001.

17 16. For periods of time throughout her life, Mrs. Child and her husband, Paul,
18 stayed in (but never owned) a cottage on a property in Provence, France, which they
19 named La Pitchoune, which included kitchen tools and implements which Mrs. Child used
20 during her lifetime, but which were removed from the property shortly after Mrs. Child
21 returned the keys to the property owners, in 1992 to her frequent collaborator Simone Beck
22 and the family of her late husband, Jean Fischbacher. In her final book, the
23 autobiographical *My Life in France*, published posthumously in 2006, Mrs. Child recalled
24 her departure from La Pitchoune, also nicknamed "La Peetch":

25 "In June 1992, Dort's daughter Phila, her husband, and baby boy joined me
26 for a final, month-long stay at La Peetch...In a leisurely way, Phila and I
27 packed up my *batterie de cuisine*, Paul's paintings and photographs, and our
28 glassware from Biot. We left Simca's furniture and tidied up all the legal

1 and financial loose ends, in order to return the house to Jean's family—just
2 as Paul and I had promised we would nearly thirty years earlier.”

3 17. As of January 2002, Mrs. Child was a permanent domiciliary, resident and
4 taxpayer of the State of California and remained so for the rest of her life. Mrs. Child
5 passed away on August 13, 2004, two days before her 92nd birthday. Her 100th birthday
6 was publicly celebrated on August 15, 2012.

7 18. Beginning in the early 1960s, and until her death in 2004, Julia Child was a
8 famous American cooking teacher, author and television personality. Her career began in
9 earnest in 1961, at the age of 39, when her first book, *Mastering the Art of French*
10 *Cooking*, was published by Alfred A. Knopf, becoming a best-seller and receiving critical
11 acclaim. In 2009, nearly 50 years after its first publication, the book topped the *New York*
12 *Times* best-seller list in the advice and how-to category. In 1963, Julia Child's celebrated
13 television program, *The French Chef*, debuted on public television and was an immediate
14 hit. It was quickly syndicated to local Public Broadcasting Service (“PBS”) stations
15 throughout the United States and was broadcast nationally for ten years, totaling
16 approximately 200 episodes, many of which remain widely available today including
17 through channels such as www.PBS.com, iTunes and DVD sets. *The French Chef* won
18 numerous accolades, including an Emmy Award and Peabody Award. The success of the
19 show led to several other successful series and PBS specials, resulting in Mrs. Child
20 winning two additional Emmy Awards, and the publication of several companion books.
21 Mrs. Child wrote or co-wrote a total of eighteen (18) books, nearly all of them educational
22 books about food, cooking and the culinary arts. Her final book, the autobiographical *My*
23 *Life in France*, published posthumously in 2006, was a critically acclaimed bestseller and
24 recounted Mrs. Child's life with her husband, Paul Child, in post-World War II France.

25 19. Throughout her life and career, Julia Child had many opportunities for
26 commercial advancement, including commercial endorsement and spokesperson
27 opportunities with companies in the food and culinary industry. She could have created a
28 lifestyle brand like Martha Stewart or Oprah Winfrey, and could have become a

1 spokesperson for multi-billion dollar commercial brands in the kitchen, culinary and food
2 or travel and leisure industries—brands such as Airbnb—for large sums of money.
3 Instead, she steadfastly refused all such commercial opportunities and instead focused her
4 career on public education.

5 20. As a testament to Mrs. Child's longstanding and well known policy of
6 refusing commercial endorsement opportunities, and also her impact on the food and
7 culinary industry, in August 2012, during celebrations for Mrs. Child's 100th birthday,
8 famed chef, bestselling author, and television host Anthony Bourdain reportedly stated:

9 "Julia Child was the single most important, influential and game-changing
10 figure in the history of American gastronomy. Everything tracks back to her.
11 And though uniquely situated to do so, she never endorsed a thing: not a pot,
12 not a pan, not a chain of restaurants, not a spice blend, apron, or boil-in-the-
13 bag dinner. She will be remembered for what she did on this earth, which
14 was to inspire millions to cook — and eat — better."

15 21. From the early 1960s, through to the present, the name, identity, and persona
16 of Julia Child have been and are instantly recognized by the public and have substantial
17 commercial value.

18 22. Upon her passing on August 13, 2004, Mrs. Child's rights of publicity,
19 including the right to use her name, voice, signature, photograph, likeness, identity and
20 persona for commercial purposes (the "Julia Child Publicity Rights") were transferred by
21 her will to The Julia Child Foundation, a charitable trust that she had created
22 approximately nine years earlier, in 1995. Mrs. Child's will was probated in the Santa
23 Barbara County Superior Court, State of California.

24 23. The Julia Child Foundation is a grant-giving private foundation dedicated to
25 advancing the matters that Julia Child valued: educating and encouraging others to live
26 well through the joys of cooking and eating well.

27 24. The Julia Child Foundation exercises careful consideration before permitting
28 the use of any of the Julia Child Publicity Rights. The Julia Child Foundation generally

1 does not grant permission for the Julia Child Publicity Rights to be used for commercial
2 purposes, including the marketing and sale of commercial products and services, because
3 Julia Child herself, during her lifetime and long career as a world-famous cooking teacher,
4 author and television personality, likewise did not grant permission for the Julia Child
5 Publicity Rights to be used for commercial purposes, other than in connection with her
6 books and television programs.

7 25. Neither Julia Child, nor The Julia Child Foundation, ever granted to any of
8 the Defendants any right, license or permission to use any of the Julia Child Publicity
9 Rights for any purpose whatsoever.

10 **DEFENDANTS' WRONGFUL CONDUCT**

11 26. Plaintiff is informed and believes and based thereon alleges that Airbnb
12 advertises, markets, promotes, distributes, and offers residential properties for rent or lease
13 under the "Airbnb" brand. According to its website, Airbnb (i) has serviced over
14 60,000,000 guests, (ii) has over 2,000,000 listings; (iii) "connects people to unique travel
15 experiences, at any price point, in more than 34,000 cities and 191 countries;" and (iv) is
16 "the easiest way for people to monetize their extra space and showcase it to an audience of
17 millions."

18 27. Defendants intentionally and prominently used the Julia Child Publicity
19 Rights, owned by The Julia Child Foundation, within numerous marketing and
20 promotional materials for the Airbnb brand and business, as well as the rental of the
21 property known as *La Pitchoune* in Provence, France, including: (i) on Airbnb's
22 commercial website, (ii) on Airbnb's own social media, including Facebook and
23 Instagram, and on the social media of paid endorsers who participated in the promotional
24 event at *La Pitchoune* over the Memorial Day holiday (enabling users to distribute such
25 marketing and promotional materials virally to their friends and followers), and (iii) in an
26 "email blast" sent by DKC to an extensive mailing list in which it expressly promoted in
27 both the title and email message that Airbnb was giving away a free night at the "former
28 home of Julia Child in Provence, France" where contest participants could "imagine

1 walking the halls of Julia Child's former home," "combing over the knick knacks in her
2 kitchen exactly as she left them," and "channeling the culinary genius of Julia Child"
3 (collectively, the "Advertisements").

4 28. Defendants used the Julia Child Publicity Rights for the purpose of attracting
5 attention to Airbnb and its commercial products and services, and enhancing the marketing
6 and promotion thereof.

7 29. At no time did Julia Child, or The Julia Child Foundation, ever give
8 permission to Defendants, or any of them, the right to use the Julia Child Publicity Rights
9 for any purpose whatsoever, including the right or permission to advertise, market, and
10 promote Airbnb and/or its products or services.

11 30. Plaintiff is informed and believes and based thereon alleges that Defendants
12 intentionally, negligently, and/or knowingly used the Julia Child Publicity Rights in the
13 Advertisements for the purpose of advertising and promoting Airbnb and its commercial
14 products and services. Defendants have, without any right, title or authorization,
15 misappropriated Plaintiff's valuable rights and the resulting success and popularity of Julia
16 Child by unlawfully using the Julia Child Publicity Rights for the aforesaid commercial
17 purposes.

18 **FIRST CAUSE OF ACTION**

19 **(Misappropriation of Right of Publicity**

20 **California Civil Code §3344.1 – Against All Defendants)**

21 31. Plaintiff repeats, re-alleges, adopts and incorporates each and every
22 allegation contained in Paragraphs 1-30, inclusive, as though fully set forth herein.

23 32. The conduct of Defendants, as alleged hereinabove, constitutes a violation of
24 Section 3344.1 of the California Civil Code, due to the knowing and unauthorized use of
25 the legendary Julia Child's name, photograph and likeness for commercial purposes, which
26 have substantial commercial value.

27 33. As a direct and proximate result of the aforesaid wrongful acts of
28 Defendants, Plaintiff has been damaged in an amount that is not yet fully ascertainable, but

1 which exceeds the jurisdictional minimum of this Court. When Plaintiff has ascertained
2 the full amount of its damages, it will seek leave of Court to amend this Complaint
3 accordingly.

4 34. As a direct and proximate result of the aforesaid wrongful acts of
5 Defendants, Plaintiff has incurred, and will continue to incur, attorneys' fees and costs.
6 Plaintiff is entitled to an award of its attorneys' fees and costs incurred in connection with
7 this action pursuant to Section 3344.1(a)(1) of the California Civil Code.

8 35. By reason of the aforesaid wrongful acts of Defendants, in addition to the
9 relief sought hereinabove, Plaintiff is entitled to an accounting of all of Defendants'
10 revenues and profits associated with the unauthorized use of Julia Child's name,
11 photograph and likeness, and to an award of all such sums.

12 36. By reason of Defendants' wrongful acts as alleged hereinabove, Defendants
13 are involuntary trustees holding all revenues and profits associated with the unauthorized
14 use of Julia Child's name, image and/or persona, in their possession under a constructive
15 trust for the benefit of Plaintiff with a duty to transfer the same to Plaintiff forthwith.

16 37. Plaintiff is informed and believes, and based thereon alleges, that
17 Defendants, in doing the things herein alleged, acted willfully, maliciously, and
18 oppressively, and with full knowledge of the adverse effects of their actions on Plaintiff,
19 and with willful and deliberate disregard for the consequences to Plaintiff. By reason
20 thereof, Plaintiff is entitled to recover punitive and exemplary damages from Defendants in
21 an amount to be determined at the time of trial.

22 38. Plaintiff also seeks a preliminary and permanent injunction to prohibit
23 Defendants from any further commercial use of the Julia Child Publicity Rights, including
24 Julia Child's name, voice, signature, photograph, likeness, image, identity or persona.

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1 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them,
2 jointly and severally, as follows:

- 3 1. General and special damages in accordance with proof at trial;
- 4 2. An award of the revenues and profits received by Defendants as a result of
5 the unauthorized use of the Julia Child publicity rights;
- 6 3. Imposition of a constructive trust on all monies and sums received by
7 Defendants as a result of their infringement of the Julia Child publicity rights;
- 8 4. Punitive and exemplary damages in accordance with proof at trial;
- 9 5. An award of Plaintiff's attorneys' fees;
- 10 6. Preliminary and permanent injunction prohibiting Defendants and their
11 affiliated companies from any further use of Julia Child's name, photograph, likeness,
12 voice, signature, identity, persona or other publicity rights.
- 13 7. For all costs of suit incurred herein;
- 14 8. Interest at the maximum legal rate; and
- 15 9. For such other and further relief as the Court may deem to be just and proper.

16
17 Dated: June 21, 2016

HARDER MIRELL & ABRAMS LLP

18
19 By: 

20 JEFFREY I. ABRAMS

21 Attorneys for Plaintiff

22 THE JULIA CHILD FOUNDATION FOR
23 GASTRONOMY AND THE CULINARY
24 ARTS
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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury.

Dated: June 21, 2016

HARDER MIRELL & ABRAMS LLP

By: 

JEFFREY I. ABRAMS

Attorneys for Plaintiff

THE JULIA CHILD FOUNDATION FOR
GASTRONOMY AND THE CULINARY
ARTS