

1 Timothy A. Loranger, State Bar No. 225422

2 Matthew P. French, State Bar No. 327814

3 WISNER BAUM LLP

4 11111 Santa Monica Blvd., Suite 1750

5 Los Angeles, CA 90025

6 Telephone: (310) 207-3233

7 Facsimile: (310) 820-7444

8 tloranger@wisnerbaum.com

9 mfrench@wisnerbaum.com

10 Pedro Echarte, *Pro Hac Vice Pending*

11 Michael Haggard, *Pro Hac Vice Pending*

12 The Haggard Law Firm

13 330 Alhambra Circle

14 Coral Gables, FL 33146

15 Tel: (305) 375-0111

16 ppe@haggardlawfirm.com

17 mah@haggardlawfirm.com

18 Christopher Stewart, *Pro Hac Vice Pending*

19 Michael Roth, *Pro Hac Vice Pending*

20 Stewart Miller Simmons Trial Attorneys

21 55 Ivan Allen Jr. Blvd., Suite 700

22 Atlanta, GA 30308

23 Tel: 404-529-3476

24 cstewart@smstrial.com

25 mroth@smstrial.com

26 *Attorneys for Plaintiff*

ELECTRONICALLY

FILED

Superior Court of California,
County of San Francisco

12/23/2024

Clerk of the Court

BY: MARIVIC VIRAY

Deputy Clerk

CGC-24-620840

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

20 YESSICA GARCIA CÁRDENAS,

21 individually,

22 Plaintiff,

23 vs.

24 AIRBNB, INC., AIRBNB PAYMENTS, INC.,

25 and AIRBNB TRAVEL, LLC.

26 Defendants.

) **Case No.:**

) **COMPLAINT**

) **DEMAND FOR JURY TRIAL**

) **[Amount demanded exceeds \$35,000]**

1 **COMPLAINT AND DEMAND FOR JURY TRIAL**

2 COMES NOW, Plaintiff, YESSICA GARCIA CÁRDENAS, individually, by and through
3 undersigned counsel, and hereby sues Defendants, AIRBNB, INC., AIRBNB PAYMENTS, INC.,
4 and AIRBNB TRAVEL, LLC (collectively, referred to “Defendants” or “Airbnb”). In support,
5 Plaintiff alleges as follows:
6

7 **INTRODUCTION**

8 1. This is a wrongful death action that stems for the tragic and untimely death of Plaintiff’s
9 decedent, JOSÉ PEÑALOZA HERRERA.
10

11 2. Plaintiff’s decedent died from carbon monoxide poisoning while staying at an Airbnb
12 short-term rental property in San Luis Potosí, Mexico on or about December 27, 2022. Plaintiff’s
13 decedent’s death was caused by a defective gas-powered water heater inside the rental unit.
14 Plaintiff’s decedent died in the incident.
15

16 **PARTIES**

17 3. Plaintiff YESSICA GARCIA CÁRDENAS is JOSÉ PEÑALOZA HERRERA’s heir and
18 surviving spouse.
19

20 4. At all material times, Defendant, AIRBNB, INC., was a Delaware Corporation doing
21 business in the State of California and has a principal place of business located at 99 Rhode Island
22 Street, San Francisco, CA 94103.

23 5. At all material times, Defendant, AIRBNB TRAVEL, LLC, was a Delaware Corporation
24 doing business in the State of California with a principal place of business located at 888 Brannan
25 Street, San Francisco, CA 94103.
26
27
28

1 6. At all material times, Defendant, AIRBNB PAYMENTS, LLC, was a Delaware
2 Corporation doing business in the State of California with a principal place of business located at
3 888 Brannan Street, San Francisco, CA 94103.

4
5 **JURISDICTION AND VENUE**

6 7. Jurisdiction and venue are proper in the Superior Court of the County of San Francisco,
7 State of California, pursuant to California Code of Civil Procedure § 395 because Airbnb, Inc. has
8 its principal place of business in San Francisco and the amount in controversy exceeds the minimal
9 jurisdictional requirement of the Court.

10 8. Plaintiff does not assert claims or rights arising under the Constitution, treaties, or laws of
11 the United States; thus, there is no federal question at issue pursuant to 28 U.S.C. § 1331.

12 9. Plaintiff brings the following claims for damages on behalf of all of the persons entitled to
13 bring a cause of action for the wrongful death of JOSÉ PEÑALOZA HERRERA pursuant to
14 section 377.60, California Code of Civil Procedure.
15

16
17 **FACTS**

18 10. At all material times, Defendants, AIRBNB, INC., AIRBNB TRAVEL, LLC, and
19 AIRBNB PAYMENTS, LLC, (collectively referred to hereinafter as “Defendants” or “Airbnb”)
20 operated an online platform and were in the business of coordinating, advertising, marketing, and
21 facilitating the short-term rental of properties – both domestically and in foreign countries, like
22 Mexico.
23

24 11. At all material times, Airbnb offered its services to its “members”, which included both
25 “hosts” (those renting out their property) and “guests” (those staying at the host’s properties).

26 12. At all material times, Airbnb controlled or had the right to control nearly every aspect of
27 the platform’s rentals (including the subject rental). Airbnb, among other things, made hosts’
28

1 properties available for rent to guests, provided details of the hosts' properties on its platforms
2 (including available safety measures at the property), accepted reservations, processed payments,
3 provided check-in instructions, facilitated communications between hosts and guests, offered a
4 refund policy, operated a 24-hour safety line, instituted rules governing both hosts and guests,
5 adopted safety policies and procedures for its members, offered support, disbursed income
6 generated to hosts. For its services, Airbnb was paid a fee and commissions.
7

8 13. Further, at all material times, Airbnb controlled or had the right to control hosts' premises
9 (including the subject premises) by, among other things, instituting safety policies and procedures
10 to ensure the safety of guests during the rental periods, requiring hosts to utilize certain life safety
11 devices in their properties (*e.g.* smoke detectors, carbon monoxide monitors, etc.), removing hosts
12 and their properties from the platform for failure to abide by its safety policies and procedures,
13 and warning guests of dangers when staying at Airbnb rentals.
14

15 14. Carbon monoxide is a poisonous gas that is a by-product of combustion. It is a colorless,
16 odorless, and tasteless gas that cannot be detected by humans. Exposure to carbon monoxide can
17 kill a person quickly and without notice.
18

19 15. Prior to December 27, 2022, Airbnb knew (or should have known) that its' guests traveling
20 abroad – especially to South and Central America – were at risk of carbon monoxide poisoning.
21 Prior to that date, numerous incidents of guests dying or being seriously from carbon monoxide
22 poisoning had occurred at Airbnb properties. For example, in December 2013, a Canadian tourist
23 died, and several others were hospitalized while on vacation in Taiwan and staying at Airbnb. The
24 cause of the death and injuries was carbon monoxide poisoning, which was emitted from a gas-
25 powered tankless water heater. In April 2019, an American tourist died while vacationing in
26 Columbia at a property rented through Airbnb. The cause of death was carbon monoxide poisoning
27
28

1 which was the result of an improperly installed water heater. In December 2021, another American
2 tourist died from carbon monoxide poisoning while on vacation in Mexico and staying at an
3 Airbnb rental. The death occurred while the tourist was showering and was a result of an
4 improperly installed water heater. In September 2022, an American tourist died in Brazil while on
5 vacation and staying at an Airbnb rental. The death was also a result of carbon monoxide poisoning
6 and occurred while the tourist was showering due to an improperly installed water heater. In
7 October 2022, three American tourists died while vacationing in Mexico at a property rented
8 through Airbnb. The cause of death was carbon monoxide poisoning which was the result of an
9 improperly installed water heater. Many of these incidents were publicized through various news
10 sources and, although the exact number of incidents is not known, it has been reported that in the
11 10-year period between 2013 – 2023 at least 19 deaths occurred at Airbnb properties due to carbon
12 monoxide poisoning.
13
14

15 16. In 2014, Airbnb recognized and acknowledged the risks posed to its guests from the
16 dangers of carbon monoxide poisoning. Airbnb indicated that it would require its hosts to install
17 carbon monoxide detectors in every listing by the end of the year. However, the policy was never
18 implemented. Airbnb never required its hosts to install carbon monoxide detectors – a life safety
19 device that costs no more than a few dollars – despite knowing and appreciating understanding the
20 risks of foreseeable serious injury or death to its guests.
21

22 17. Instead of requiring its hosts to install carbon monoxide detectors, Airbnb instituted a
23 program where hosts could obtain up to one free carbon monoxide detector for their properties
24 from the company. The program was optional for hosts and Airbnb has never required its hosts to
25 install the life safety device despite knowing the significant risks to the life and safety of guests
26 when traveling abroad.
27
28

1 18. To make matters significantly worse, in the years leading up to the subject incident, Airbnb
2 undertook the duty to warn of the risks of carbon monoxide poisoning to both hosts and guests on
3 its website. However, those warnings comprised of general warnings about the risks of carbon
4 monoxide poisoning, and were entirely inadequate and misleading in light of the existing risk and
5 past history of injury and deaths at Airbnb rentals. Specifically, Airbnb never warned or otherwise
6 informed hosts or guests of the recurring injuries and deaths caused by carbon monoxide poisoning
7 at its rental properties throughout the world – especially in Central and South America. Airbnb
8 also never warned its guests when booking its rentals of the presence of carbon monoxide causing
9 devices within the unit (*e.g.*, gas-powered water heaters) despite informing the guest of the
10 presences of other features and aspects of the rentals.
11

12
13 19. Failing to adequately warn prevented both hosts and guests from making informed
14 decisions about the risks entailed with staying at Airbnb’s properties and of the potential need for
15 additional safety devices to be installed by hosts (*i.e.* carbon monoxide monitors) or to be utilized
16 by guests when traveling (*i.e.*, portable carbon monoxide monitors).
17

18 20. At all material times, the risk of carbon monoxide poisoning to Airbnb members (guests)
19 was foreseeable.

20 21. In December 2022, Plaintiff’s decedent, JOSÉ PEÑALOZA HERRERA, along with his
21 co-workers, traveled to San Luis Potosí, Mexico to help disconnect, move and re-connect/install
22 machinery at Joynsonquin Automotive.
23

24 22. Upon information and belief, Plaintiff’s decedent, JOSÉ PEÑALOZA HERRERA booked
25 and reserved a short-term rental through the Airbnb platform. The property was a condominium
26 and had an address of Agustín Vera 850, Apt. 3, Col del Valle, 78200 San Luis Potosí, S.L.P.
27 Mexico. The unit had a gas-powered water heater located inside the unit.
28

1 23. Unbeknownst to Plaintiff's decedent, carbon monoxide poisoning was a significant risk at
2 Airbnb rentals in Mexico and throughout Central and South America.

3 24. On or about December 27, 2022, while staying at the Airbnb, Plaintiff's decedent JOSÉ
4 PEÑALOZA HERRERA went to sleep in a room with a mattress in it, which also had a gas fueled
5 water heater and other appliances installed in it.
6

7 25. Unbeknownst to Plaintiff's decedent, JOSÉ PEÑALOZA HERRERA, the water heater,
8 exhaust ducts and/or other appliances were defective, not properly installed and not operating as
9 intended. Due to the defects, lethal levels of carbon monoxide were emitted into the Airbnb unit.
10

11 26. Upon information and belief, the premises did not have a carbon monoxide detector or in
12 the alternative, the carbon monoxide monitor was not functioning.

13 27. Plaintiff's decedent, JOSÉ PEÑALOZA HERRERA succumbed to carbon monoxide
14 poisoning and died while in the unit.

15 **FIRST CAUSE OF ACTION**

16 *Plaintiff's Wrongful Death Claim Sounding in Negligence*
17 *against Defendants*

18 28. Plaintiff re-alleges and incorporates herein by reference each and every allegation and
19 statement contained in the prior paragraphs.
20

21 29. At all material times, Defendants, by and through their agents and employees, owed their
22 members a duty to operate its online platform and real estate rental services with reasonable and
23 ordinary care. Defendants, by and through their agents and employees, owed their members the
24 duty to warn of dangers associated with its platform and real estate rental services, including of
25 the risks of carbon monoxide poisoning while staying at Airbnb short-term rentals abroad.
26 Defendants, by and through their agents and employees, owed their members the duty to control,
27 maintain, and operate its short-term rentals and its' hosts' premises in a reasonably safe condition.
28

1 In the alternative, Defendants, by and through their agents and employees, undertook such duties
2 and therefore had the duty to do them with reasonable and ordinary care.

3 30. At all material times, Defendants knew or should have known that those staying at its host's
4 premises abroad, like Plaintiff's decedent, were at risk of carbon monoxide poisoning. Further,
5 Defendants knew or should have known that those staying at its host's premises abroad, like
6 Plaintiff's decedent, neither knew of such risks nor had it within their power to protect themselves
7 absent such knowledge.
8

9 31. At all material times, Defendants were in a superior position to appreciate such hazards
10 and take the necessary steps to prevent harm to its members.
11

12 32. At all material times, Defendants, by and through their agents and employees, breached
13 their duties and failed to exercise reasonable care by the following actions or omissions:

- 14 a. Failing to maintain the subject premises in a reasonably safe condition;
- 15 b. Failing to inspect or otherwise confirm the gas-powered water heater at
16 the subject premises was in a non-defective and properly working
17 condition;
- 18 c. Failing to warn Plaintiff's decedent of the presence of a gas-powered
19 water heater in the subject premises;
- 20 d. Failing to require hosts to inspect or maintain their premises in a
21 reasonably safe condition;
- 22 e. Failing to require hosts to install working carbon monoxide monitors in
23 their units;
- 24 f. Failing to ensure or otherwise verify that the subject premises had a
25 working carbon monoxide monitor;
- 26 g. Failing to have or implement reasonable safety policies and procedures;
- 27 h. Failing to require hosts to install carbon monoxide monitors;
- 28 i. Failing to adequately warn members, both hosts and guests, of the
significant risks of carbon monoxide poisoning at foreign short-term
rental properties;

- j. Failing to warn members, both hosts and guests, of the prior incidents of carbon monoxide poisoning occurring at foreign short-term rental properties;
- k. Misleading members, both hosts and guests, with respect to the severity of the risk of carbon monoxide poisoning at foreign short-term rental properties;
- l. Other acts of negligence not yet discovered.

33. As a legal, direct, and proximate result of Defendants' negligent conduct, Plaintiff's decedent fell victim to carbon monoxide poisoning and died.

34. As a legal, direct, and proximate result of Defendants' negligent conduct, Plaintiff has suffered the following damages, which are in excess of the jurisdictional limits of this Court:

- a. The loss of love, affection, society, service, comfort, support, right of support, expectations of future support and counseling, companionship, solace and mental support as well as other benefits and assistance of Plaintiff's decedent;
- b. The financial support, services and assistance of Plaintiff's decedent;
- c. The loss of property, medical, funeral and burial expenses;
- d. The loss of Plaintiff's decedent's earnings; and
- e. Any other damages recoverable by law.

SECOND CAUSE OF ACTION

Plaintiff's Wrongful Death Claim Sounding in Premises Liability against Defendants

35. Plaintiff re-alleges and incorporates herein by reference each and every allegation and statement contained in the prior paragraphs.

36. At all material times, Defendants, by and through their agents and employees, had or undertook the duty to control, maintain, and operate its short-term rentals and its' hosts' premises in a reasonably safe condition.

1 37. At all material times, Defendants knew or should have known that those staying at its host's
2 premises abroad, like Plaintiff's decedent, were at risk of carbon monoxide poisoning while
3 staying at Airbnb rentals abroad. Further, Defendants knew or should have known that that those
4 staying at its host's premises abroad, like Plaintiff's decedent, neither knew of such risks nor had
5 it within their power to protect themselves absent such knowledge. Finally, Defendants knew or
6 should have known that the subject premises had a gas powered water heater, that the gas powered
7 water heater was not properly installed or functions, and/or that the subject premises did not have
8 any safety or warning devices to prevent against carbon monoxide poisoning (*e.g.*, a carbon
9 monoxide monitor)
10

11 38. At all material times, Defendants were in a superior position to appreciate such hazards
12 and take the necessary steps to prevent harm to its members.
13

14 39. At all material times, Defendants, by and through their agents and employees, breached
15 their duties and failed to exercise reasonable care by the following actions or omissions:
16

- 17 a. Failing to maintain the subject premises in a reasonably safe condition;
- 18 b. Failing to inspect or otherwise confirm the gas-powered water heater at
19 the subject premises was in a non-defective and properly working
condition;
- 20 c. Failing to warn Plaintiff's decedent or his friends of the presence of a
21 gas-powered water heater in the subject premises;
- 22 d. Failing to require the host to inspect or maintain their premises in a
reasonably safe condition;
- 23 e. Failing to require the host to install working carbon monoxide monitors
24 in its unit;
- 25 f. Failing to ensure or otherwise verify that the subject premises had a
26 working carbon monoxide monitor;
- 27 g. Failing to have or implement reasonable safety policies and procedures;
- 28 h. Failing to require the host to install carbon monoxide monitors;

- i. Failing to adequately warn members, both hosts and guests, of the significant risks of carbon monoxide poisoning at foreign short-term rental properties;
- j. Failing to warn members, both hosts and guests, of the prior incidents of carbon monoxide poisoning occurring at foreign short-term rental properties;
- k. Misleading members, both hosts and guests, with respect to the severity of the risk of carbon monoxide poisoning at foreign short-term rental properties;
- l. Other acts of negligence not yet discovered.

40. As a legal, direct, and proximate result of Defendants' negligent conduct, Plaintiff's decedent fell victim to carbon monoxide poisoning and died.

41. As a legal, direct, and proximate result of Defendants' negligent conduct, Plaintiff has suffered the following damages, which are in excess of the jurisdictional limits of this Court:

- a. The loss of love, affection, society, service, comfort, support, right of support, expectations of future support and counseling, companionship, solace and mental support as well as other benefits and assistance of Plaintiff's decedent;
- b. The financial support, services and assistance of Plaintiff's decedent;
- c. The loss of property, medical, funeral and burial expenses;
- d. The loss of Plaintiff's decedent's earnings; and
- e. Any other damages recoverable by law.

PRAYER FOR RELIEF

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

- a. For special and general damages according to proof at trial.
- b. For all economic and compensatory damages according to proof at trial.
- c. For funeral and burial expenses.

- 1 d. For interest on all economic damages in the legal amount from the date of
2 deaths, subject to proof at trial.
- 3 e. For court and trial costs, and other allowable costs, according to proof.
- 4 f. For reasonable attorneys' fees, costs and expenses, pursuant to applicable law.
- 5 g. For such other and further relief this Court deems appropriate under the
6 circumstances.

7 DATED: December 23, 2024

WISNER BAUM LLP

8 *Timothy Loranger*
9 Timothy A. Loranger
10 Attorneys for Plaintiff
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury of all issues so triable as a matter of right.

DATED: December 23, 2024

WISNER BAUM LLP



Timothy A. Loranger
Attorneys for Plaintiff