



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

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Case Number: CPF-16-515136

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ORDER

IN RE: CITY AND COUNTY OF SAN FRANCISCO ET AL

001C05578090

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FILED
Superior Court of California
County of San Francisco

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9 CITY AND COUNTY OF SAN FRANCISCO,
SAN FRANCISCO TREASURER JOSÉ CISNEROS, and
10 SAN FRANCISCO TAX COLLECTOR DAVID AUGUSTINE

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SAN FRANCISCO
14 UNLIMITED JURISDICTION

15 CITY AND COUNTY OF
SAN FRANCISCO; SAN FRANCISCO
16 TREASURER JOSÉ CISNEROS; and
SAN FRANCISCO TAX COLLECTOR
17 DAVID AUGUSTINE,

18 Petitioners,

19 vs.

20 HOMEAWAY.COM, INC.

21 Respondent.

Case No. CPF-16-515136

**[PROPOSED] ORDER GRANTING SAN
FRANCISCO'S PETITION TO COMPEL
ENFORCEMENT OF SUBPOENA ISSUED TO
HOMEAWAY.COM BY THE SAN
FRANCISCO TAX COLLECTOR**

Hearing Date: ~~August 25~~ ^{September 20} 2016
Hearing Judge: Hon. Harold Kahn
Time: 9:30 a.m.
Place: Dept. 302

Date Action Filed: June 21, 2016
Trial Date: Not set.

22
23
24 The Petition To Compel Enforcement Of Subpoena Issued To Homeaway.Com by Petitioners
25 City and County of San Francisco, San Francisco Treasurer Jose Cisneros and San Francisco Tax
26 Collector David Augustine came on for hearing at 9:30 a.m. on August 25, 2016 in Department 302 of

1 the above-captioned court, the Honorable Harold Kahn presiding. Deputy City Attorney Mark D.
2 Lipton, Esq. appeared on behalf of Petitioners. Sanjay Nangia, Esq., Ambika Doran, Esq., and James
3 Grant, Esq. appeared on behalf of Respondent HomeAway.com, Inc.

4 At the August 25, 2016 hearing, the Court heard argument, ordered supplemental submissions
5 from the parties and continued the hearing to September 20, 2016. At the continued hearing, Deputy
6 City Attorney James M. Emery appeared for Petitioners; and Sanjay Nangia, Esq., and James Grant,
7 Esq. appeared for Respondent HomeAway.com, Inc.

8 Having reviewed the parties' submissions, considered the relevant authorities, and heard
9 argument, the Court hereby GRANTS the Petition.

10 There is insufficient support in the record to establish that Homeaway is either an Electronic
11 Communications Service or a Remote Computing Service within the meaning of the Stored
12 Communications Act. There is insufficient evidence to show that the subpoena was burdensome or
13 overbroad. The subpoena does not violate First Amendment rights. The Court does not need to reach
14 the issue of the City's authority under the hotel tax. The subpoena is sufficiently related to the tax
15 ordinances to permit the subpoena to be enforced.

16 This order is stayed until November 21, 2016, to allow for appellate review by respondent.

17 IT IS SO ORDERED.

18
19 Dated: September 28, 2016

20
21 
22 _____
23 HON. HAROLD KAHN
24 JUDGE OF THE SUPERIOR COURT

25 Approved as to form:
26 SEE EXHIBIT "A" RE
27 COMPLIANCE WITH CRC 3.1312

28 _____
29 DAVIS WRIGHT TREMAINE, LLP
30 Attorneys for Homeaway.com, Inc.

Jose Rios Merida

From: Jim Emery <Jim.Emery@sfgov.org>
Sent: Tuesday, September 27, 2016 10:39 AM
To: Contestdept302tr
Cc: jimgrant@dwt.com; Mark Lipton; sanjaynangia@dwt.com
Subject: Re: Homeaway subpoena enforcement: SF Superior Ct Case No 515136
Attachments: 01137428.DOCX; 092016-D302-CCSF - CPF-16-515136.pdf

Dear Judge Kahn,

Homeaway's counsel told me this morning that Homeaway has no objection to the form of the proposed order, below.

Jim Emery
Deputy City Attorney
City Hall, Room 375
San Francisco, CA 94102
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jim.emery@sfgov.org

From: Jim Emery/CTYATT
To: jimgrant@dwt.com, sanjaynangia@dwt.com,
Cc: Mark Lipton/CTYATT@CTYATT
Date: 09/21/2016 01:17 PM
Subject: Homeaway subpoena enforcement: SF Superior Ct Case No 515136

Dear Jim and Sanjay,

I've prepared a proposed order tracking Judge Kahn's oral ruling yesterday. Please let me know whether you require any changes in the language of the order. I've attached for your reference the rough transcript that the reporter gave me this morning.

I look forward to hearing from you.

(proposed order)

(hearing transcript)

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EXHIBIT "A"