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IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

COSTAR REALTY INFORMATION,
INC., and APARTMENTS, LLC,

Plaintiffs,

vs.

APARTMENT HUNTERS, INC.,
KEVIN SHAYAN, and STEVEN
SHAYAN,

Defendants.

Case No. 8:15-cv-02111-JLS-KES

**JUDGMENT AND PERMANENT
INJUNCTION**

The Honorable Josephine L. Staton

1 **JUDGMENT**

2 Pursuant to the stipulation of Plaintiffs CoStar Realty Information, Inc., and
3 Apartments, LLC, (collectively, “Plaintiffs” or “CoStar”) and Defendants
4 Apartment Hunters, Inc. (“AHI”), Kevin Shayan, and Steven Shayan (collectively,
5 “Defendants”), this Court hereby ORDERS that final judgment shall be and is
6 hereby entered in this action as follows:

7 1. Judgment is hereby entered in favor of Plaintiffs and against
8 Defendant AHI on Plaintiffs’ claims of copyright infringement and
9 misappropriation.

10 2. Defendants are providing consideration to Plaintiffs by entering into
11 the separate Release and Settlement Agreement signed by the Parties. Plaintiffs
12 and Defendants shall each bear their own attorneys’ fees and costs in this action.

13 **PERMANENT INJUNCTION**

14 Pursuant to the stipulation of Plaintiffs and Defendants, and for good cause
15 shown, this Court hereby ORDERS that a Permanent Injunction is entered as
16 follows:

17 1. For the purposes of this Permanent Injunction, the following
18 definitions shall apply:

19 a. “AHI” shall mean Defendant Apartment Hunters, Inc., and any
20 parent, subsidiary, sister company, affiliate, related entity, assignee,
21 transferee, designee, alter ego, or successor in interest.

22 b. The “AHI System” shall mean the AHI Websites, as defined
23 below, the services accessible through such websites, and any servers,
24 software, and electronic data that make up or support such websites and
25 services, as well as any other websites or social media accounts associated
26 with such websites.

27 c. The “AHI Websites” shall mean any and all websites owned or
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1 operated, now or in the future, by

2 i. AHI;

3 ii. any parent, subsidiary, sister company, affiliate, related
4 entity, assignee, transferee, designee, alter ego, or successor
5 in interest of AHI; or

6 iii. any other corporate entity owned or operated, now or in the
7 future by any employee, owner, shareholder, or officer (as of
8 the date of this Permanent Injunction) of any entity set forth
9 in paragraphs 1(c)(i)-(ii) above,

10 which (i) disseminates property rental information, including but not limited
11 to the websites presently located at www.apartmenthunterz.com,
12 www.featuredrentals.com, www.ifindrentals.com, wetakesection8.com,
13 4rentinla.com, 4rentinnewyork.com, leaseinsandiego.com,
14 rentinsanfrancisco.com, ineed2tomove.com, findforeclosuresnow.com, and
15 foreclosureplaces.com, or (ii) utilizes any of AHI's: content, data, databases,
16 source code, object code, other technology (excluding generic hardware, e.g.
17 computer servers), domain names, trademarks, brands, assets, or goodwill.

18 d. "Apartments.com" shall mean the websites operated by
19 Plaintiffs, including the website presently located at www.apartments.com.

20 e. "CoStar Photograph(s)" shall mean any and all copyrighted
21 images (or portions thereof), whether in the form of a photograph, video, or
22 other non-textual format, and whether now in existence or later created, in
23 which Plaintiffs (including their parents, subsidiaries, or affiliates) own or
24 control an exclusive right under Section 106 of the United States Copyright
25 Act (17 U.S.C. § 106).

26 f. "CoStar Information" shall mean any and all property listing
27 information or data, whether now in existence or later created, which (i) is
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1 displayed on Apartments.com or any other website operated by Plaintiffs
2 now or in the future; and (ii) Defendants obtained from CoStar, whether
3 directly from CoStar or indirectly through a third party (or through a chain
4 of third parties) which originally obtained the information or data from
5 CoStar and which does not have CoStar's written authorization to distribute
6 the information or data. For the avoidance of doubt, CoStar Information
7 does not include information or data which CoStar and Defendants each
8 independently obtain (and each have independent authority to obtain) from
9 the same common source.

10 g. "CoStar Content" shall mean any CoStar Photograph or CoStar
11 Information.

12 2. Defendants, and each of them, shall be permanently restrained and
13 enjoined from (a) infringing, by any means, directly or indirectly, any exclusive
14 rights under the Copyright Act in CoStar Photographs, or (b) publishing or
15 displaying CoStar Information on the AHI Websites or otherwise
16 misappropriating, by any means, directly or indirectly, any CoStar Information.

17 3. Should CoStar obtain knowledge of any CoStar Content appearing on
18 any AHI Website, the following notice and cure protocol (the "Notice and Cure
19 Protocol") shall apply:

20 a. CoStar shall give written notice to AHI, and its counsel, as
21 designated in paragraph 4.1 of the Release and Settlement Agreement,
22 within ten (10) calendar days of CoStar obtaining knowledge of such CoStar
23 Content appearing on AHI Website(s).

24 b. CoStar's notification shall provide (a) the URL(s) at which such
25 CoStar Content appeared; (b) the date(s) on which CoStar believes such
26 CoStar Content appeared on AHI Website(s); (c) the date(s) on which
27 CoStar obtained knowledge that such CoStar Content appeared on AHI
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1 Website(s); and (d) screenshot(s) showing all or substantially all of the
2 page(s) on which the CoStar Content appeared on AHI Website(s).

3 c. Any notice lacking these requirements set forth in paragraph
4 3(a) and 3(b) above shall not be considered proper notice requiring action by
5 AHI.

6 d. AHI shall, within ten (10) calendar days of receiving the above-
7 described notification from CoStar, remove the CoStar Content from the
8 AHI Websites and, to the extent reasonably possible, use the notification and
9 limitation-of-service procedures described in paragraphs 8.b. and 8.c. below.

10 4. Following the one-hundred-twenty (120) day period from the date of
11 this Order (within which AHI must incorporate or cause to be incorporated into the
12 operation of the AHI Websites the state-of-the-art photograph identification and
13 filtering technology, supplied by PicScout, pursuant to paragraph 8 below), AHI
14 shall be further enjoined from operating the AHI System and any website, system,
15 or software that is substantially similar to the AHI System unless and until AHI
16 incorporates or causes to be incorporated into the operation of such website,
17 system, or software the state-of-the-art photograph identification and filtering
18 technology as provided below in paragraph 8 below.

19 5. To the greatest extent possible, understanding the impracticality of
20 independently reviewing each individual listing sent by a data feed, AHI shall take
21 reasonable steps to prevent third parties from submitting and uploading CoStar
22 Content (that such third parties do not own) to the AHI Websites.

23 6. AHI shall take reasonable steps sufficient to monitor and ensure that
24 all persons within its control or employment (whether as independent contractors,
25 employees, agents, partners, or in some other capacity) comply with this
26 Permanent Injunction. Such steps shall include but are not limited to taking all
27 reasonable corrective action with respect to any individual within AHI's control or
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1 employment whom it determines is not in compliance with the terms of this
2 Permanent Injunction, which may include training, disciplining, and/or terminating
3 such individual.

4 7. Defendants shall continue to abide by the terms of use applicable to
5 the products that Plaintiffs (including their parents, subsidiaries, or affiliates)
6 operate including, without limitation, Apartments.com, Apartmentfinder.com,
7 Land.com, and LoopNet.com.

8 8. Within one-hundred-twenty (120) days from the date of this Order,
9 AHI shall incorporate or cause to be incorporated into the operation of the AHI
10 System the state-of-the-art photograph identification and filtering technology,
11 supplied by PicScout, which identifies CoStar Photographs. Plaintiffs shall be
12 responsible for providing PicScout with the necessary access to CoStar
13 Photographs to allow PicScout to apply the photograph identification technology
14 against photos in the AHI System. Such photograph identification and filtering
15 technology shall be based on digital fingerprinting technology unless and until a
16 different technology has been proven to be more effective at identifying CoStar
17 Photographs (if in the future any party identifies any such purportedly more
18 effective technology, the parties shall negotiate in good faith the practical
19 implementation and cost of such new technology). The photograph identification
20 and filtering technology shall operate in-line on the AHI System, which means it
21 shall complete its photograph identification and filtering simultaneously to the
22 photograph being published and/or displayed on the AHI System. Notwithstanding
23 the outer deadline of 120 days, AHI shall exercise good faith efforts to incorporate
24 or cause to be incorporated into the operation of the AHI system the photograph
25 identification and filtering technology, supplied by PicScout, as soon as it becomes
26 reasonably practicable to do so.

27 a. AHI shall permit PicScout to operate the filtering technology to
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1 achieve maximum reasonable effectiveness in preventing display of CoStar
2 Photographs on AHI Websites. AHI shall ensure that any and every
3 photograph the AHI System acquires, whether acquired from a data feed,
4 seed file, user upload, “speed post,” data harvesting, or any other source, is
5 analyzed by the filtering technology simultaneously to it being published
6 and/or displayed on the AHI System.

7 b. Upon receipt of notification of Plaintiffs’ ownership of any
8 CoStar Photograph(s) appearing on any AHI Website(s), AHI will, as soon
9 as reasonably practical, both remove the photograph from public display and
10 notify the source of the photograph(s), if such source can be identified, of
11 Plaintiffs’ ownership and that such photographs cannot be displayed on such
12 AHI Website(s). If the source is a user of the AHI System, AHI will notify
13 the user, to the extent that such notification is possible, that the CoStar
14 Photograph(s) has or have not been published due to Plaintiffs’ ownership of
15 the CoStar Photograph(s) and that, to the extent reasonably possible, if
16 repeat acts of infringement or misappropriation are committed by the user,
17 AHI will be required to restrict the user’s access to the AHI System, as well
18 as restrict the access of any entities with which it knows the user is affiliated.

19 c. Prima facie evidence of authorization to post CoStar
20 Photographs must be obtained from any user, when reasonably possible,
21 once a second instance of allegedly infringing or misappropriated CoStar
22 Photographs are submitted by that user after removal of and notice
23 concerning the first allegedly infringing or misappropriated CoStar
24 Photographs have been sent to that user.

25 d. Plaintiffs and AHI expressly contemplate that Plaintiffs’ legal
26 representatives, and any individual or entity acting at their direction, may
27 access the listings, including without limitation images of properties,
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1 available on the front end of the AHI System to effectuate, and to monitor
2 compliance with, the terms of this Permanent Injunction and Plaintiffs'
3 intellectual property or other legal rights. To the extent AHI restricts outside
4 access to listings, including without limitation images of properties,
5 available on the AHI System, through password protection or otherwise,
6 AHI shall provide Plaintiffs' legal representatives, or an individual or entity
7 acting at their direction, a single password (free of charge) to access such
8 restricted parts of the AHI System to which paying or permitted users have
9 access, for purposes contemplated in this Permanent Injunction,
10 notwithstanding any AHI System term of service, term of use, or other
11 provision to the contrary. This provision does not entitle Plaintiffs or their
12 legal representatives to access the AHI System's backend or servers.

13 9. If any of the Defendants sell, lease, license, convey, give away, or
14 otherwise transfer or assign, any part of the source code, object code, other
15 technology (excluding generic hardware, e.g. computer servers), domain names,
16 trademarks, brands, assets, or goodwill in any way related to the AHI System, or
17 otherwise cause or allow to occur a change of control of the business, operations,
18 equity, or assets of AHI, (collectively, a "Transfer"), it/they will require, as a
19 condition of any such Transfer, that each purchaser, lessee, or other transferee or
20 assignee (collectively, a "Transferee") (a) agree to this Court's jurisdiction and
21 venue and fully waive and relinquish any argument that venue or jurisdiction by
22 this Court is improper or inconvenient and (b) agree to be bound by and comply
23 with the injunctive terms herein.

24 This provision shall not apply to a purchaser, lessee, or other
25 transferee or assignee (collectively, a "Brand Acquirer") if (a) the Brand Acquirer
26 does not acquire any part of the content, databases, source code, object code, or
27 other technology related to the AHI system, but instead only acquires domain
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1 names, trademark, brands and/or goodwill related to the AHI System (a “Brand
2 Acquisition”) and (b) the Defendant(s) affirm in writing in advance of the Brand
3 Acquisition that (i) Defendant(s) have made a reasonable good faith inquiry as to
4 the Brand Acquirer’s intentions for the Brand Acquisition; and (ii) based on such a
5 reasonable good faith inquiry, Defendant(s) do not know or have reason to believe
6 that Brand Acquirer is making the Brand Acquisition for the purpose of
7 disseminating property rental information, whether online or offline, residential or
8 commercial.

9 10. Defendants further shall not engage in a Transfer or Brand
10 Acquisition with or to any person whom Defendants know or suspect is engaged
11 in, or plans to engage in, conduct that would violate the terms of this Permanent
12 Injunction.

13 11. Should CoStar satisfy the requirements of the Notice and Cure
14 Protocol set forth in paragraphs 3(a)-(b) above, and should AHI fail to satisfy the
15 requirements of the Notice and Cure Protocol set forth in paragraph 3(d) above,
16 AHI shall be liable for damages which shall be calculated by adding (1) the sum of
17 \$10,000 multiplied by the number of days past the ten-day cure period each CoStar
18 Photograph at issue is displayed on the AHI Website, and (2) the reasonable
19 attorneys’ fees and costs incurred by Plaintiffs in obtaining such damages. By way
20 of example, if Plaintiffs provide the notice required by paragraph 3 and three
21 CoStar Photographs continue to be published or displayed on the AHI System for
22 five days past the ten-day cure period, the amount of damages may be up to
23 \$150,000 ($\$10,000 \times 5 \times 3$), plus Plaintiffs’ reasonable attorneys’ fees and costs.

24 12. This Court shall retain jurisdiction of this matter in law and equity for
25 purposes of enforcing and/or adjudicating claims of violations of this Judgment
26 and Permanent Injunction or the parties’ Release and Settlement Agreement. Any
27 such matters shall be raised by noticed motion. The parties irrevocably and fully
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1 waive and relinquish any argument that venue or jurisdiction by the Court is
2 improper or inconvenient.

3 13. The parties irrevocably and fully waive any and all right to appeal the
4 Judgment and Permanent Injunction, to have it vacated or set aside, to seek or
5 obtain a new trial thereon, or otherwise to attack in any way, directly or
6 collaterally, its validity or enforceability.

7 14. Defendants shall give notice of this Judgment and Permanent
8 Injunction to each of their officers, directors, agents, servants, employees, assigns,
9 owners, alter egos, affiliates, all entities through which they conduct business,
10 representatives, successors, licensees, and all those acting in concert or
11 participation with each or any of them, to the extent such persons exist, and to
12 request adherence to the terms of this Permanent Injunction.

13 15. This Permanent Injunction does not create any independent duties
14 other than those previously specified.

15 16. For the purposes of clarity, the Court holds the following:

- 16 a. The Court has personal jurisdiction over all Defendants; and
- 17 b. Judgment is entered only against AHI. No judgment or
18 monetary damages are entered against the individual defendants, Kevin
19 Shayan and Steven Shayan.

20 17. This Permanent Injunction enjoins the conduct of Defendants wherever
21 they may be found, including, without limitation, outside of the United
22 States.

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1 16. Plaintiffs shall not be required to post any bond or security, and
2 Defendants permanently, irrevocably, and fully waive any right to request a bond
3 or any other security.

4 **IT IS SO ORDERED.**

5 **Dated:** March 27, 2017

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A handwritten signature in black ink, appearing to read "Josephine L. Staton". The signature is written in a cursive, flowing style with a prominent initial "J".

THE HONORABLE JOSEPHINE L. STATON
UNITED STATES DISTRICT JUDGE