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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Mark Hayes, Circuit Court Judge

Case No. 2017-CP-46204476

EQUINOX, LLC,

Plaintiff,

v.

BRANDON EPPS & COURTNEY
EPPS

Appellants,

BRANDON EPPS AND
COURTNEY EPPS, as Next of
Friends of ALEXIS MARION
HUCKS, ADRIANNE BELLE
HUCKS, WELLS SKIPPER
HUCKS, SAWYER LANE EPPS,
COOPER WADE EPPS, and LILI
MADELYN EPPS,

Appellants

v.

RICHARD B. DRESKIN

Respondent

RECORD ON APPEAL
Volume I

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	C. A. No. 2017-CP-42-04476
Equinox, LLC,	)	
	)	
Plaintiff,	)	ORDER
	)	
vs.	)	
	)	
Brandon Epps & Courtney Epps,	)	
	)	
Defendants.	)	
	)	
_____ Brandon Epps and Courtney Epps, As Next of Friends of Alexis Marion Hucks, Adrienne Belle Hucks, Wells Skipper Hucks, Sawyer Lane Epps, Cooper Wade Epps, and Lili Madelyn Epps,	)	
	)	
Third-Party Plaintiffs,	)	
	)	
vs.	)	
	)	
Richard B. Dreskin,	)	
	)	
Third-Party Defendant.	)	
_____	)	

This matter came before the Court on Third-Party Defendant Richard B. Dreskin's (hereinafter, "Dreskin") motion to dismiss all claims asserted against him in the "Second Amended Answer and Counterclaims and Third-Party Claims" (hereinafter, the "Second Amended Answer" or "SAA") filed by Defendants and Third-Party Plaintiffs on October 12, 2020. The present motion is asserted pursuant to Rule 12(c), SCRCP, and was heard on March 24, 2021. The moving party was represented at the hearing by R. Hudson Smith of Eller Tonnsen Bach, LLC. Richard B. Fennell of James, McElroy, and Diehl, PA represented Defendants and Third-Party Plaintiffs. Generally, this case relates to a dispute over a residential lease agreement and tenants' claims for

damages from alleged mold exposure. For the reasons set forth below, the Court grants Dreskin's motion for judgment on the pleadings.

I. FACTUAL ALLEGATIONS

Relevant to this motion, Plaintiff Equinox, LLC ("Equinox") and Defendant Courtney Epps entered into a 1-year lease agreement (the "Lease") on February 1, 2016 for a residential home located at 618 Garden Rose Court, Greer, SC 29651 (the "Premises") for \$2,200 payable on the first day of each month. *See* Plaintiff's Amended Complaint, filed Feb. 14, 2018 (the "Amended Complaint" or "AC"), ¶¶ 5-6. Subsequently, on or about October 1, 2017, Equinox and both defendants entered into the "Lease Extension and Modification," which added Defendant Brandon Epps as a tenant and extended the Lease's term until September 30, 2018. *See id.*, ¶¶ 10-11. Dreskin is alleged to be the managing member of Equinox. *See* Second Amended Answer, p. 9, ¶ 56.

Beginning around May 2017, Defendants notified Equinox for the first time that they believed mold was present at the Premises, which Equinox alleges it never located despite its investigation. *See id.*, p. 11, ¶ 68; *see also* AC, ¶ 13. On or about October 9, 2017, Equinox notified Defendants they would be evicted if they did not cure months of unpaid rent, and Defendants abandoned the Premises, notified Equinox of their termination of the Lease, and claimed various health ailments and property damage due to mold exposure. *See* AC, ¶¶ 15-16; *see also* SAA, p. 10, ¶¶ 61-62.

II. PROCEDURAL HISTORY

After its initial ejectment proceedings were dismissed in the Magistrate Court, Equinox filed the instant lawsuit on December 7, 2017 against Defendants Brandon Epps and Courtney Epps, and the defendants filed an answer and counterclaims on January 15, 2018 seeking damages from Equinox for breach of contract, breach of warranty of habitability, nuisance, and negligence.

After Equinox filed an amended complaint on February 14, 2018, the defendants filed an answer and counterclaims including the same causes of action against Equinox. Although Defendants filed a motion seeking to add necessary parties on November 21, 2018, no additional pleadings were filed by Defendants' former counsel before her withdrawal on March 11, 2019 or the following 7 months while Defendants represented themselves *pro se*.

After new counsel appeared on their behalf, Defendants filed a "Motion for Leave to Amend Answer" on December 6, 2019, seeking to assert claims against a new party, Richard B. Dreskin. Before the motion was heard by the Court, the parties filed a consent motion to dismiss this matter under Rule 40(j), SCRCP, and the Court issued an order dismissing the case on January 23, 2020. Before the Court restored this case to the active docket on May 12, 2020, and before any ruling had been issued on their previously filed motion to amend their answer, Defendants filed a separate lawsuit asserting virtually identical claims against Equinox and Dreskin on April 16, 2020 under Case No. 2020-CP-42-01301 (the "2020 Action") and a motion seeking to consolidate the 2020 Action with this case which had been dismissed for almost 4 months.

On October 9, 2020, the Court issued an order acknowledging that the "parties agreed it is in the best interests of judicial economy for the claims at issue in the 2017 Action and the 2020 Action to proceed under one civil action number." Order, filed Oct. 9, 2020. On October 12, 2020, Defendants filed their "Second Amended Answer, Counterclaims, and Third-Party Claims" adding Richard B. Dreskin as a party in this litigation. *See* SAA. On November 12, 2020, Dreskin filed the instant motion for judgment on the pleadings.

III. DISCUSSION

A. The Statute of Limitations Bars Defendants/Third-Party Plaintiffs' Claims Against Dreskin for Breach of Contract Accompanied by Fraudulent Act, Violation of the S.C. Unfair Trade Practices Act, and Conversion

In this case, Defendants/Third-Party Plaintiffs' causes of action asserted against Third-Party Defendant Richard B. Dreskin individually for breach of contract accompanied by fraudulent act, violation of the S.C. Unfair Trade Practices Act, and conversion began to accrue in May 2017. *See* SAA, p. 11, ¶ 68; *see also* Defendants' Memorandum of Law in Opposition, filed Mar. 23, 2021, p. 2. The parties also agree that each of these claims is governed by a 3-year statute of limitations. *See* S.C. Code Ann. § 15-3-530(1), -530(2), -530(5). Although these claims began to accrue in May 2017, the first pleading in this action asserting any claims against Mr. Dreskin individually was filed more than 3 years later on October 12, 2020 with the Second Amended Answer.

While they acknowledge that the Second Amended Answer was filed more than 3 years after May 2017, Defendants and Third-Party Plaintiffs argue their action was timely "commenced" against Dreskin by Defendants' "Motion for Leave to Amend Answer" filed December 6, 2019 while Dreskin was not a party to the litigation. They also contend that "these claims against Dreskin" were timely filed with the filing of the 2020 Action. In South Carolina, an action is barred unless it is "commenced" within the period set forth in statute. S.C. Code Ann. § 15-3-510. In order to commence a civil action, the action must be filed and served either within the applicable statute of limitations or within 120 days after the statutory period expires. Rule 3, SCRCP; *see also* S.C. Code Ann. § 15-3-20. No provision is made for "commencement" of a civil action upon the filing of a motion to amend or any relation back to the date of the motion to amend. *Id.* The parties agree that South Carolina's appellate courts have never decided whether the mere filing of a motion to amend satisfies the requirements of "commencing" an action under Rule 3 and S.C. Code Ann. §§ 15-3-20, -510. *See* Def. Memo., filed Mar. 23, 2020, p. 5.

Defendants cite to a North Carolina Court of Appeals decision, *Simpson v. Hatteras Island Gallery Restaurant, Inc.*, 109 N.C. App. 314 (N.C. Ct. App. 1993), which is not controlling on this Court. Although Defendants assert that *Simpson* represents a result with which South Carolina's appellate courts would agree, this Court comes to the opposite conclusion. South Carolina's operative statute, S.C. Code Ann. § 15-3-30 ("A civil action is commenced when the summons and complaint are filed."), more closely mirrors the language of Georgia's statute, Ga. Code Ann. § 9-11-3 ("A civil action is commenced by filing a complaint with the court."), which its courts have interpreted to mean that only a pleading can commence an action – a motion to amend is not sufficient. *Exel Transp. Services, Inc. v. Sigma Vita, Inc.*, 288 Ga.App. 527, 530, 654 S.E.2d 665, 669 (Ga. App. 2007) (observing that the appellant "cited no authority for the proposition that the mere filing of a motion for a permissive counterclaim is the equivalent of bringing a claim."). In contrast to the statutes of South Carolina and Georgia, the North Carolina statutes at issue in *Simpson* are silent as to whether the filing of a summons and complaint (or a motion) are required to commence an action. See N.C.G.S.A. § 1-15, *et seq.* Accordingly, this Court concludes that the filing of the motion to amend in this case did not stop the running of the Statute of Limitations as to Dreskin.

Furthermore, the Court finds that the granting of Defendants' motion to amend does not stop the running of the statute of limitations as to a third party not part of the litigation. When Defendants filed their "Motion for Leave to Amend Answer" on December 6, 2019, Mr. Dreskin was not a party to the litigation at that time. Further, although the Court issued an order on December 3, 2018 adding the defendants' six children as "third-party plaintiffs," no third-party complaint or pleading was filed in this Action by these parties until nearly 2 years later on October 12, 2020. As the Notice of Electronic Filing filed after the motion clearly indicates, only Plaintiff

Equinox, LLC was served electronically with Defendants' "Motion for Leave to Amend Answer." See Notices of Electronic Filing, filed Dec. 6, 2019 and Oct. 19, 2020. The record does not include any evidence that Mr. Dreskin was served with Defendants' Motion to Amend, whether by personal service or service through his counsel.

As both Rule 3, SCRCP and S.C. Code Ann. § 15-3-20(B) make clear, an action cannot be "commenced" against an opposing party unless it is timely served on the party after filing. Because Mr. Dreskin was not a party to the litigation when Defendants filed their Motion to Amend and there is no evidence that Defendants served Dreskin with their motion to amend, the Court's order granting the motion, or the pleading alleging claims against Dreskin, the Court finds that neither the filing nor the subsequent granting of Defendants' Motion to Amend stopped the running of the Statute of Limitations as to Dreskin.

Finally, to the extent that Defendants argue their motion to amend tolled any period for commencement, the Court notes that this action was voluntarily dismissed by the parties pursuant to Rule 40(j), SCRCP on January 23, 2020 before any ruling was issued on Defendants' motion to amend. Rule 40(j) terminates the pendency of motions filed but not decided. Said differently, a motion does not remain "pending" after a case is dismissed pursuant to Rule 40(j). Therefore, to the extent that the Court could impute any "tolling" to the pendency of the motion to amend filed December 6, 2019, any such tolling was effectively terminated on January 23, 2020 as neither the motion nor this litigation was "pending" after January 23, 2020.

In accordance with the above, the Court finds that three of four claims asserted by Defendants and Third-Party Plaintiffs against Mr. Dreskin individually for breach of contract accompanied by fraudulent act, violation of the S.C. Unfair Trade Practices Act, and conversion are barred by the applicable statute of limitations and should be dismissed as a matter of law. Not

encompassed in this decision is whether the statute of limitation will or will not prevent, as a matter of law, recovery against Mr. Dreskin in the event that liability is established against Plaintiff Equinox, LLC at trial.

B. Defendants/Third-Party Plaintiffs' Claim for "Alter Ego" Against Dreskin Must be Dismissed

The Court finds that the fourth and final remaining cause of action against Dreskin for "alter ego" must be dismissed because it is not a cause of action recognized by South Carolina law. In *Drury Dev. Corp. v. Found. Ins. Co.*, 380 S.C. 97, 668 S.E.2d 798 (2008), the South Carolina Supreme Court explored the nature of alter ego liability not as a separate cause of action but rather a theory of procedural relief and ultimately held that a creditor need not obtain a judgment against an insolvent corporation before suing individual shareholders. The Court first noted that alter ego relief is an issue that is often considered post-judgment. *Id.*, 380 S.C. at 102 ("[I]t is undoubtedly true that the corporate veil is often pierced post-judgment."). The *Drury* court noted that the defendant shareholders had erroneously "conflated the concept of a claim with that of a judgment" noting that "an attempt to pierce the corporate veil is not itself a cause of action but rather a means of imposing liability on an underlying cause of action." *Id.*, at 103 (citing 1 William Meade Fletcher Et Al., *Fletcher Encyclopedia Of The Law Of Private Corporations*, § 41.10 (per. ed., rev. vol. 2006)). The Supreme Court concluded the opinion with its finding that "South Carolina law is clear that plaintiffs attempting to pierce the corporate veil must state a claim against the corporate entity in order to proceed on a veil piercing theory." *Id.*

As *Drury* makes clear, South Carolina does not recognize a stand-alone cause of action of "alter ego." Therefore, this Court does not view the "alter ego" allegations as presenting a proper legal theory of direct liability against Dreskin. For a member of a limited liability company to be held personally liable or responsible for acts of the LLC, the LLC must first be proven to be legally

culpable. If all Defendants' other causes of action fail against Equinox, their final cause of action for "alter ego" against Mr. Dreskin must fail. In other words, Defendants' eighth cause of action for alter ego could not stand alone if the other seven causes of action were dismissed by the Court. Therefore, under *Drury*, the Eighth Cause of Action for "Alter Ego" against Dreskin must be dismissed because it is not a separate cause of action recognized by South Carolina law.

C. Defendants/Third-Party Plaintiffs' Claim for "Alter Ego" Against Dreskin Must Be Dismissed

On January 26, 2021, Defendants and Third-Party Plaintiffs filed their "Motion for Partial Summary Judgment." This motion was docketed but was not reached during the March 24, 2021 hearing. Therefore, the Court makes no ruling on the motion for partial summary judgment in this Order, and the motion is still pending to be heard and should be docketed.

IV. CONCLUSION

In conclusion, the Court hereby GRANTS Third-Party Defendant Richard B. Dreskin's Motion pursuant to Rules 12(b)(6) and/or Rule 12(c) and finds that all claims, counterclaims, and/or third-party claims asserted against Dreskin in his individual capacity by Defendants/Third-Party Plaintiffs Brandon Epps and Courtney Epps, individually and as next of friends of Alexis Marion Hucks, Adrienne Belle Hucks, Wells Skipper Hucks, Sawyer Lane Epps, Cooper Wade Epps, and Lili Madelyn Epps ARE DISMISSED.

IT IS SO ORDERED.

[Electronic Signature Page Follows]



Spartanburg Common Pleas

Case Caption: Equinox, Llc , plaintiff, et al VS Brandon Epps , defendant, et al

Case Number: 2017CP4204476

Type: Order/Other

IT IS SO ORDERED

s/ J. Mark Hayes, II #2132

Electronically signed on 2022-01-14 11:21:43 page 9 of 9

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Spartanburg
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2017CP4204476

Equinox, Llc et al
PLAINTIFF(S)

Brandon Epps et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

Please see attached.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☒ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 12/21/2021 .

Equinox, Llc
Alexandra B Bachman
Wells Skipper Hucks
Richard B Dreskin
Jon P Carroll

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

This matter came before the Court on third-party defendant, Dreskin's motion to dismiss all claims asserted against him in the second amended complaint (counterclaims and third-party claims). The present motion is asserted pursuant to SCRCP Rule 12(c) and Rule 12(b)(6).

After reviewing the motion and the documents in support and in opposition of the motion and considering the arguments offered during the hearing, the motion is granted on the issue of the statute of limitation as the issue applies to the claims of direct liability asserted against third-party Dreskin. The filing of the motion to amend in this case did not stop the running of the Statute of Limitation as to Dreskin. Additionally, a court's granting of a motion to amend does not stop the running of the statute of limitation as to a third party not part of the motion to amend.

Also, South Carolina does not recognize a stand-alone cause of action of "alter ego." Therefore, this Court does not view the "alter ego" allegations as presenting a proper legal theory of direct liability against Dreskin. For a member of an LLC to be held personally liability or responsible for acts the LLC, the LLC must first be proven to be legally culpable.

Not encompassed in this decision is whether the statute of limitation will or will not prevent, as a matter of law, recovery against Dreskin in the event the liability is establish against the LLC.

One of the attorneys for Dreskin is asked to prepare a formal order granting the motion. The order should be consistent with the decision as stated above.

A motion for partial summary judgement filed by the Defendants Epps was docketed but was not reached. Therefore, the motion is still pending to be heard and should be docket.



Spartanburg Common Pleas

Case Caption: Equinox, Llc , plaintiff, et al VS Brandon Epps , defendant, et al

Case Number: 2017CP4204476

Type: Order/Electronic Form 4

IT IS SO ORDERED

s/ J. Mark Hayes, II #2132

Electronically signed on 2021-12-21 10:13:26 page 3 of 3

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)
) IN THE COURT OF COMMON PLEAS
) SEVENTH JUDICIAL CIRCUIT

Courtney Epps And Brandon Epps,) C. A. No. 2020-CP-42-01301
individually and as next of friends of Alexis)
Marion Hucks, Adrienne Belle Hucks, Wells)
Skipper Hucks, Sawyer Lane Epps, Cooper)
Wade Epps, and Lilli Madelyn Epps,)
) Plaintiffs,)
) vs.)

Richard B. Dreskin, M.D., and Equinox, LLC,)
) Defendants.)
)

Equinox, LLC,)
) IN THE COURT OF COMMON PLEAS
) SEVENTH JUDICIAL CIRCUIT
) C.A. No. 2017-CP-42-04476
) Plaintiff,)
) vs.)

Brandon Epps and Courtney Epps,)
) **MOTION FOR RULE TO SHOW CAUSE**
) **OR VACATE**
) Defendants.)
)

ORDER

This matter came before me for a hearing in two separate, related matters: first, on Equinox, LLC's and Richard B. Dreskin's (collectively, the "Equinox Parties") Motion to Dismiss filed in C. A. No. 2020-CP-42-01301 (the "2020 Action"); second, on Courtney Epps and Brandon Epps', individually and as next of friends of Alexis Marion Hucks, Adrienne Belle Hucks, Wells Skipper Hucks, Sawyer Lane Epps, Cooper Wade Epps, and Lilli Madelyn Epps (collectively, the "Epps Parties") Motions for Leave to Amend their Amended Answer and to Consolidate filed in C. A. No. 2017-CP-42-4476 (the "2017 Action"). Present at the hearing on behalf of the Equinox

Parties was Adam C. Bach of the law firm Eller Tonnsen Bach, LLC. Present at the hearing on behalf of the Epps Parties was Jennifer Houti of the law firm James McElroy & Diehl, P.A.

It appears from the record and arguments of counsel that the Epps Parties filed a motion to amend to bring new counterclaims and a third-party claim in the 2017 Action in December 2019. Before a hearing could be heard on their motion to amend, the case was stricken from the docket pursuant to Rule 40(j), SCRCF. In April 2020, the Epps Parties filed the 2020 Action asserting essentially the same claims as they sought to assert in their proposed, amended pleading in the 2017 Action.

At the hearing, the parties agreed it is in the interests of judicial economy for all of the claims at issue in the 2017 Action and 2020 Action to proceed under one civil action number.

THEREFORE, BASED ON THE FOREGOING,

IT IS ORDERED that within ten days from the entry of this Order, the 2020 Action shall be dismissed by the Epps Parties, *without prejudice*. The Epps Parties' motion to amend in the 2017 Action is hereby granted and the Epps Parties shall file their amended pleading within ten (10) days from the entry of this Order. This Order shall be filed in both the 2020 Action and the 2017 Action.

AND IT IS SO ORDERED.

September 1, 2020

Spartanburg, SC

Judge, Seventh Judicial Circuit



Spartanburg Common Pleas

Case Caption: Equinox, Llc , plaintiff, et al VS Brandon Epps , defendant, et al

Case Number: 2017CP4204476

Type: Order/Consolidate

IT IS SO ORDERED

s/ J. Mark Hayes, II #2132

Electronically signed on 2020-10-08 15:54:44 page 3 of 3

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

Courtney Epps And Brandon Epps,
individually and as next of friends of Alexis
Marion Hucks, Adrienne Belle Hucks, Wells
Skipper Hucks, Sawyer Lane Epps, Cooper
Wade Epps, and Lilli Madelyn Epps,

Plaintiffs,

vs.

Richard B. Dreskin, M.D., and Equinox, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

C. A. No. 2020-CP-42-01301

Equinox, LLC,

Plaintiff,

vs.

Brandon Epps and Courtney Epps,

Defendants.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

C.A. No. 2017-CP-42-04476

**MOTION FOR RULE TO SHOW CAUSE
OR VACATE**

ORDER

This matter came before me for a hearing in two separate, related matters: first, on Equinox, LLC's and Richard B. Dreskin's (collectively, the "Equinox Parties") Motion to Dismiss filed in C. A. No. 2020-CP-42-01301 (the "2020 Action"); second, on Courtney Epps and Brandon Epps', individually and as next of friends of Alexis Marion Hucks, Adrienne Belle Hucks, Wells Skipper Hucks, Sawyer Lane Epps, Cooper Wade Epps, and Lilli Madelyn Epps (collectively, the "Epps Parties") Motions for Leave to Amend their Amended Answer and to Consolidate filed in C. A. No. 2017-CP-42-4476 (the "2017 Action"). Present at the hearing on behalf of the Equinox

Parties was Adam C. Bach of the law firm Eller Tonnsen Bach, LLC. Present at the hearing on behalf of the Epps Parties was Jennifer Houti of the law firm James McElroy & Diehl, P.A.

It appears from the record and arguments of counsel that the Epps Parties filed a motion to amend to bring new counterclaims and a third-party claim in the 2017 Action in December 2019. Before a hearing could be heard on their motion to amend, the case was stricken from the docket pursuant to Rule 40(j), SCRCF. In April 2020, the Epps Parties filed the 2020 Action asserting essentially the same claims as they sought to assert in their proposed, amended pleading in the 2017 Action.

At the hearing, the parties agreed it is in the interests of judicial economy for all of the claims at issue in the 2017 Action and 2020 Action to proceed under one civil action number.

THEREFORE, BASED ON THE FOREGOING,

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AND IT IS SO ORDERED.

September 1, 2020

Spartanburg, SC

Judge, Seventh Judicial Circuit



Spartanburg Common Pleas

Case Caption: Courtney Epps , plaintiff, et al VS Richard B. Dreskin Md , defendant,
et al
Case Number: 2020CP4201301
Type: Order/Consolidate

IT IS SO ORDERED

s/ J. Mark Hayes, II #2132

Electronically signed on 2020-10-08 15:55:07 page 3 of 3

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
2017-CP-04476

EQUINOX, LLC,

Plaintiff,

vs.

BRANDON EPPS & COURTNEY EPPS,

Defendants.

BRANDON EPPS AND COURTNEY EPPS, as
Next of Friends of ALEXIS MARION HUCKS,
ADRIANNE BELLE HUCKS, WELLS SKIPPER
HUCKS, SAWYER LANE EPPS, COOPER
WADE EPPS, and LILI MADELYN EPPS,

Third-Party Plaintiffs,

vs.

EQUINOX, LLC,

Third-Party Defendant.

**CONSENT ORDER
RESTORING ACTION
TO ACTIVE TRIAL ROSTER**

Pursuant to Rule 40(j) of the South Carolina Rules of Civil Procedure and the Consent Order Stipulation Striking Case from Docket Pursuant to Rule 40(j) previously entered by the Court, Plaintiff /Third-Party Defendant Equinox, LLC (“Equinox”) and Defendants/Third-Party Plaintiffs Brandon Epps and Courtney Epps, individually and as Next of Friends of Alexis Marion Hucks, Adrienne Belle Hucks, Wells Skipper Hucks, Sawyer Lane Epps, Cooper Wade Epps, and Lili Madelyn Epps (collectively, “the Epps”), hereby agree and stipulate to the Court restoring this action to the jury trial roster.

It is hereby **ORDERED, ADJUGED, and DECREED** that this action is immediately restored to the active jury trial roster.

Judge Presiding

Spartanburg, SC
_____, 2020

WE CONSENT:

By: s/ Adam C. Bach
Adam C. Bach
R. Hudson Smith
Eller Tonnsen Bach, LLC
1306 South Church Street
Greenville, SC 29605
Email: abach@etblawfirm.com
Attorneys for Plaintiff/Third-Party Defendant

By: s/ Jennifer M. Houti
Jennifer M. Houti
James, McElroy & Diehl, P.A.
525 North Tryon, Suite 700
Charlotte, NC 28202
Telephone: 704-372-9870
Email: jhouti@jmdlaw.com
Attorneys for Defendants and Third-Party Plaintiffs



Spartanburg Common Pleas

Case Caption: Equinox, Llc , plaintiff, et al VS Brandon Epps , defendant, et al

Case Number: 2017CP4204476

Type: Order/Consent Order

IT IS SO ORDERED

s/ J. Mark Hayes, II #2132

Electronically signed on 2020-05-12 14:52:21 page 3 of 3

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

Equinox, LLC,)

Plaintiff,)

vs.)

Brandon Epps and Courtney Epps,)

Defendants.)

 Outside the Box Business Solutions, LLC)
 and Brandon and Courtney Epps, as Next of)
 Friends of Alexis Marion Hucks, Adrienne)
 Belle Hucks, Wells Skipper Hucks, Sawyer)
 Lane Epps, Cooper Wade Epps, and Lilli)
 Madelyn Epps,)

Third-Party Plaintiffs,)

vs.)

Equinox, LLC,)

Third-Party Defendant.)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

C. A. No. 2017-CP-42-04476

**CONSENT ORDER STIPULATION
STRIKING CASE FROM DOCKET
PURSUANT TO RULE 40(j)**

Plaintiff/Third-Party Defendant Equinox, LLC; Defendants Brandon Epps and Courtney Epps; and Third-Party Plaintiffs Outside the Box Business Solutions, LLC and Brandon and Courtney Epps, as Next of Friends of Alexis Marion Hucks, Adrienne Belle Hucks, Wells Skipper Hucks, Sawyer Lane Epps, Cooper Wade Epps, and Lilli Madelyn Epps; by and through their undersigned counsel of record, pursuant to the provisions of Rule 40(j) of *South Carolina Rules of Civil Procedure*, hereby strike this action from the docket by mutual consent, including all claims, counterclaims, and third-party claims. The parties agree that this matter may be restored to the active trial docket upon motion made by either party within one (1) year of the date stricken.

[Signature page to follow.]

IT IS SO ORDERED.

Judge, Seventh Judicial Circuit

_____, 2020
Spartanburg, South Carolina

WE SO MOVE AND CONSENT:

s/Adam C. Bach

Adam C. Bach (S.C. Bar #74885)
R. Hudson Smith (S.C. Bar #101369)
ELLER TONNSEN BACH, LLC
1306 South Church Street
Greenville, SC 29605
Telephone: (864) 236-5013
Facsimile: (864) 312-4191
abach@etblawfirm.com
hsmith@etblawfirm.com

Attorneys for Plaintiff/Third-Party Defendant
Equinox, LLC

January 22, 2020

Greenville, SC

s/Adam L. Horner (with express consent)

Adam L. Horner (S.C. Bar #78166)
JAMES MCELROY & DIEHL
525 N. Tryon Street, Suite 700
Charlotte, NC 28202
Telephone: (704) 372-9870
ahorner@jmdlaw.com

Attorneys for Defendants and Third-Party
Plaintiffs



Spartanburg Common Pleas

Case Caption: Equinox, Llc , plaintiff, et al VS Brandon Epps , defendant, et al

Case Number: 2017CP4204476

Type: Order/Dismissal Rule 40J

IT IS SO ORDERED

s/ J. Mark Hayes, II #2132

Electronically signed on 2020-01-22 16:38:51 page 4 of 4

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

COUNTY OF SPARTANBURG

Case No. 2017-CP-42-04476

Equinox, LLC,

Plaintiff,

v.

Brandon & Courtney Epps,

Defendants.

and

Outside the Box Business Solutions LLC and
Brandon and Courtney Epps, as Next of
Friends

of Alexis Marion Hucks, Adrienne Belle
Hucks

Wells Skipper Hucks, Sawyer Lane Epps,
Copper Wade Epps, Lilli Madelyn Epps

3rd Party Plaintiffs

v.

Equinox LLC

3rd Party Defendant

PROPOSED ORDER

The Motion for Withdrawal of Appearance and to Stay Proceedings, having been read and considered,

IT IS HEREBY ORDERED:

That attorney Jan V. Hinson is withdrawn and a stay of the proceedings for fourteen (14) days from the above civil action number.

Drafted by:

s/ Jan V. Hinson

Jan V. Hinson, Attorney for Defendants

S.C. Bar No. 101498

The Law Offices of Jan V. Hinson, P.C.

330 E. Coffee Street

Greenville, South Carolina 29601

[Electronic signature page to follow]

THE HONORABLE R. KEITH KELLY
Spartanburg County Circuit Court
125 E. Floyd Baker Blvd.
Gaffney, SC 29340
P. 864-487-2581
F. 864-487-2772



Spartanburg Common Pleas

Case Caption: Equinox, Llc VS Brandon Epps , defendant, et al

Case Number: 2017CP4204476

Type: Order/Withdraw

IT IS SO ORDERED.

S/GRACE GILCHRIST KNIE - 2760

Electronically signed on 2019-03-08 16:52:12 page 3 of 3

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Case No. 2017-CP-42-04476

Equinox, LLC,

Plaintiff,

v.

Brandon & Courtney Epps,

Defendants.

and
Outside the Box Business Solutions LLC and
Brandon and Courtney Epps, as Next of
Friends
of Alexis Marion Hucks, Adrienne Belle
Hucks
Wells Skipper Hucks, Sawyer Lane Epps,
Copper Wade Epps, Lilli Madelyn Epps
3rd Party Plaintiffs

v.

Equinox LLC
3rd Party Defendant

PROPOSED ORDER

2019 MAY 17 PM 3:18
CLERK OF COURT
SPARTANBURG COUNTY

To withdraw the claims of Outside of the Box Business Solutions LLC and to amend the caption and ask that the Court grant this Order.

IT IS HEREBY ORDERED:

That Plaintiff Outside of the Box Business Solutions LLC be dismissed, and the style of the case herein read:

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

COUNTY OF SPARTANBURG

Case No. 2017-CP-42-04476

Equinox, LLC,
Plaintiff,

v.

Brandon & Courtney Epps,
Defendants.

and

Brandon and Courtney Epps, as Next of Friends
of Alexis Marion Hucks, Adrienne Belle Hucks
Wells Skipper Hucks, Sawyer Lane Epps,
Copper Wade Epps, Lilli Madelyn Epps
3rd Party Plaintiffs

v.

Equinox LLC
3rd Party Defendant

This ____ day of _____, 2019

SO ORDERED, this 15 day of May, 2019.



The Honorable ~~_____~~
Spartanburg County Grace Knie

Drafted by:

Brandon and Courtney Epps
Pro Se
417 Graypointe Drive
Greer, SC 29650
(864) 450-8123

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

COUNTY OF SPARTANBURG

Case No. 2017-CP-42-04476

Equinox, LLC,

Plaintiff,

v.

Brandon & Courtney Epps,

Defendants.

and

Outside the Box Business Solutions LLC and
Brandon and Courtney Epps, as Next of Friends
of Alexis Marion Hucks, Adrienne Belle Hucks
Wells Skipper Hucks, Sawyer Lane Epps,
Copper Wade Epps, Lilli Madelyn Epps

3rd Party Plaintiffs

v.

Equinox LLC

3rd Party Defendant

PROPOSED ORDER

The parties, having consented to add necessary parties to amend the caption between them
and ask that the Court grant this Order.

IT IS HEREBY ORDERED:

1.

Outside of the Box Business Solutions, LLC shall be added as a 3rd Party Plaintiff.

2.

Brandon and Courtney Epps, as Next of Friends of Alexis Marion Hucks, Adrienne Belle Hucks, Wells Skipper Hucks, Sawyer Lane Epps, Copper Wade Epps, and Lilli Madelyn Epps shall be added as 3rd Party Plaintiffs.

3.

Discovery shall remain open until further Order of this Court.

SO ORDERED, this _____ day of _____, 2018.

The Honorable R. Keith Kelly
Spartanburg County
Court of Common Pleas

Drafted by:

Consented to by:

s/Jan V. Hinson
Jan V. Hinson
Attorney for Defendants
South Carolina Bar No. 101498
The Law Offices of Jan V. Hinson, P.C.
330 E. Coffee Street
Greenville, SC 29601
(864) 527-5933

s/Adam C. Bach
Adam C. Bach (S.C. Bar #74885)
ELLER TONNSEN BACH, LLC
1306 South Church Street
Greenville, SC 29605
Telephone: (864) 236-5013
Facsimile: (864) 312-4191
abach@etblawfirm.com
Attorney for Plaintiff



Spartanburg Common Pleas

Case Caption: Equinox, Llc VS Brandon Epps , defendant, et al

Case Number: 2017CP4204476

Type: Order/Other

It is so Ordered.

s/ R. Keith Kelly - 2165

Electronically signed on 2018-11-30 15:59:03 page 3 of 3

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Equinox, LLC,

Plaintiff,

vs.

Brandon Epps and Courtney Epps,

Defendants.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

C.A. No. 2017-CP-42-_____

SUMMONS**TO: THE DEFENDANT(S) ABOVE NAMED**

You are hereby summoned and required to answer the Complaint, herewith served upon you, and to serve a copy of your answer to same upon the subscriber at 1306 South Church Street, Greenville, South Carolina, 29605, within thirty (30) days after the service hereof, exclusive of the day of such service. If you fail to answer within that time, you will be considered to be in default and the Plaintiff will move before the Court for the relief demanded in the Complaint.

Respectfully submitted,

s/Adam C. Bach

Adam C. Bach (S.C. Bar #74885)
 R. Hudson Smith (S.C. Bar #101369)
 ELLER TONNSEN BACH, LLC
 1306 South Church Street
 Greenville, SC 29605
 Telephone: (864) 236-5013
 Facsimile: (864) 312-4191
abach@etblawfirm.com
hsmith@etblawfirm.com

Attorneys for Plaintiff Equinox, LLC

December 7, 2017

Greenville, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	C.A. No. 2017-CP-42-_____
Equinox, LLC,	)	
	)	
Plaintiff,	)	COMPLAINT
	)	
vs.	)	(NON-JURY)
	)	
Brandon Epps and Courtney Epps,	)	
	)	
Defendants.	)	
_____	)	

The plaintiff, Equinox, LLC, complaining of the above-named defendants, Brandon Epps and Courtney Epps, would respectfully show unto this Honorable Court as follows:

PARTIES AND JURISDICTION

1. Plaintiff Equinox, LLC is a limited liability company formed under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.
2. Defendant Brandon Epps is a citizen and resident of Spartanburg County, South Carolina.
3. Defendant Courtney Epps is a citizen and resident of Spartanburg County, South Carolina.
4. This Court has personal jurisdiction over the parties hereto and subject matter jurisdiction over the causes of action set forth herein.

GENERAL ALLEGATIONS

5. On or about February 1, 2016, Plaintiff Equinox, LLC (the "Landlord"), Defendant Courtney Epps, and Kathy Owens entered into a Lease Agreement (the "Lease") for the premises located at 618 Garden Rose Ct, Greer, SC 29651 (the "Premises"). A copy of the Lease is attached hereto as **Exhibit A**.

6. Pursuant to Sections 2 and 3 of the Lease, the term was for approximately one (1) year beginning on February 1, 2016 and ending on January 31, 2017. Defendant Courtney Epps and Kathy Owens agreed to pay the monthly rent of Two Thousand Two Hundred and 00/100 Dollars (\$2,200.00) on the first day of each month.

7. Section 3 of the Lease provides for the payment of the Landlord's legal fees and a 35% collection fee in the event of the tenants' breach of the Lease.

8. Section 9 of the Lease provides that the tenants shall bear the costs and expenses to correct or repair any damage sustained to the Premises beyond reasonable wear and tear.

9. Subsequent to the execution of the Lease, the Landlord and Defendants Brandon Epps and Courtney Epps (the "Tenants") executed a document entitled Lease Extension and Modification Agreement amending certain terms and conditions of the Lease (the "Amendment"). A copy of the Modified Lease is attached hereto as **Exhibit B**.

10. Pursuant to Sections 1 and 2 of the Amendment, the term of the Lease was extended to run from October 1, 2017 until September 30, 2018. Defendant Brandon Epps was added as an additional lessee on the Lease, and Kathy Owens was removed as a lessee on the Lease.

11. Pursuant to Section 5 of the Amendment, the Tenants agreed to pay monthly rent of Two Thousand Four Hundred Forty Dollars (\$2,440.00) payable on the first day of each month.

12. During the term of the Lease, the Tenants damaged the bathroom located on the first floor of the Premises, causing extensive water damage to the first-floor flooring and basement ceiling. Because of the damage caused by the Tenants, extensive repairs will be needed such as demolishing the floor; replacing the floor, and ceiling, and fixtures.

13. On or about October 17, 2017, the Landlord filed an application for ejectment and complaint in the Spartanburg County Magistrate Court seeking to evict the Tenants from the Premises due to their nonpayment of rent.

14. On or about November 17, 2017, the Tenants argued at the ejectment hearing that the Magistrate Court lacked subject matter jurisdiction because the Tenants intended to file a future counterclaim in excess of jurisdictional limit of \$7,500.00 relating to their allegations that the Premises was uninhabitable due to pre-existing mold in the home. That same day, the Magistrate Court agreed that it lacked subject matter jurisdiction due to the contemplated counterclaim and dismissed the Landlord's application for ejectment.

15. On or about November 27, 2017, AdvantaClean prepared a report relating to its testing of the Premises for mold on November 15, 2017 and November 22, 2017 and findings of no mold contamination (the "Mold Report"). A copy of the Mold Report is attached hereto as **Exhibit C**.

16. In addition to the amounts due for the damage to the Premises caused by the Tenants, there remains currently due and outstanding the amount of Nine Thousand Seven and 83/100 Dollars (\$9,007.83) in unpaid rent, fees, and expenses owed by the Tenants to the Landlord.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

17. The Landlord adopts and realleges all of the above allegations not inconsistent with this cause of action as if fully repeated herein.

18. The Lease is a valid and binding contract that exists between the Landlord and the Tenants, and the Landlord has fully performed all obligations of it under the Lease.

19. The Tenants unjustifiably failed to perform and breached the contract by failing to pay all rent amounts due and outstanding as well as the costs and expenses associated with repairing the damages to the Premises caused by the Tenants in contravention of the Lease.

20. As a direct and proximate result of the Tenants' breach of the contract, the Landlord has suffered actual and consequential damages and is entitled to recover said damages from the Tenants.

FOR A SECOND CAUSE OF ACTION
(Quantum Meruit/Unjust Enrichment)

21. The Landlord adopts and realleges all of the above allegations not inconsistent with this cause of action as if fully repeated herein.

22. The Landlord provided the Premises for the benefit of the Tenants, and the Premises were accepted, used and enjoyed, and/or the benefits of the Premises have been otherwise realized by the Tenants.

23. The retention of benefits of the Premises by the Tenants would, under the circumstances, make it inequitable for the Tenants to retain the same without paying Landlord the reasonable value thereof.

24. The Tenants have been unjustly enriched by retaining benefits of the Premises without paying the Landlord the reasonable value thereof.

25. Under the doctrine of *quantum meruit*/unjust enrichment, the Tenants are liable to the Landlord for the reasonable value of the Premises for which the Landlord has not been paid in an amount to be determined by the trier of fact.

FOR A THIRD CAUSE OF ACTION
(Conversion)

26. The Landlord adopts and realleges all of the above allegations not inconsistent with this cause of action as if fully repeated herein.

27. The Tenants, without authorization, wrongfully and intentionally removed, assumed, and exercised the rights of ownership, and otherwise converted for their own use and benefit certain property and fixtures that rightfully belonged to the Landlord, to the exclusion of the rights of the Landlord.

28. As a direct and proximate result of the Tenants' conversion of the Landlord's property, the Landlord has suffered injury and is entitled to recover actual, consequential, and punitive damages in amounts to be determined by the trier of fact.

FOR A FOURTH CAUSE OF ACTION
(Termination of Lease and Ejectment)

29. The Landlord adopts and realleges all of the above allegations not inconsistent with this cause of action as if fully repeated herein.

30. The Tenants are in default under the Lease for failing to pay all amounts due and outstanding to the Landlord under the Lease.

31. The Landlord provided notice to the Tenants of their default(s) under the Lease and their unlawful possession of the Premises.

32. As of the filing of this Complaint, the Tenants have failed to remedy their default as set forth above and the Tenants remain in unlawful possession of the Premises.

FOR A FIFTH CAUSE OF ACTION
(Attorney's Fees)

33. The Landlord adopts and realleges all of the above allegations not inconsistent with this cause of action as if fully repeated herein.

34. Section 3 of the Lease provides, "Tenant shall be liable to said Landlord for all losses sustained, costs and expenses incurred, including but not limited to legal fees and a 35% collection fee, resulting from Tenant's breach of this agreement and legal actions instituted as a result thereof."

35. The Tenants are liable to the Landlord for all costs, including reasonable attorney's fees, incurred by the Landlord in enforcing the provisions of the Lease, seeking the termination of the Lease, and seeking possession of the Premises for violations of the Lease.

WHEREFORE, Plaintiff Equinox, LLC respectfully asks the Court to enter judgment awarding it the following relief:

1. That the Court issue and serve a Rule to Vacate or Show Cause upon Defendants Brandon Epps and Courtney Epps demanding that said individuals appear or respond to such Rule within ten (10) days after service thereof or suffer eviction in accordance with S.C. Code Ann. § 27-37-10, et seq.; and to post such notice on the demised premises in accordance with § 27-37-30(8);
2. A judgment for damages, including all actual, consequential, and punitive damages;
3. Pre-judgment interest;
4. The costs of this action;
5. Reasonable attorney's fees; and
6. Such further relief as the Court deems just and proper.

Signature Page and Jury Demand Follows

Respectfully submitted,

s/Adam C. Bach

Adam C. Bach (S.C. Bar #74885)
R. Hudson Smith (S.C. Bar #101369)
ELLER TONNSEN BACH, LLC
1306 South Church Street
Greenville, SC 29605
Telephone: (864) 236-5013
Facsimile: (864) 312-4191
abach@etblawfirm.com
hsmith@etblawfirm.com

Attorneys for Plaintiff Equinox, LLC

December 7, 2017

Greenville, South Carolina

Plaintiff Equinox, LLC hereby demands a trial by jury of all issues triable by a jury.

s/Adam C. Bach

Adam C. Bach

Exhibit A

Landlord:	
Equinox, LLC	Phone: 864.458.8521
214 Oak Meadow Dr.	Fax: 864.551.2393
Simpsonville, SC 29681	
	rick@equinox-llc.com
Property Management:	
	Phone (864)
	Fax (864)

LEASE AGREEMENT

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

This Agreement of Lease, made and entered into this day of, by, and between **Equinox, LLC AND/OR Assigns**, Lessor (hereinafter for convenience called Landlord), and

Kathy Owens and Courtney W. Epps

Lessee, (hereinafter for convenience called Tenant(s) and/or Co-signer).

It is expressly understood that this agreement is between the Landlord and each signatory individually and severally. In the event of default by one signatory, each and every remaining signatory shall be responsible for timely payment of rent and other provisions of their agreement. Only persons designated on the lease application shall occupy premises.

Approved Occupants:

WITNESSETH:

- LANDLORD TENANT ACT:** This Rental Agreement is governed by the South Carolina Residential Landlord and Tenant Act.
- DESCRIPTION AND TERMS:** Landlord, in consideration of the rent received herein to be paid by said Tenant(s) and of other covenants, agreements, and conditions hereinafter contained to be kept, performed and observed by said Tenant, does hereby let and lease unto said Tenant the premises known as:

618 Garden Rose Ct Greer, SC 29651

To be used and occupied by said Tenant as a residence, and for no other purpose, for the term:

Beginning **February 1st, 2016**

Ending **January 31st, 2017**

If lease for a portion of a month at beginning or end of lease, lease is prorated for the number of days from lease signing to end of month and from beginning of month to termination.

- RENT:** Tenant, in consideration of the use of the premises and of the covenants and agreements made herein by

the Landlord, leases said premises and does hereby promise to pay Equinox, LLC or authorized agent of Landlord, as a rental, the monthly rent of: **\$2200** in lawful money of the United States payable as follows: Rent is due in advance ON THE FIRST DAY OF EACH MONTH ("Rental Due Date"). A late charge of \$50 will be charged after the 5th day following. On the 10th day following, an additional \$50 late fee will be charged on any rent that has not been paid. Rent shall be paid at the office of Equinox, LLC at the address given above or at a different address as may be provided. The burden of proof of payment shall be upon the Tenant. The Tenant shall have the responsibility of delivering the payment in a timely fashion. It shall be no excuse that a payment is lost or delayed in the mail or otherwise delayed without fault by the tenant, and in any such situation the late fee shall apply. Upon the failure by the Tenant to make any payment or rent when it is due, or if the Tenant should breach any other covenant(s), agreement(s), or condition(s) herein contained, the Landlord shall have the right to begin legal eviction proceedings through the Magistrate Court and to take appropriate legal steps to collect all sums due from Tenant(s). Any rent or late fees that remain unpaid shall accrue interest at the rate of 1.5% of the unpaid balance on the 1st day of the month as Additional Rent.

This constitutes Notice pursuant to South Carolina Code of Laws (Section 2740-7106) and tenant acknowledges receipt of Notice. No other Notice will be given. Should rent not be received by the 5th day following the Rental Due Date, eviction papers may be filed. Tenant shall be liable to said Landlord for all losses sustained, costs and expenses incurred, including but not limited to legal fees and a 35% collection fee, resulting from Tenant's breach of this agreement and legal actions instituted as a result thereof. Landlord shall also have all other legal rights and remedies otherwise available to it. If rent is unpaid when due and Tenant fails to pay rent within fifteen days from the date due, the Landlord, in addition to and not in place of other remedies, may terminate this rental agreement.

4. **DEPOSITS:** The burden of proof of payment of any deposits shall be upon the Tenant(s).

Security Deposit Received: **\$2200** Date:

Final Month's Rent **\$NA** Date:

Mail Box Deposit Received: **\$NA** Date:

The security deposit collected from the Tenant shall be refunded to the Tenant within 30 days after the premises have been vacated, providing upon inspection the premises are found to be in good condition as they were at the beginning of the lease, normal wear and tear excepted, and provided the covenants, agreements and conditions on the part of the Tenant have been complied with entirely. The security deposit is not any part of the rent herein reserved, and consequently cannot be deducted from the rent due in any month.

5. **PETS.** Pets are not permitted except when special written permission is granted by Landlord following payment of Pet Fee by Tenant, and execution of pet agreement by Tenant(s) and any Co-signor. Should pet(s) be present at premise without the written consent of the Landlord, Tenant shall be in breach of contract and Landlord may terminate the lease. The standard required pet fee is \$250.00 per pet. In addition to Pet Fee, Tenant(s) and Co-signer(s) will be responsible for any pet damages to any part of the premises. **An Addendum to Residential Lease for Pets if applicable is attached.**

Pet fee will be used to treat premises by a professional exterminator and for additional deep cleaning after tenant has vacated.

Pet fee received: **\$NA** Date

6. **KEYS.** Tenant is fully responsible for the property until all keys and garage door openers if any have been returned to the office of Landlord or Landlord's agent after vacating. Security Deposit will be charged a minimum of \$100.00 if all keys are not returned. Rent accrues until all keys are received at the office of Property Management or Landlord.

Date Keys Issued: 2/11/16 Date Mailbox Keys Issued: _____

7. **CONDITION OF PREMISES:** Tenant accepts premises and appliances in their present condition. Failure to return a written report of pre-existing conditions precludes the Tenant from claiming any defect existed in the premises upon the Tenant's initial occupancy.

8. **IT IS EXPECTED THAT THE TENANT WILL PRACTICE GOOD HOUSEKEEPING.** Tenant agrees

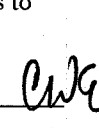
to maintain the premises in good, clean condition, excepting reasonable wear and tear, and to make no alterations or additions thereon without the written consent of Landlord. It is expressly understood that the Tenant will maintain, at the Tenant's expense, the following items:

- a) To keep sinks, lavatories, and commodes draining and operating properly. (Notice: any malfunction must be reported within 5 days of occupancy.) Landlord bears expense to remove roots from sewer lines. Tenant must repair at Tenant's expense stoppage or leakage for any other reason.
- b) To replace all broken glass (window, door, shower door, etc.)
- c) To repair any damage caused by Tenant(s) or Tenant's guests to interior or exterior walls, electrical or plumbing fixtures, screens, doors, wood floors, carpet, vinyl, and other furnishings.
- d) To mow and maintain the lawn and trim the shrubs and plantings, to weed flower beds, to remove leaves and debris, etc.
- e) To pay for all utilities used while occupying said premises. Allowing power to be turned off constitutes a default of the Lease.
- f) To keep all grounds free from unsightly objects and debris.
- g) To repay Landlord for any service to the heating system caused by Tenant's misuse or inadequate supply of fuel. To change heating and air conditioning filter monthly.
- h) To maintain and check smoke detectors monthly. Smoke detectors have been checked prior to move-in and are in working condition. If smoke detector battery fails, it is Tenant's responsibility to replace battery.
- i) To repay Landlord for the cost of all repairs made necessary by negligent or careless use of said premises.
- j) To be responsible for pest control (except termite protection of structure).
- k) The leased premises and the fixtures contained therein, shall be deemed to be clean and acceptable, and in good repair and operable, unless otherwise reported in writing to Landlord within 48 hours (except for the plumbing acceptance period in Paragraph a)) of the commencement of the rental term.
- l) To be responsible for service charge if no repair is necessary from tenant reported problem.
- m) To allow no untagged vehicles to be stored in public view.
- n) To have carpets if present cleaned once per year and on termination of the Lease by a professional carpet cleaning service and provide Landlord with paid receipt.

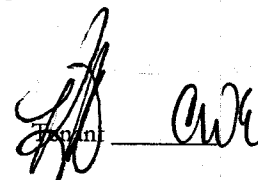
The tenant agrees to promptly report to Landlord any repairs which need to be made to the property. NO TENANT INCURRED EXPENSES SHALL BE DEDUCTED FROM THE MONTHLY RENT UNDER ANY CIRCUMSTANCES WHATSOEVER. Neither Landlord nor Agent accepts responsibility for injury or damages resulting from unreported deficiencies.

9. RULES AND REGULATIONS:

- a) Tenant understands and agrees that any actions, such as hanging pictures or other items from walls or woodwork, or modifications of any type made to the premises are done at the Tenant's risk and expense. Any modification made by tenant may be required to be removed at Tenant's expense. If, in the opinion of Landlord or Landlord's agent, the premises have sustained any damage beyond the reasonable wear and tear, then Tenant shall bear the costs and expenses to correct or repair the damage. Tenant may request written permission for a proposed course of action or modification from Landlord or Landlord's agent.
- b) Posters stuck to walls with tape and thumb tacks; large nails driven into walls; anchor, toggle, or molly bolts installed in walls; adhesive backed mirrors and picture hangers; decals and transfers; wallpaper borders added to walls; interior painted surfaces by tenant shall be considered damage. If Tenant installs items such as window blinds, mirrors, coat hangers, towel racks, can openers, door chains, deadbolts, or any other items attached to walls, cabinets, or the structure, then these MUST remain when the premises are vacated.
- c) Picture hangers are to be left on the walls when the premises are vacated. Indiscriminate hanging of decorative items will be treated as damages.
- d) Tenant agrees to refrain from any act that creates a nuisance (such as excessive noise), or that is a violation of any law. Tenant is also responsible for all acts of their pets and visitors. Tenants and their guest(s) will be expected to consider the peace and quiet of their neighbors at all times. Failure to comply will be cause for termination of the Lease.
- e) Tenant agrees to abide by any Homeowners Association Rules and Regulations if applicable.
- f) Lock-out: if Tenant locks him or herself out, it is the Tenant's responsibility to secure a locksmith for re-entry. Any damage to property from re-entry will be Tenant's responsibility to repair.
- g) Emergency Calls: contact Landlord or Agent's answering service when there is an emergency. Flowing water that cannot be stopped and no heat are considered emergencies. No air conditioning is not an emergency. In case of fire, call 911 first then move to a safe location before contacting Landlord or Agent.
- h) The Common Area Facilities, if any, such as swimming pool, laundry room, recreational, and other common area facilities, when open and operating, are subject to applicable rules and regulations. The Tenant agrees to

- observe faithfully all rules and regulations that now or may hereafter be adopted for the use of the premises.
- i) Landlord agrees to allow tenant the use of any existing electronic equipment during the term of the Lease. Lessor makes no claim of warranty as to the condition or serviceability of the electronic systems. Lessee agrees that Lessor's offer of the use of these systems is not an inducement of additional rent and agrees that no reduction in rent is due should the telephone or security systems be removed or prove to be unsuitable for use for any reason.
10. **RIGHT OF RE-ENTRY:** Upon notification, Tenant(s) agree(s) to permit Landlord or Landlord's Agents to enter premises at reasonable hours for the purpose of making inspections and repairs.
11. **CLEANING AND VACATING:** Upon vacating the premises the Tenant promises:
- To pay all rent and other accrued charges in full. Deposit monies do not apply to rent and in no way are to be construed as the final month's rent.
 - To thoroughly clean the residence. Kitchen: thoroughly clean all appliances inside and out including range hood and dishwasher door; wipe inside cabinets, drawers, and counter tops; sweep and mop floor. Leave refrigerator door open and turn off power or unplug. Bath: clean all fixtures; remove all toiletry items; sweep and mop floors; clean mirrors and faucets; wipe inside cabinets and drawers. Vacuum all floors and carpets — if heavily soiled, have professionally cleaned. If in Landlord's opinion, carpets are heavily soiled, they will be professionally cleaned at tenant's expense. Wipe all baseboards and windowsills. Sweep: garage, porches, and walkways. Remove: all trash from premises. If above items are not met satisfactorily, the minimum cleaning fee will be \$150 or more depending upon the severity of the condition of the property and will be deducted from the security deposit.
 - To lock and fasten all doors and windows and return all keys and garage door openers for the premises to the office of Landlord or Agent.
 - To mow the grass and fulfill all other responsibilities contained in the lease.
 - Failure of Tenant to give 30 Day written notice to vacate automatically forfeits ALL Security Deposits as a cancellation fee.
12. **SHOWING PREMISES:** Tenant agrees to allow Landlord or Landlord's agent to show the premises to prospective tenants and/or purchasers during the last 30 days of the Tenant's occupancy of the premises as necessary and at other times during the term of the lease with 12 hour notice.
13. **NON-LIABILITY OF LANDLORD:** The Tenant covenants that neither the Landlord nor his agent shall be liable for any damages or injury of the Tenant, the Tenant's guests, agents, employees or any person entering the premises or building of which the demised premises are a part, or to goods or equipment therein resulting from any defect in the structure or its equipment, or in the structure or equipment of the structure of which the demised premises are apart, and, further to indemnify, defend, and hold the Landlord harmless from all claims of every kind and nature. It is recommended that the Tenant secure renters insurance against personal liability injury and loss of personal belongings.
14. **ABANDONMENT.** The unexplained absence of a Tenant from premises for a period of 15 days after default in the payment of rent or termination of utilities shall be constructed as abandonment of the premises. When premises has been abandoned, or the rental agreement has come to an end and the Tenant has removed a substantial portion of his property or terminated his utilities, the Landlord may enter the premises, using forcible entry if required, and dispose of remaining property. All property not covered by this section will be handled under the provisions of Code of Laws of South Carolina for 1976, Sections 27-37-10 to 27-37-150. If Tenant abandons the unit, he shall be liable for the rent for the remaining term of this agreement pursuant to and subject to Section 35(b) of the South Carolina Residential Landlord and Tenant Act.
15. **LEAD-BASED PAINT DISCLOSURE FOR MOST RESIDENTIAL PROPERTIES BUILT BEFORE 1978:** See Lead-Based Paint Disclosure Addendum attached.
16. **MEGAN'S LAW:** The Tenant and Landlord agree that the Property Manager or Real Estate Broker representing Tenant or Landlord and all affiliated agents are not responsible for obtaining or disclosing any information contained in the South Carolina Sex Offender Registry. The Tenant and Landlord agree that no course of action may be brought against the Property Manager or Real Estate Broker representing Tenant or Landlord and all affiliated agents for failure to obtain or disclose any information contained in the South Carolina Sex Offender Registry. The Tenant agrees that the Tenant has the sole responsibility to obtain any such information. The Tenant understands that Sex Offender Registry information may be obtained from the local sheriff's department or other appropriate law enforcement officials.
17. **MISCELLANEOUS:**



Tenant: _____
Landlord: _____

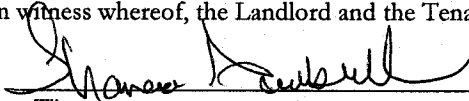
Appliances: Stove, Dishwasher, Microwave

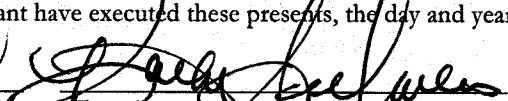
At lease execution, the LESSEE will be given a MOVE-IN Inspection Form. This form must be completed and returned to the office within 7 days of the lease execution date. Should this form not be returned within the allotted time (or not returned at all), Lessee takes possession of the property "AS IS" and all that this implies. Failure to return the MOVE-IN Inspection Form will result in any damages found at time of move-out to be charged to the LESSEE, regardless if they were preexisting to tenant moving in.

This lease shall be binding upon the parties, their heirs, and their representatives.

If any part of this lease is not fully understood, competent legal advice should be sought.

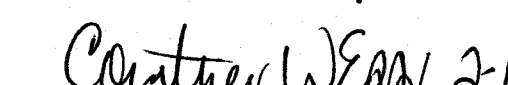
In witness whereof, the Landlord and the Tenant have executed these presents, the day and year first above written.


 Witness

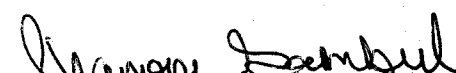

 Tenant

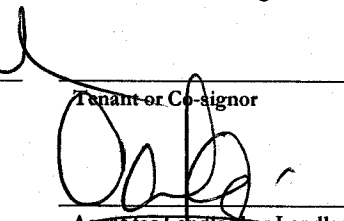
2-1-16
 Date


 Witness


 Tenant

2-1-16
 Date


 Witness


 Tenant or Co-signor

2/1/16
 Date

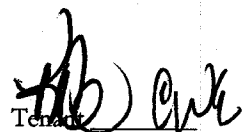

 Tenant

Exhibit B

LEASE EXTENSION AND MODIFICATION AGREEMENT

THIS EXTENSION AND MODIFICATION AGREEMENT is to be attached to and form a part of the lease (which together with any amendments, modifications, and extensions thereof is hereinafter called the "Lease") made 1 February 2016 between **Equinox, LLC** as Lessor and **Kathy Owens and Courtney W. Epps** as Lessee covering the premises known as

618 Garden Rose Court
Greer, SC 29651

Lessor and Lessee have agreed that the Lease shall continue based upon the terms, conditions, covenants, and agreements contained in the original lease (referenced above), with the modifications noted below:

1. The term of the Lease shall be extended by one year to run 1 October 2017 to 30 September 2018.
2. "Brandon Epps" is added as Additional Lessee.
3. "Kathy Owens" is removed from list of Lessees.
4. "Courtney Epps, Brandon Epps and minor children" are explicitly entered in the Lease as Approved Occupants.
5. Rent for the premises shall be \$2440.00 per month for the term.
6. Application of late charges as given in Paragraph 3 of the Lease is modified as follows:

Delete the sentence:

A late charge of \$50 will be charged after the 5th day following. On the 10th day following, an additional \$50 late fee will be charged on any rent that has not been paid.

And substitute the following sentence:

A late charge of 5% of rent due will be charged after the 5th day of the month. On the 10th day of the month, an additional 5% late fee will be charged on any rent that has not been paid.

The parties hereto have signed and sealed this Extension Agreement on the dates indicated below

WITNESSES

LESSOR:

Equinox, LLC

By:

Richard Dreskin
Richard Dreskin, Managing Member

Date:

WITNESSES:

Whitney Bruchter

LESSEE:

Courtney W. Epps

Courtney W Epps

Date:

Brandon Epps

Brandon Epps

Date:

Exhibit C



AdvantaClean of the Upstate
162A Kerns Avenue
Greenville, SC 29609

11/27/2017

Rick Dreskin
618 Garden Rose Court
Greer, SC 29651

Summary: AdvantaClean was called to assess the contamination of the contents of the home. We had been called by the tenant three days prior and I explained that to the home owner's representative. The only way to test for contamination is to do a tape lift surface test. The test area is 1 inch by 1 inch. The specific locations and surfaces tested have to be chosen by the tester. The sample is then examined by Southeast Environmental Microbiology Laboratories of Greenville, SC and a report provided. I returned to the house on Tuesday November 22nd to do more testing at the home owner's request.

Site Assessment: I was on site on Wednesday afternoon 15th November 2017. I performed a walk through of the property to determine where to take the tests. During the walk through the only suspect visible mold growth I saw was on the bathroom floor on the first floor. The previous water damaged ceiling below had already been repaired so I can't comment on the current status of that area. The rest of the house and belongings did not have anything that I could see as potential growth. Mold spores themselves are not visible to the naked eye and so the amount of contamination was unknown. The only other possible indication of a mold issue was upon opening the door to the basement a musty odor was apparent. This smell is often mold spore concentrations in the air. On my second visit on the 22nd there was no longer a smell anywhere in the house.

Remediation versus decontamination: Remediation is the removal of active mold or bacterial growth to prevent further damage and allow for repairs to be made safely. Decontamination is the removal of contaminants, such as mold spores, from an area, object or person. We would remediate the home and decontaminate the contents.

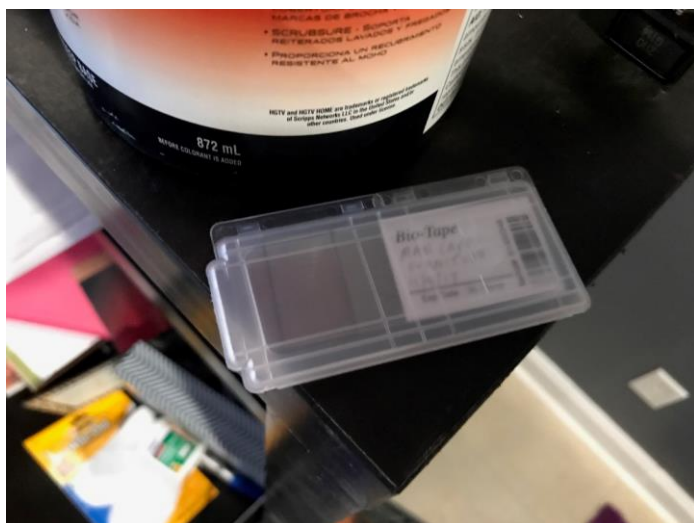
I have already explained and quoted the content decontamination process to the tenant as that was what he requested.

Results: Of the seven surface tests I completed only one was found to have a active fungal growth and that was the one taken of the subfloor under the bathroom wood flooring. Of the six other tests only two showed the presence of mold spores. Those two were only scattered spores of the varieties pythomyces and Cladosporium. Scattered means only a very small number were present (1-20 spore). The range is very low (VL) 21-100, low (L) 101-1000, medium (M) 1001-10000, and high (H) >10,000. Of those two test one was in the kitchen and one in the second floor bedroom. Nothing tested positive for fungal growth or spores in the basement area.

I also did three air test. One in the basement, one in the living room, and one outside. The outside test is done as a comparison test to determine the effects of air exchange on indoor air quality. The results were not alarming. The total spore count was not high. The air test in the basement indicate the air quality is within normal range for mold. The air test in the 1st floor living room was normal except for Cladosporium, which was twice the outside count and elevated enough to recommend addressing but not nearly as high as the previous tests done be Air and Mold Live. I suspect that the multiple weeks of the HVAC running and outside air exchange has caused much of the initial contamination to be filtered and vented out. This is not always the case however with no significant mold spores showing up in the surface tests and the air test being so much better that is my suspicion.



The first test was done on a horizontal surface of the couch in the upstairs living room. This was chosen because it was a centrally located flat surface content belonging to the tenant.



The second test was done on the top of a dresser that was in the down stairs living area "man cave". This site was selected because it was a horizontal surface in the room that was suspected to have the highest contamination. The test results showed no active mold growth and no spores at the test site.



Back corner of the kitchen counter top



Couch in the basement living area (man cave).



Under the flooring in the 1st floor bathroom.



Steps on the bunk bed unit in 2nd floor bedroom.

Conclusion: All test results have been provided to the homeowner in a separate document. I am surprised that no mold spores were found on the contents surface test after having reviewed the initial testing done by Mold and Air. The time between tests may have allowed for some dilution of the spores due to HVAC conditioning the space. My tests indicate no contamination of the belongings that would warrant decontamination. Though the tenant's sensitivity and prior exposure is going to affect their reaction to any level of contamination and may drive them to proceed with decontamination. I have provided a quote to the tenant for content cleaning and will be providing a quote to the home owner's representative for remediation of the structure.

It is my personal recommendation that AdvantaClean be hired to perform remediation of the property first. Then perform a chlorine dioxide fumigation of the entire house. This will kill any mold and mold spores in the structure, including contents. That would be the most efficient way to address both problems at the lowest cost.

All work would be performed to safety and remediation industry standards. All containment protocol, controls and testing would be done to standard and documented. City of Greer would be contacted prior to work being performed to ensure all code and environmental concerns were addressed. Chlorine dioxide is used in solid, liquid, and gaseous form for the sanitization of various biological contaminants in multiple industries and applications.

Please call or email if there are any questions or concerns.

Thank you for your consideration,

Dan Wackerhagen

Owner

AdvantaClean

864-650-7202

Dan.wackerhagen@advantaclean.com

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	Case No. 2017-CP-42-04476
	)	
Equinox, LLC,	)	
	)	
Plaintiff,	)	ANSWER AND
	)	COUNTERCLAIM
v.	)	
	)	
Brandon & Courtney Epps,	)	
	)	
Defendants.	)	
	)	

COMES NOW Defendants Brandon and Courtney Epps, in the above action, to file this, their Answer and Counterclaim, showing this Honorable Court the following:

PROCEDURAL HISTORY

Defendants were served with this action on December 14, 2017, with the Affidavit of Service filed December 15, 2017. Defendants were previously served with a Rule to Vacate or Show Cause (Civil Action No. 2017CV4210108684), which the Magistrate Court merged into the companion case for monetary damages, Civil Action No. 2017CV4210108685. In doing so, the Magistrate Court took notice that the Counterclaim exceeded the jurisdictional monetary limits of the Magistrate Court, as Defendants claim damages in excess of jurisdictional limits. Defendants properly filed their Counterclaim in Civil Action No. 2017CV4210108685 and that case is still pending. It is anticipated that the parties will file a Joint Motion to Consolidate those cases into the instant case.

ANSWER

1.

Defendants respectfully acknowledge the claims of Plaintiff concerning Equinox, LLC.

2.

Defendants respectfully deny the assertion as to the county of residency of Brandon Epps, as Mr. Epps is and was residing in Greenville County at the time of the filing of this action. With the anticipated consolidation of the Magistrate Court actions into this action, Brandon Epps waives jurisdictional argument.

3.

Defendants respectfully deny the assertions in Paragraph 3 of Plaintiff's Complaint, as Defendant Courtney Epps is and was a resident of Greenville County, South Carolina at the time of the filing of this action. With the anticipated consolidation of the Magistrate Court actions into this action, Courtney Epps waives jurisdictional argument.

4.

Pursuant to the anticipated Order of Consolidation, Defendants respectfully admit that the Court has personal jurisdiction over the parties and subject matter jurisdiction over the causes of action.

5.

Defendant Courtney Epps respectfully acknowledges the lease agreement for 618 Garden Rose Ct, Greer, SC 29651.

6.

Defendant Courtney Epps respectfully acknowledges the initial lease term was for approximately one (1) year and that she agreed to pay monthly rent.

7.

Defendants respectfully acknowledge the lease terms.

8.

Defendants respectfully acknowledge the lease terms.

9.

Defendants respectfully acknowledge the execution of the Lease Extension.

10.

Defendants respectfully acknowledge the terms of the Lease Extension.

11.

Defendants respectfully acknowledge the Lease Extension provides for monthly rent payment.

12.

Defendants respectfully deny the assertions in Paragraph 12 of the Plaintiff's Complaint.

13.

Defendants respectfully acknowledge the filing for ejectment and complaint on or about October 17, 2017 in Spartanburg County Magistrate Court.

14.

Defendants respectfully acknowledge and deny parts of the assertions in Paragraph 14 of Plaintiff's Complaint. Defendants respectfully deny that the Magistrate Court dismissed the Landlord's application for ejectment.

15.

Defendants respectfully deny the assertions in Paragraph 15 of the Plaintiff's Complaint.

16.

Defendants respectfully deny the assertions in Paragraph 16 of the Plaintiff's Complaint.

17.

Defendants respectfully acknowledge that Plaintiff restates foregoing assertions.

18.

Defendants respectfully deny the assertions in Paragraph 18 of the Plaintiff's Complaint.

19.

Defendants respectfully deny the assertions in Paragraph 19 of the Plaintiff's Complaint.

20.

Defendants respectfully deny the assertions in Paragraph 20 of the Plaintiff's Complaint.

21.

Defendants respectfully acknowledge that Plaintiff restates foregoing assertions.

22.

Defendants respectfully deny the assertions in Paragraph 22 of the Plaintiff's Complaint.

23.

Defendants respectfully deny the assertions in Paragraph 23 of the Plaintiff's Complaint.

24.

Defendants respectfully deny the assertions in Paragraph 24 of the Plaintiff's Complaint.

25.

Defendants respectfully deny the assertions in Paragraph 25 of the Plaintiff's Complaint.

26.

Defendants respectfully acknowledge that Plaintiff restates foregoing assertions.

27.

Defendants respectfully deny the assertions in Paragraph 27 of the Plaintiff's Complaint.

28.

Defendants respectfully deny the assertions in Paragraph 28 of the Plaintiff's Complaint.

29.

Defendants respectfully acknowledge that Plaintiff restates foregoing assertions.

30.

Defendants respectfully deny the assertions in Paragraph 30 of the Plaintiff's Complaint.

31.

Defendants respectfully deny the assertions in Paragraph 31 of the Plaintiff's Complaint.

32.

Defendants respectfully deny the assertions in Paragraph 32 of the Plaintiff's Complaint.

33.

Defendants respectfully acknowledge that Plaintiff restates foregoing assertions.

34.

Defendants respectfully acknowledge the recitation of a sentence in the Lease Contract in Paragraph 34 of the Plaintiff's Complaint.

35.

Defendants respectfully deny the assertions in Paragraph 35 of the Plaintiff's Complaint.

COUNTERCLAIM FOR DAMAGES

36.

Defendants are subject to the jurisdiction of this Court by virtue of the Complaint filed. Additionally, the subject matter real property is located with the jurisdiction of this Court.

37.

Defendants and their six (6) minor children were tenants of the residential property located at 618 Garden Rose Court, Greer, South Carolina 29651 (hereinafter "The Property"). Defendants co-signed a Lease Extension and Modification on or about October 1, 2017, which provision did not mention money owed to Plaintiff and which Extension was executed by Courtney Epps and substituted Brandon Epps for the original co-lessee. Defendants will add additional parties by motion as the Court directs.

38.

On information and belief, Equinox LLC is a limited liability company having a business address of 214 Oak Meadow Drive, Simpsonville, South Carolina 29681 and on information and belief, this Plaintiff has at all material times owned, managed and controlled The Property.

39.

The true names and/or capacities, whether individual, corporate, associate or otherwise, of Plaintiff and Does 1 through 5, inclusive, are unknown to Defendants at this time, and who therefore Defendants sue by such fictitious names. Defendants are informed and believe and thereupon allege that each of the Plaintiffs to be fictitiously named by motion as a DOEs are legally responsible, negligently or in some other actionable manner, for the events and happenings hereinafter referred to, and thereby proximately and legally caused the injuries and damage to Defendants as hereinafter alleged. Defendants will ask leave of court to amend this action under the Motion previously filed or as directed by the Court to insert the true names and/or capacities of such fictitiously named Plaintiffs when the same have been ascertained.

40.

Upon information and believe at all times mentioned herein, Plaintiff and DOEs were the agent, employee and representative of each other, and in doing the things hereinafter alleged, was acting within the course and scope of such agency, service and representation, and directed, aided and abetted, authorized or ratified each and every act and conduct hereinafter alleged.

41.

Upon information and belief, at all times mentioned herein, Plaintiff was the co-tortfeasor of each of the other Plaintiffs in doing the things hereinafter alleged.

42.

The Property has been subject to at least one inspection by the City of Greer and found to be in violation of the International Property Maintenance Code adopted by the City of Greer that has resulted in a citation for violation of code, the property's uninhabitability acknowledged by the sworn signature of the lessor, Richard Dreskin, Managing Member of Equinox LLC on October 26th, 2017. Further, the subject property has now been condemned.

43.

Notwithstanding Plaintiffs' sworn assertion that he would not allow the subject property to be occupied, Plaintiffs failed to notify the tenant that the premise was found to be in violation of code and failed to notify the Defendants that the City of Greer had required that he certify it would be unoccupied and that he did so certify.

44.

The habitability violations addressed the interior of the Property including, but not limited to, an improperly waterproofed foundation known to Plaintiffs prior to the lease that resulted in water accumulating in the basement of the Property, resulting in mold infestation in floors, walls, insulation and HVAC ductwork. Further, the plumbing in the home was sub-standard and defective.

45.

During all relevant dates herein, Defendants lived at the Property and as a consequence of the conditions, Defendants have sustained injuries and health problems caused or exacerbated by the conditions. As a consequence of the conditions and the physical injuries caused by the conditions, Defendants have also sustained severe mental suffering, frustration and anxiety.

46.

Defendants resided as tenants of The Property during the period in which Plaintiffs owned, managed, or repaired the premises. During Plaintiff's tenancy, Plaintiff was exposed to the following substandard conditions:

- a) leaking plumbing;
- b) accumulation of water in the basement resulting from a bathroom leak through the floor above the basement;
- c) mold throughout the residence from the defective repair of foundational moisture.

47.

Defendants notified the Plaintiffs and its agents about the habitability violations, but Plaintiffs failed to correct the habitability conditions. Upon information and belief the Plaintiffs, and each of the Plaintiffs are experienced property owners or contractors and are aware that, absent appropriate maintenance and repair, serious habitability violations would develop that would seriously and materially affect Defendants' tenancy.

FIRST CAUSE OF ACTION

(Breach of Contract)

48. Plaintiff re-alleges, and incorporates by reference every allegation contained in the preceding paragraphs of this Complaint as though set forth herein.

49. The agreement, like all agreements in South Carolina, carries with it a duty of good faith and fair dealing for both parties.

50. Defendants suffered actual and consequential damages as a result of the above-mentioned breach and are entitled to relief for the same.

51. If there is noncompliance by the landlord with a rental agreement or noncompliance with Section 27-40-440 materially affecting health and safety or the physical condition of the property, the tenant may deliver a written notice to the landlord specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than fourteen days after receipt of the notice if the breach is not remedied within fourteen days as stated in Section 27-40-610. Defendants delivered a written notice to the Plaintiff specifying the acts and omissions constituting the breach in May 2017 with no adequate remedy by Plaintiff. After many attempts by Defendants, Defendants terminated the rental agreement by letter in October, with termination stated as effective November 18, 2017.

52. As a direct and proximate result of the foregoing, Defendants are entitled to reasonable attorney's fees and costs pursuant to Section 27-40-330 of the South Carolina Residential Landlord Tenant Act.

53. As a direct and proximate result of Plaintiffs' breach of contract, Defendants have sustained personal injury, special, general and property damage in amounts to be determined at trial.

54. As stated in Article 7 of the South Carolina Residential Landlord Tenant Act, "if the landlord ("the plaintiff") fails to deliver possession of the dwelling unit to the tenant as provided in Section 27-40-410, rent abates until possession is delivered and the tenant ("defendants") may: (1) terminate the rental agreement upon at least five days' written notice to the landlord and upon termination the landlord shall return all prepaid rent and security".

SECOND CAUSE OF ACTION

(Breach of Warranty of Habitability)

55. Defendants re-alleges, and incorporates by reference every allegation contained in the preceding paragraphs of this Complaint as though set forth herein.

56. The Defendants allege that the defective conditions constitute that the Plaintiff is in violation of local housing laws which posed severe health and safety hazards and breached the implied warranty of habitability in accordance to the International Code Council Section 108, subsection 108.1.5 number 9. Which states "a building or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, damage, faulty construction or arrangement, inadequate light, ventilation, mechanical or plumbing system, or otherwise, is determined by the code official to be unsanitary, unfit for human habitation or in such a condition that is likely to cause sickness or disease".

57. Defendants had actual and constructive notice of the defective conditions alleged herein, but despite such notice, failed to adequately repair and abate the conditions at The Property.

58. Defendants did not cause, create or contribute to the existence of the defective conditions alleged herein.

59. On or about October 26, 2017 the Plaintiff was notified in writing by a public code enforcement agency that the Plaintiff was required to correct some or all of the defective conditions

at The Property within ten (10) days from the date of the letter. The Plaintiff signed an affidavit stating that not under any conditions was The Property to be leased, sold or otherwise occupied until all mold abatement requirements of the City of Greer's Codes Enforcement are satisfied.

60. Plaintiffs knew or should have known that permitting said defective conditions to exist at the outset of the lease threatened the physical and emotional health and well-being of Defendants or any renter, and posed a serious threat and danger to their health and safety.

61. By failing to correct said defective conditions, Plaintiffs have breached the warranty of habitability implied in all rental contracts under the local International Code Council. Further, Plaintiffs have breached the warranty of habitability implied in all rental contracts by not abiding by the South Carolina Landlord Tenant Act, Article 3, Section 27-40-440, by knowingly renting an uninhabitable home at the outset and by failing to make all repairs and doing whatever is reasonably necessary to put and keep the premises in a fit and habitable condition after tenants discovered the defect hidden by Plaintiffs.

62. Because Plaintiffs' breach of the implied warranty of habitability, it has been necessary for Defendants to incur expenses and other special damages in an amount to be proven at trial.

63. As a direct and proximate result of Plaintiffs' breach of the warranty of habitability, Defendants have sustained personal injury, special, general and property damage in amounts to be determined at trial.

THIRD CAUSE OF ACTION

(Nuisance)

64. Defendant re-alleges, and incorporates by reference every allegation contained in the preceding paragraphs of this Complaint as though set forth herein.

65. The Defendants allege that the Plaintiff interfered with the Defendants right to privacy by not providing an announcement of their intent when entering the property to perform services at The Property.

66. As stated in the Landlord Tenant Act of South Carolina in Section 27-40-530, “a landlord shall not abuse the right of access or use it to harass the tenant. The code requires the landlord to announce his entry even for purposes of repair as state in (b). Nonetheless, the Plaintiff did not so announce.

67. As a direct and proximate result of Plaintiffs’ nuisance, Defendants have sustained special and general damage in amounts to be determined at trial.

FOURTH CAUSE OF ACTION

(Negligence)

68. Defendants re-alleges and incorporates by reference every allegation contained in the preceding paragraphs of this Complaint as though set forth herein.

69. As owners, operators and managers of The Property, the Defendants owed Plaintiff the duty to exercise reasonable care in the ownership, management and control of The Property.

70. These duties owed by Plaintiff to Defendants to exercise reasonable care include, but are not limited to: the duty to refrain from interfering with Defendants full use of and quiet enjoyment of their rented premises; the duty to comply with all applicable state and local laws governing Defendant’s rights as tenant; the duty to present and maintain Defendant’s premises in a safe, healthy and habitable condition for the entire term of Defendant’s tenancy and the duty to not obstruct Defendant’s full use and occupancy of their rented residences.

71. Plaintiffs, by the conduct alleged above, so negligently and carelessly maintained, operated, and managed The Property as to breach the duties that they owed to Defendants.

72. Plaintiffs’ conduct was undertaken with reckless disregard for the foreseeable consequences to Defendants.

73. Because of Plaintiffs’ negligence, it has been necessary for Plaintiffs to incur expenses and other special damages in an amount to be proven at trial.

74. As a direct and proximate result of these breaches of duty by the Plaintiffs, Defendants have sustained general, special and property damage in amounts to be determined at trial.

PUNITIVE DAMAGES

75. Defendants re-alleges and incorporates the allegations contained in the above paragraphs as if fully repeated verbatim herein to the extent that none of the following is legally inconsistent with the foregoing.

76. The acts and/or omissions of the Plaintiffs, as stated above, were willful, wanton, grossly negligent, negligence per se, and/or in reckless disregard for the safety, health, mental wellbeing, life and intellectual and financial future tenants.

77. The conduct of the Plaintiffs as set forth above justifies an award of punitive damages as to the Plaintiffs for each and every claim of the Defendants.

WHEREFORE, Defendants pray for the following damages and relief:

- (1) For offset monies in an amount to be determined at trial;
- (2) That Plaintiff's actions (as consolidated) as to Brandon Epps for monies due and eviction be dismissed as improperly pled;
- (3) That this Court Order Plaintiff to treat the home and contents according to the recommendations in both mold reports in order that Defendants be able to retrieve their contents;
- (4) For personal injury, general, special and property damage in an amount to be determined at trial;
- (5) Reasonable attorney fees;
- (6) Costs of suit;
- (7) For such other relief as the Court may deem just and proper.

This 15th Day of January, 2018.

s/Jan V. Hinson
 Jan V. Hinson, Attorney for Defendants
 S.C. Bar No. 101498
 The Law Offices of Jan V. Hinson, P.C.
 330 E. Coffee Street
 Greenville, South Carolina 29601
 (864) 527-5933

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Equinox, LLC,

Plaintiff,

v.

Brandon & Courtney Epps,

Defendants.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Case No. 2017-CP-42-04476

**DEFENDANT'S ANSWER AND
COUNTERCLAIM**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this date served plaintiff in the foregoing matter with a copy of the DEFENDANTS ANSWER AND COUNTERCLAIM filed with the Court via electronic filing to:

Adam C. Bach
1306 South Church Street
Greenville, SC 29605

This 15th day of January, 2018.

s/ Jan V. Hinson

Jan V. Hinson, Attorney for Defendants
S.C. Bar No. 101498
The Law Offices of Jan V. Hinson, P.C.
330 E. Coffee Street
Greenville, South Carolina 29601
(864) 527-5933

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Equinox, LLC,

Plaintiff,

v.

Brandon & Courtney Epps,

Defendants.

IN THE COURT OF COMMON PLEAS

Case No. 2017-CP-42-04476

**JOINT MOTION TO CONSOLIDATE
MAGISTRATE ACTIONS
INTO PENDING ACTION**

COMES NOW Plaintiff and Defendants in the above action, to move this Court for a Consolidation of pending Magistrate Court Civil Action No. 2017CV4210108685, which action incorporates Magistrate Court Civil Action No. 2017CV4210108684 under the Order signed on January 2, 2018, herein attached as Exhibit "A" into Circuit Court Civil Action No. 2017-CP-42-04476.

This 15th Day of January, 2018.

s/ Jan V. Hinson

Jan V. Hinson, Attorney for Defendants
S.C. Bar No. 101498
The Law Offices of Jan V. Hinson, P.C.
330 E. Coffee Street
Greenville, South Carolina 29601
(864) 527-5933

s/ Adam Bach

Adam C. Bach (S.C. Bar #74885)
R. Hudson Smith (S.C. Bar#101369)
ELLER TONNSEN BACH, LLC
1306 South Church Street
Greenville, SC 29605
Telephone: (864) 236-5013
Facsimile: (864) 312-4191
Abach@etblawfirm.com
hsmith@etblawfirm.com
Attorney for Plaintiff, Equinox, LLC

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Equinox, LLC,

Plaintiff,

v.

Brandon & Courtney Epps,

Defendants.

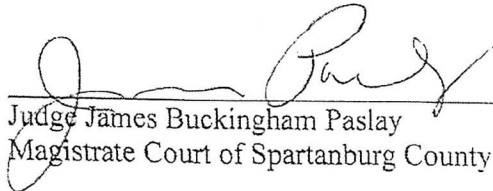
CIVIL ACTION FILE NO.
2017-CV-4210108684

IN THE MAGISTRATE COURT

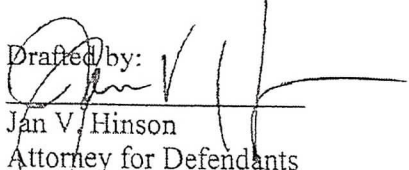
ORDER

After due consideration and argument of counsel, the interest of justice will best be served by the transfer and consolidation of this action from the Spartanburg County Magistrate Court to the Circuit Court. This case shall proceed upon receipt of all papers and shall be consolidated into sister case, Civil Action Number 2017-CV-4210108685, the issues in both of which shall be absorbed into the Circuit Court action, as the amount in controversy to be filed as a Counterclaim in Civil Action Number 2017-CV-4210108685 by Defendants Brandon and Courtney Epps exceeds the jurisdiction of this Court.

SO ORDERED, this 2 day of January, 2018.


Judge James Buckingham Paslay
Magistrate Court of Spartanburg County

Drafted by:


Jan V. Hinson
Attorney for Defendants
South Carolina Bar No. 101498
The Law Offices of Jan V. Hinson, P.C.
330 E. Coffee Street
Greenville, SC 29601

2018 JAN -2 AM 9:00

FILED
CLERK OF COURT
SPARTANBURG
SOUTH CAROLINA

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Equinox, LLC,

Plaintiff,

vs.

Brandon Epps, Courtney Epps

Defendants.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

C.A. No. 2017-CP-42-04476

**AMENDED SUMMONS
(Jury Trial Demanded)****TO: THE DEFENDANTS ABOVE NAMED**

You are hereby summoned and required to answer the Complaint, herewith served upon you, and to serve a copy of your answer to same upon the subscriber at 1306 South Church Street, Greenville, South Carolina, 29605, within thirty (30) days after the service hereof, exclusive of the day of such service. If you fail to answer within that time, you will be considered to be in default and the Plaintiff will move before the Court for the relief demanded in the Complaint.

Respectfully submitted,

s/Adam C. Bach

Adam C. Bach (S.C. Bar #74885)
R. Hudson Smith (S.C. Bar #101369)
ELLER TONNSEN BACH, LLC
1306 South Church Street
Greenville, SC 29605
Telephone: (864) 236-5013
Facsimile: (864) 312-4191
abach@etblawfirm.com
hsmith@etblawfirm.com

Attorneys for Plaintiff Equinox, LLC

February 14, 2018

Greenville, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	C. A. No. 2017-CP-42-04476
Equinox, LLC,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	AMENDED COMPLAINT
	)	(Jury Trial Demanded)
Brandon Epps, Courtney Epps,	)	
	)	
Defendants.	)	
	)	
	)	

The plaintiff, Equinox, LLC, complaining of the above-named defendants, Brandon Epps and Courtney Epps, would respectfully show unto this Honorable Court as follows:

PARTIES AND JURISDICTION

1. Plaintiff Equinox, LLC is a limited liability company formed under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.
2. Defendant Brandon Epps is a citizen and resident of Spartanburg County, South Carolina.
3. Defendant Courtney Epps is a citizen and resident of Spartanburg County, South Carolina.
4. This Court has personal jurisdiction over the parties hereto and subject matter jurisdiction over the causes of action set forth herein.

GENERAL ALLEGATIONS

5. On or about February 1, 2016, Plaintiff Equinox, LLC (the “Landlord”), Defendant Courtney Epps, and Kathy Owens entered into a Lease Agreement (the “Lease”) for the premises located at 618 Garden Rose Ct, Greer, SC 29651 (the “Premises”). A copy of the Lease is attached hereto as **Exhibit A**.

6. Pursuant to Sections 2 and 3 of the Lease, the term was for approximately one (1) year beginning on February 1, 2016 and ending on January 31, 2017. Defendant Courtney Epps and Kathy Owens agreed to pay the monthly rent of Two Thousand Two Hundred and 00/100 Dollars (\$2,200.00) on the first day of each month.

7. Section 3 of the Lease provides for the payment of the Landlord’s legal fees and a 35% collection fee in the event of the tenants’ breach of the Lease.

8. Pursuant to Section 8 of the Lease, the Tenants agreed to “maintain at the Tenant’s expense...sinks, lavatories, and commodes” and “[t]o repair any damage caused by Tenant(s)” to plumbing fixtures and wood floors.

9. Section 9 of the Lease provides that the tenants shall bear the costs and expenses to correct or repair any damage sustained to the Premises beyond reasonable wear and tear.

10. Subsequent to the execution of the Lease, the Landlord, Defendant Brandon Epps, and Defendant Courtney Epps (the “Tenants”) executed a document entitled Lease Extension and Modification Agreement amending certain terms and conditions of the Lease (the “Amendment”). A copy of the Amendment is attached hereto as **Exhibit B**.

11. Pursuant to Sections 1 and 2 of the Amendment, the term of the Lease was extended to run from October 1, 2017 until September 30, 2018. Defendant Brandon Epps was added as an additional lessee on the Lease, and Kathy Owens was removed as a lessee on the Lease.

12. Pursuant to Section 5 of the Amendment, the Tenants agreed to pay monthly rent of Two Thousand Four Hundred Forty Dollars (\$2,440.00) payable on the first day of each month.

13. Beginning on June 4, 2017, Tenants informed Landlord for the first time that they believed mold was present at the Premises. Upon investigation, Landlord did not locate any evidence of visible mold. Instead, Landlord discovered discolored floorboards in the guest bathroom where it appeared that the toilet had overflowed due to a blockage caused by Tenants, causing damage to the flooring around the toilet.

14. Over the ensuing months, Landlord took additional steps to safeguard against any alleged mold, including removing drywall to inspect rafters underneath the guest bathroom, leaving the rafters exposed to watch for any future leaks, replacing the undamaged toilet seal, and other actions. During that time period, Landlord did not observe any visible mold on the rafters, drywall, walls, or flooring.

15. Upon information and belief, the Tenants abandoned the Premises during the month of October 2017. The Tenants left behind numerous items of personal property, including trash cans full of trash, unwashed dishes in the sink, a refrigerator and pantry full of food, and other trash in the home that the Tenants failed to clean or remove. The filth left behind by the Tenants created a potential health hazard from a pest infestation which could result in significant damage to the Premises if not remedied.

16. On or about October 9, 2017, Landlord notified Tenants that they were months behind on rent and that their failure to pay rent would necessitate legal action unless Tenants cured in ten days. Tenants responded by alleging numerous health issues due to black mold exposure and by refusing to pay any back rent until Landlord paid for mold remediation to the Premises.

17. On or about October 17, 2017, the Landlord filed an application for ejectment and complaint in the Spartanburg County Magistrate Court seeking to evict the Tenants from the Premises due to their nonpayment of rent.

18. On or about October 25, 2017, Landlord arrive at the Premises intending to inspect for mold and identify any needed repairs. Upon Landlord's arrival, Tenants notified police, and Tor Ellstrom, a Code Enforcement Officer employed by Defendant City of Greer (the "City"), spoke with Landlord about the Premises. During this visit, Landlord did not observe any evidence of mold on flooring, walls, or ceiling, and Tenants refused to allow Landlord to further inspect the Premises for the conditions they claimed to exist.

19. After October 25, 2017, the City and Landlord entered into an agreement whereby the City agreed to delay any condemnation proceedings until the resolution of the legal proceedings between Landlord and the Tenants. In exchange, Landlord agreed not to allow the Premises to be occupied until any mold issues were abated.

20. Subsequently, Landlord was prevented from making any such abatements because mold remediation companies refused to commence work until the Tenants' personal property was removed from the Premises. Since the Tenants refused to remove their property and the City refused to allow Landlord to remove the Tenants' property, Landlord's compliance with the City's demands were impossible.

21. Beginning or about November 1, 2017, Defendant Courtney Epps knowingly made numerous false and defamatory statements in multiple Facebook posts accessible to the general public defaming Landlord and the condition of the Premises. Among numerous other falsehoods, Defendant Courtney Epps made the following false allegations:

- That Landlord refused to fix a water leak for 5 months which "turned into widespread mold all over" the home;

- That the Premises “had mold in it” before Tenants moved in and that Landlord was “covering it up”;
- That Landlord knew about the mold and “did nothing “despite being contacted “over 50 times;”
- That Landlord knowingly delayed removing a “molded drywall” from the home for a month;
- That the neighboring residents knew of mold problems on the Premises;
- That the Premises “has been flooding in the basement for years;” and
- That the Premises had been condemned “due to mold on Oct 26 by code enforcement.”

22. On or about November 17, 2017, the Tenants argued at the ejectment hearing that the Magistrate Court lacked subject matter jurisdiction because the Tenants intended to file a future counterclaim in excess of jurisdictional limit of \$7,500.00 relating to their allegations that the Premises was uninhabitable due to pre-existing mold in the home. That same day, the Magistrate Court agreed that it lacked subject matter jurisdiction due to the contemplated counterclaim and dismissed the Landlord’s application for ejectment.

23. On or about November 27, 2017, AdvantaClean prepared a report after testing the Premises for mold on two occasions. AdvantaClean found no evidence of mold contamination.

24. On or about December 22, 2017, Landlord entered the Premises after providing notice to Tenants with a repairman to clean the decomposing food and waste left behind by the Tenants. Upon entry, Landlord discovered that Tenants had installed a burglar alarm without Landlord’s notice or consent.

25. That same day after Landlord left the Premises, Tenants sent an email informing Landlord that he was not allowed to enter the Premises outside their presence or Tenants would call the police.

26. On or about December 27, 2017, an employee and/or agent of the City of Greer unlawfully posted a notice on the Premises stating that the property had been declared “unsafe for human occupancy or use.”

27. That same day, Tor Ellstrom, an employee of the City of Greer, informed Landlord via email that the Premises had been condemned “due to issues with persons repeatedly entering this house and causing issues for the Greer Police.” Prior to the condemnation notice, Landlord had not called the police relating to the Premises.

28. Ellstrom also informed the Landlord that he could not enter the premises due to the condemnation. Because of this, the Landlord could not remediate the results of the water damage in the guest bathroom and damage resulting from the Tenants’ overflowing the guest toilet. On January 24, 2018, the City of Greer reversed its restriction on Landlord access to the Premises.

29. In addition to the amounts due for the damage to the Premises caused by the Tenants, there remains currently due and outstanding the amount of Nine Thousand Seven and 83/100 Dollars (\$9,007.83) in unpaid rent, fees, and expenses owed by the Tenants to the Landlord, plus other damages caused by the Tenants to the Premises in an amount to be determined.

FOR A FIRST CAUSE OF ACTION
Breach of Contract
as to Defendants Brandon Epps and Courtney Epps

30. The Landlord adopts and realleges all of the above allegations not inconsistent with this cause of action as if fully repeated herein.

31. The Lease is a valid and binding contract that exists between the Landlord and the Tenants, and the Landlord has fully performed all obligations of it under the Lease.

32. The Tenants unjustifiably failed to perform and breached the contract by failing to pay all rent amounts due and outstanding as well as the costs and expenses associated with repairing the damages to the Premises caused by the Tenants in contravention of the Lease.

33. As a direct and proximate result of the Tenants' breach of the contract, the Landlord has suffered actual and consequential damages and is entitled to recover said damages from the Tenants.

FOR A SECOND CAUSE OF ACTION
Quantum Meruit/Unjust Enrichment
as to Defendants Brandon Epps and Courtney Epps

34. The Landlord adopts and realleges all of the above allegations not inconsistent with this cause of action as if fully repeated herein.

35. The Landlord provided the Premises for the benefit of the Tenants, and the Premises were accepted, used and enjoyed, and/or the benefits of the Premises have been otherwise realized by the Tenants.

36. The retention of benefits of the Premises by the Tenants would, under the circumstances, make it inequitable for the Tenants to retain the same without paying Landlord the reasonable value thereof.

37. The Tenants have been unjustly enriched by retaining benefits of the Premises without paying the Landlord the reasonable value thereof.

38. Under the doctrine of *quantum meruit*/unjust enrichment, the Tenants are liable to the Landlord for the reasonable value of the Premises for which the Landlord has not been paid in an amount to be determined by the trier of fact.

FOR A THIRD CAUSE OF ACTION
(Conversion as to Defendants Brandon Epps and Courtney Epps)

39. The Landlord adopts and realleges all of the above allegations not inconsistent with this cause of action as if fully repeated herein.

40. The Tenants, without authorization, wrongfully and intentionally removed, assumed, and exercised the rights of ownership, and otherwise converted for their own use and

benefit certain property and fixtures that rightfully belonged to the Landlord, to the exclusion of the rights of the Landlord.

41. As a direct and proximate result of the Tenants' conversion of the Landlord's property, the Landlord has suffered injury and is entitled to recover actual, consequential, and punitive damages in amounts to be determined by the trier of fact.

FOR A FOURTH CAUSE OF ACTION
Defamation – Slander/Libel as to Defendant Courtney Epps

42. Landlord adopts and realleges all of the above allegations not inconsistent with this cause of action as if fully repeated herein.

43. Defendant Courtney Epps unlawfully and improperly published numerous false and defamatory statements concerning Landlord to third parties.

44. Defendant Courtney Epps's publication of these statements were done with reckless disregard for the truth and/or with actual knowledge of their falsity.

45. Landlord has suffered actual, consequential, and/or special damages as a result of Defendant Courtney Epps's defamatory statements to third parties.

46. Therefore, Landlord is entitled to an order declaring that Defendants Courtney Epps and Brandon Epps shall be required to:

- A. Permanently vacate the Premises;
- B. Remove all personal property and removable fixtures from the Premises;
- C. Refrain from taking any actions to prevent Landlord's entry onto the Premises;
- D. Refrain from taking any actions to prevent Landlord from making any repairs to the Premises; and
- E. Refrain from making any defamatory statements about Landlord and/or the Premises.

FOR A FIFTH CAUSE OF ACTION
(Attorney's Fees)

47. The Landlord adopts and realleges all of the above allegations not inconsistent with this cause of action as if fully repeated herein.

48. Section 3 of the Lease provides, "Tenant shall be liable to said Landlord for all losses sustained, costs and expenses incurred, including but not limited to legal fees and a 35% collection fee, resulting from Tenant's breach of this agreement and legal actions instituted as a result thereof."

49. The Tenants are liable to the Landlord for all costs, including reasonable attorney's fees, incurred by the Landlord in enforcing the provisions of the Lease, seeking the termination of the Lease, and seeking possession of the Premises for violations of the Lease.

WHEREFORE, Plaintiff Equinox, LLC respectfully asks the Court to enter judgment awarding it the following relief:

1. For an order providing the following injunctive relief:
 - A. That Defendants Brandon Epps and Courtney Epps shall be required to:
 - i. Refrain from taking any actions to prevent Landlord's entry onto the Premises;
 - ii. Refrain from taking any actions to prevent Landlord from making any repairs to the Premises; and
2. A judgment for damages, including all actual, consequential, and punitive damages;
3. Pre-judgment interest;
4. The costs of this action;
5. Reasonable attorney's fees; and
6. Such further relief as the Court deems just and proper.

Respectfully submitted,

s/Adam C. Bach

Adam C. Bach (S.C. Bar #74885)
R. Hudson Smith (S.C. Bar #101369)
ELLER TONNSEN BACH, LLC
1306 South Church Street
Greenville, SC 29605
Telephone: (864) 236-5013
Facsimile: (864) 312-4191
abach@etblawfirm.com
hsmith@etblawfirm.com

Attorneys for Plaintiff Equinox, LLC

February 14, 2018

Greenville, South Carolina

Plaintiff Equinox, LLC hereby demands a trial by jury of all issues triable by a jury.

s/Adam C. Bach

Adam C. Bach

Exhibit A

Landlord:	
Equinox, LLC	Phone: 864.458.8521
214 Oak Meadow Dr.	Fax: 864.551.2393
Simpsonville, SC 29681	
	rick@equinox-llc.com
Property Management:	
	Phone (864)
	Fax (864)

LEASE AGREEMENT

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

This Agreement of Lease, made and entered into this day of, by, and between **Equinox, LLC AND/OR Assigns**, Lessor (hereinafter for convenience called Landlord), and

Kathy Owens and Courtney W. Epps

Lessee, (hereinafter for convenience called Tenant(s) and/or Co-signer).

It is expressly understood that this agreement is between the Landlord and each signatory individually and severally. In the event of default by one signatory, each and every remaining signatory shall be responsible for timely payment of rent and other provisions of their agreement. Only persons designated on the lease application shall occupy premises.

Approved Occupants:

WITNESSETH:

1. **LANDLORD TENANT ACT:** This Rental Agreement is governed by the South Carolina Residential Landlord and Tenant Act.
2. **DESCRIPTION AND TERMS:** Landlord, in consideration of the rent received herein to be paid by said Tenant(s) and of other covenants, agreements, and conditions hereinafter contained to be kept, performed and observed by said Tenant, does hereby let and lease unto said Tenant the premises known as:

618 Garden Rose Ct Greer, SC 29651

To be used and occupied by said Tenant as a residence, and for no other purpose, for the term:

Beginning **February 1st, 2016**

Ending **January 31st, 2017**

If lease for a portion of a month at beginning or end of lease, lease is prorated for the number of days from lease signing to end of month and from beginning of month to termination.

3. **RENT:** Tenant, in consideration of the use of the premises and of the covenants and agreements made herein by

the Landlord, leases said premises and does hereby promise to pay Equinox, LLC or authorized agent of Landlord, as a rental, the monthly rent of: \$2200 in lawful money of the United States payable as follows: Rent is due in advance ON THE FIRST DAY OF EACH MONTH ("Rental Due Date"). A late charge of \$50 will be charged after the 5th day following. On the 10th day following, an additional \$50 late fee will be charged on any rent that has not been paid. Rent shall be paid at the office of Equinox, LLC at the address given above or at a different address as may be provided. The burden of proof of payment shall be upon the Tenant. The Tenant shall have the responsibility of delivering the payment in a timely fashion. It shall be no excuse that a payment is lost or delayed in the mail or otherwise delayed without fault by the tenant, and in any such situation the late fee shall apply. Upon the failure by the Tenant to make any payment or rent when it is due, or if the Tenant should breach any other covenant(s), agreement(s), or condition(s) herein contained, the Landlord shall have the right to begin legal eviction proceedings through the Magistrate Court and to take appropriate legal steps to collect all sums due from Tenant(s). Any rent or late fees that remain unpaid shall accrue interest at the rate of 1.5% of the unpaid balance on the 1st day of the month as Additional Rent.

This constitutes Notice pursuant to South Carolina Code of Laws (Section 2740-7106) and tenant acknowledges receipt of Notice. No other Notice will be given. Should rent not be received by the 5th day following the Rental Due Date, eviction papers may be filed. Tenant shall be liable to said Landlord for all losses sustained, costs and expenses incurred, including but not limited to legal fees and a 35% collection fee, resulting from Tenant's breach of this agreement and legal actions instituted as a result thereof. Landlord shall also have all other legal rights and remedies otherwise available to it. If rent is unpaid when due and Tenant fails to pay rent within fifteen days from the date due, the Landlord, in addition to and not in place of other remedies, may terminate this rental agreement.

4. **DEPOSITS:** The burden of proof of payment of any deposits shall be upon the Tenant(s).

Security Deposit Received: \$2200 Date:

Final Month's Rent \$NA Date:

Mail Box Deposit Received: \$NA Date:

The security deposit collected from the Tenant shall be refunded to the Tenant within 30 days after the premises have been vacated, providing upon inspection the premises are found to be in good condition as they were at the beginning of the lease, normal wear and tear excepted, and provided the covenants, agreements and conditions on the part of the Tenant have been complied with entirely. The security deposit is not any part of the rent herein reserved, and consequently cannot be deducted from the rent due in any month.

5. **PETS.** Pets are not permitted except when special written permission is granted by Landlord following payment of Pet Fee by Tenant, and execution of pet agreement by Tenant(s) and any Co-signor. Should pet(s) be present at premise without the written consent of the Landlord, Tenant shall be in breach of contract and Landlord may terminate the lease. The standard required pet fee is \$250.00 per pet. In addition to Pet Fee, Tenant(s) and Co-signer(s) will be responsible for any pet damages to any part of the premises. **An Addendum to Residential Lease for Pets if applicable is attached.**

Pet fee will be used to treat premises by a professional exterminator and for additional deep cleaning after tenant has vacated.

Pet fee received: \$NA Date

6. **KEYS.** Tenant is fully responsible for the property until all keys and garage door openers if any have been returned to the office of Landlord or Landlord's agent after vacating. Security Deposit will be charged a minimum of \$100.00 if all keys are not returned. Rent accrues until all keys are received at the office of Property Management or Landlord.

Date Keys Issued: 2/11/16 Date Mailbox Keys Issued: _____

7. **CONDITION OF PREMISES:** Tenant accepts premises and appliances in their present condition. Failure to return a written report of pre-existing conditions precludes the Tenant from claiming any defect existed in the premises upon the Tenant's initial occupancy.

8. **IT IS EXPECTED THAT THE TENANT WILL PRACTICE GOOD HOUSEKEEPING.** Tenant agrees

[Handwritten signature]
Tenant

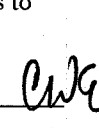
to maintain the premises in good, clean condition, excepting reasonable wear and tear, and to make no alterations or additions thereon without the written consent of Landlord. It is expressly understood that the Tenant will maintain, at the Tenant's expense, the following items:

- a) To keep sinks, lavatories, and commodes draining and operating properly. (Notice: any malfunction must be reported within 5 days of occupancy.) Landlord bears expense to remove roots from sewer lines. Tenant must repair at Tenant's expense stoppage or leakage for any other reason.
- b) To replace all broken glass (window, door, shower door, etc.)
- c) To repair any damage caused by Tenant(s) or Tenant's guests to interior or exterior walls, electrical or plumbing fixtures, screens, doors, wood floors, carpet, vinyl, and other furnishings.
- d) To mow and maintain the lawn and trim the shrubs and plantings, to weed flower beds, to remove leaves and debris, etc.
- e) To pay for all utilities used while occupying said premises. Allowing power to be turned off constitutes a default of the Lease.
- f) To keep all grounds free from unsightly objects and debris.
- g) To repay Landlord for any service to the heating system caused by Tenant's misuse or inadequate supply of fuel. To change heating and air conditioning filter monthly.
- h) To maintain and check smoke detectors monthly. Smoke detectors have been checked prior to move-in and are in working condition. If smoke detector battery fails, it is Tenant's responsibility to replace battery.
- i) To repay Landlord for the cost of all repairs made necessary by negligent or careless use of said premises.
- j) To be responsible for pest control (except termite protection of structure).
- k) The leased premises and the fixtures contained therein, shall be deemed to be clean and acceptable, and in good repair and operable, unless otherwise reported in writing to Landlord within 48 hours (except for the plumbing acceptance period in Paragraph a)) of the commencement of the rental term.
- l) To be responsible for service charge if no repair is necessary from tenant reported problem.
- m) To allow no untagged vehicles to be stored in public view.
- n) To have carpets if present cleaned once per year and on termination of the Lease by a professional carpet cleaning service and provide Landlord with paid receipt.

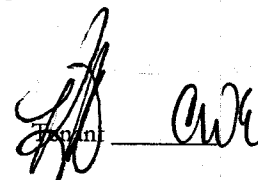
The tenant agrees to promptly report to Landlord any repairs which need to be made to the property. NO TENANT INCURRED EXPENSES SHALL BE DEDUCTED FROM THE MONTHLY RENT UNDER ANY CIRCUMSTANCES WHATSOEVER. Neither Landlord nor Agent accepts responsibility for injury or damages resulting from unreported deficiencies.

9. RULES AND REGULATIONS:

- a) Tenant understands and agrees that any actions, such as hanging pictures or other items from walls or woodwork, or modifications of any type made to the premises are done at the Tenant's risk and expense. Any modification made by tenant may be required to be removed at Tenant's expense. If, in the opinion of Landlord or Landlord's agent, the premises have sustained any damage beyond the reasonable wear and tear, then Tenant shall bear the costs and expenses to correct or repair the damage. Tenant may request written permission for a proposed course of action or modification from Landlord or Landlord's agent.
- b) Posters stuck to walls with tape and thumb tacks; large nails driven into walls; anchor, toggle, or molly bolts installed in walls; adhesive backed mirrors and picture hangers; decals and transfers; wallpaper borders added to walls; interior painted surfaces by tenant shall be considered damage. If Tenant installs items such as window blinds, mirrors, coat hangers, towel racks, can openers, door chains, deadbolts, or any other items attached to walls, cabinets, or the structure, then these MUST remain when the premises are vacated.
- c) Picture hangers are to be left on the walls when the premises are vacated. Indiscriminate hanging of decorative items will be treated as damages.
- d) Tenant agrees to refrain from any act that creates a nuisance (such as excessive noise), or that is a violation of any law. Tenant is also responsible for all acts of their pets and visitors. Tenants and their guest(s) will be expected to consider the peace and quiet of their neighbors at all times. Failure to comply will be cause for termination of the Lease.
- e) Tenant agrees to abide by any Homeowners Association Rules and Regulations if applicable.
- f) Lock-out: if Tenant locks him or herself out, it is the Tenant's responsibility to secure a locksmith for re-entry. Any damage to property from re-entry will be Tenant's responsibility to repair.
- g) Emergency Calls: contact Landlord or Agent's answering service when there is an emergency. Flowing water that cannot be stopped and no heat are considered emergencies. No air conditioning is not an emergency. In case of fire, call 911 first then move to a safe location before contacting Landlord or Agent.
- h) The Common Area Facilities, if any, such as swimming pool, laundry room, recreational, and other common area facilities, when open and operating, are subject to applicable rules and regulations. The Tenant agrees to

- observe faithfully all rules and regulations that now or may hereafter be adopted for the use of the premises.
- i) Landlord agrees to allow tenant the use of any existing electronic equipment during the term of the Lease. Lessor makes no claim of warranty as to the condition or serviceability of the electronic systems. Lessee agrees that Lessor's offer of the use of these systems is not an inducement of additional rent and agrees that no reduction in rent is due should the telephone or security systems be removed or prove to be unsuitable for use for any reason.
10. **RIGHT OF RE-ENTRY:** Upon notification, Tenant(s) agree(s) to permit Landlord or Landlord's Agents to enter premises at reasonable hours for the purpose of making inspections and repairs.
11. **CLEANING AND VACATING:** Upon vacating the premises the Tenant promises:
- To pay all rent and other accrued charges in full. Deposit monies do not apply to rent and in no way are to be construed as the final month's rent.
 - To thoroughly clean the residence. Kitchen: thoroughly clean all appliances inside and out including range hood and dishwasher door; wipe inside cabinets, drawers, and counter tops; sweep and mop floor. Leave refrigerator door open and turn off power or unplug. Bath: clean all fixtures; remove all toiletry items; sweep and mop floors; clean mirrors and faucets; wipe inside cabinets and drawers. Vacuum all floors and carpets — if heavily soiled, have professionally cleaned. If in Landlord's opinion, carpets are heavily soiled, they will be professionally cleaned at tenant's expense. Wipe all baseboards and windowsills. Sweep: garage, porches, and walkways. Remove: all trash from premises. If above items are not met satisfactorily, the minimum cleaning fee will be \$150 or more depending upon the severity of the condition of the property and will be deducted from the security deposit.
 - To lock and fasten all doors and windows and return all keys and garage door openers for the premises to the office of Landlord or Agent.
 - To mow the grass and fulfill all other responsibilities contained in the lease.
 - Failure of Tenant to give 30 Day written notice to vacate automatically forfeits ALL Security Deposits as a cancellation fee.
12. **SHOWING PREMISES:** Tenant agrees to allow Landlord or Landlord's agent to show the premises to prospective tenants and/or purchasers during the last 30 days of the Tenant's occupancy of the premises as necessary and at other times during the term of the lease with 12 hour notice.
13. **NON-LIABILITY OF LANDLORD:** The Tenant covenants that neither the Landlord nor his agent shall be liable for any damages or injury of the Tenant, the Tenant's guests, agents, employees or any person entering the premises or building of which the demised premises are a part, or to goods or equipment therein resulting from any defect in the structure or its equipment, or in the structure or equipment of the structure of which the demised premises are apart, and, further to indemnify, defend, and hold the Landlord harmless from all claims of every kind and nature. It is recommended that the Tenant secure renters insurance against personal liability injury and loss of personal belongings.
14. **ABANDONMENT.** The unexplained absence of a Tenant from premises for a period of 15 days after default in the payment of rent or termination of utilities shall be constructed as abandonment of the premises. When premises has been abandoned, or the rental agreement has come to an end and the Tenant has removed a substantial portion of his property or terminated his utilities, the Landlord may enter the premises, using forcible entry if required, and dispose of remaining property. All property not covered by this section will be handled under the provisions of Code of Laws of South Carolina for 1976, Sections 27-37-10 to 27-37-150. If Tenant abandons the unit, he shall be liable for the rent for the remaining term of this agreement pursuant to and subject to Section 35(b) of the South Carolina Residential Landlord and Tenant Act.
15. **LEAD-BASED PAINT DISCLOSURE FOR MOST RESIDENTIAL PROPERTIES BUILT BEFORE 1978:** See Lead-Based Paint Disclosure Addendum attached.
16. **MEGAN'S LAW:** The Tenant and Landlord agree that the Property Manager or Real Estate Broker representing Tenant or Landlord and all affiliated agents are not responsible for obtaining or disclosing any information contained in the South Carolina Sex Offender Registry. The Tenant and Landlord agree that no course of action may be brought against the Property Manager or Real Estate Broker representing Tenant or Landlord and all affiliated agents for failure to obtain or disclose any information contained in the South Carolina Sex Offender Registry. The Tenant agrees that the Tenant has the sole responsibility to obtain any such information. The Tenant understands that Sex Offender Registry information may be obtained from the local sheriff's department or other appropriate law enforcement officials.
17. **MISCELLANEOUS:**



Tenant: _____
Landlord: _____

Appliances: Stove, Dishwasher, Microwave

At lease execution, the LESSEE will be given a MOVE-IN Inspection Form. This form must be completed and returned to the office within 7 days of the lease execution date. Should this form not be returned within the allotted time (or not returned at all), Lessee takes possession of the property "AS IS" and all that this implies. Failure to return the MOVE-IN Inspection Form will result in any damages found at time of move-out to be charged to the LESSEE, regardless if they were preexisting to tenant moving in.

This lease shall be binding upon the parties, their heirs, and their representatives.

If any part of this lease is not fully understood, competent legal advice should be sought.

In witness whereof, the Landlord and the Tenant have executed these presents, the day and year first above written.

Sharon Lambell Country Wepp 2-1-16
 Witness Tenant Date

Sharon Lambell Country Wepp 2-1-16
 Witness Tenant Date

Sharon Lambell Country Wepp 2-1-16
 Witness Tenant or Co-signor Date
Country Wepp 2-1-16
 Agent for Landlord or Landlord Date

Country Wepp
 Tenant

Exhibit B

LEASE EXTENSION AND MODIFICATION AGREEMENT

THIS EXTENSION AND MODIFICATION AGREEMENT is to be attached to and form a part of the lease (which together with any amendments, modifications, and extensions thereof is hereinafter called the "Lease") made 1 February 2016 between **Equinox, LLC** as Lessor and **Kathy Owens and Courtney W. Epps** as Lessee covering the premises known as

618 Garden Rose Court
Greer, SC 29651

Lessor and Lessee have agreed that the Lease shall continue based upon the terms, conditions, covenants, and agreements contained in the original lease (referenced above), with the modifications noted below:

1. The term of the Lease shall be extended by one year to run 1 October 2017 to 30 September 2018.
2. "Brandon Epps" is added as Additional Lessee.
3. "Kathy Owens" is removed from list of Lessees.
4. "Courtney Epps, Brandon Epps and minor children" are explicitly entered in the Lease as Approved Occupants.
5. Rent for the premises shall be \$2440.00 per month for the term.
6. Application of late charges as given in Paragraph 3 of the Lease is modified as follows:

Delete the sentence:

A late charge of \$50 will be charged after the 5th day following. On the 10th day following, an additional \$50 late fee will be charged on any rent that has not been paid.

And substitute the following sentence:

A late charge of 5% of rent due will be charged after the 5th day of the month. On the 10th day of the month, an additional 5% late fee will be charged on any rent that has not been paid.

The parties hereto have signed and sealed this Extension Agreement on the dates indicated below

WITNESSES

LESSOR:

Equinox, LLC

By:

Richard Dreskin
Richard Dreskin, Managing Member

Date:

WITNESSES:

Whitney Bruchter

LESSEE:

Courtney W. Epps

Courtney W Epps

Date:

Brandon Epps

Brandon Epps

Date:

Exhibit C



AdvantaClean of the Upstate
162A Kerns Avenue
Greenville, SC 29609

11/27/2017

Rick Dreskin
618 Garden Rose Court
Greer, SC 29651

Summary: AdvantaClean was called to assess the contamination of the contents of the home. We had been called by the tenant three days prior and I explained that to the home owner's representative. The only way to test for contamination is to do a tape lift surface test. The test area is 1 inch by 1 inch. The specific locations and surfaces tested have to be chosen by the tester. The sample is then examined by Southeast Environmental Microbiology Laboratories of Greenville, SC and a report provided. I returned to the house on Tuesday November 22nd to do more testing at the home owner's request.

Site Assessment: I was on site on Wednesday afternoon 15th November 2017. I performed a walk through of the property to determine where to take the tests. During the walk through the only suspect visible mold growth I saw was on the bathroom floor on the first floor. The previous water damaged ceiling below had already been repaired so I can't comment on the current status of that area. The rest of the house and belongings did not have anything that I could see as potential growth. Mold spores themselves are not visible to the naked eye and so the amount of contamination was unknown. The only other possible indication of a mold issue was upon opening the door to the basement a musty odor was apparent. This smell is often mold spore concentrations in the air. On my second visit on the 22nd there was no longer a smell anywhere in the house.

Remediation versus decontamination: Remediation is the removal of active mold or bacterial growth to prevent further damage and allow for repairs to be made safely. Decontamination is the removal of contaminants, such as mold spores, from an area, object or person. We would remediate the home and decontaminate the contents.

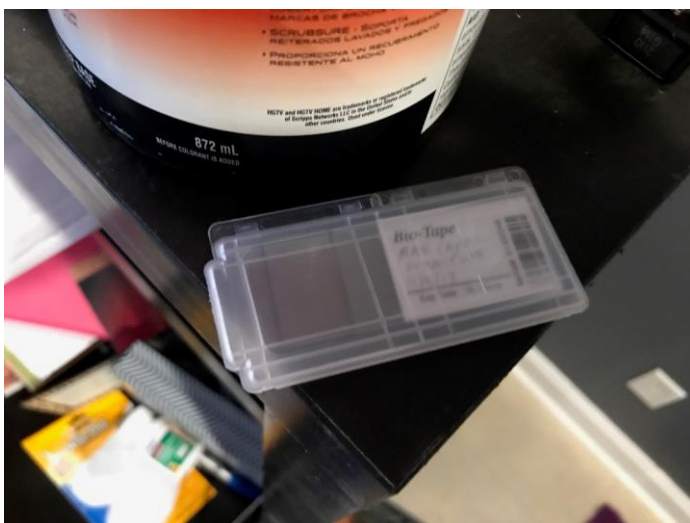
I have already explained and quoted the content decontamination process to the tenant as that was what he requested.

Results: Of the seven surface tests I completed only one was found to have a active fungal growth and that was the one taken of the subfloor under the bathroom wood flooring. Of the six other tests only two showed the presence of mold spores. Those two were only scattered spores of the varieties pythomyces and Cladosporium. Scattered means only a very small number were present (1-20 spore). The range is very low (VL) 21-100, low (L) 101-1000, medium (M) 1001-10000, and high (H) >10,000. Of those two test one was in the kitchen and one in the second floor bedroom. Nothing tested positive for fungal growth or spores in the basement area.

I also did three air test. One in the basement, one in the living room, and one outside. The outside test is done as a comparison test to determine the effects of air exchange on indoor air quality. The results were not alarming. The total spore count was not high. The air test in the basement indicate the air quality is within normal range for mold. The air test in the 1st floor living room was normal except for Cladosporium, which was twice the outside count and elevated enough to recommend addressing but not nearly as high as the previous tests done be Air and Mold Live. I suspect that the multiple weeks of the HVAC running and outside air exchange has caused much of the initial contamination to be filtered and vented out. This is not always the case however with no significant mold spores showing up in the surface tests and the air test being so much better that is my suspicion.



The first test was done on a horizontal surface of the couch in the upstairs living room. This was chosen because it was a centrally located flat surface content belonging to the tenant.



The second test was done on the top of a dresser that was in the down stairs living area "man cave". This site was selected because it was a horizontal surface in the room that was suspected to have the highest contamination. The test results showed no active mold growth and no spores at the test site.



Back corner of the kitchen counter top



Couch in the basement living area (man cave).



Under the flooring in the 1st floor bathroom.



Steps on the bunk bed unit in 2nd floor bedroom.

Conclusion: All test results have been provided to the homeowner in a separate document. I am surprised that no mold spores were found on the contents surface test after having reviewed the initial testing done by Mold and Air. The time between tests may have allowed for some dilution of the spores due to HVAC conditioning the space. My tests indicate no contamination of the belongings that would warrant decontamination. Though the tenant's sensitivity and prior exposure is going to affect their reaction to any level of contamination and may drive them to proceed with decontamination. I have provided a quote to the tenant for content cleaning and will be providing a quote to the home owner's representative for remediation of the structure.

It is my personal recommendation that AdvantaClean be hired to perform remediation of the property first. Then perform a chlorine dioxide fumigation of the entire house. This will kill any mold and mold spores in the structure, including contents. That would be the most efficient way to address both problems at the lowest cost.

All work would be performed to safety and remediation industry standards. All containment protocol, controls and testing would be done to standard and documented. City of Greer would be contacted prior to work being performed to ensure all code and environmental concerns were addressed. Chlorine dioxide is used in solid, liquid, and gaseous form for the sanitization of various biological contaminants in multiple industries and applications.

Please call or email if there are any questions or concerns.

Thank you for your consideration,

Dan Wackerhagen

Owner

AdvantaClean

864-650-7202

Dan.wackerhagen@advantaclean.com

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	C. A. No. 2017-CP-42-04476
	)	
Equinox, LLC,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	REPLY TO COUNTERCLAIMS
	)	
Brandon Epps and Courtney Epps,	)	
	)	
Defendants.	)	
	)	

The plaintiff, Equinox, LLC (“Equinox”), replying to the counterclaims alleged by Defendants Brandon Epps and Courtney Epps in their answer and counterclaim dated and filed January 15, 2018 (the “Counterclaims”), would respectfully allege and show unto the Court as follows:

FOR A FIRST DEFENSE

1. Paragraphs 1 – 35 of the Answer and Counterclaims do not contain allegations directed at the plaintiff and, therefore, no response is required. To the extent a response is required, these allegations are denied.

2. Equinox admits the allegations of paragraph 36.

3. In response to the allegations of paragraph 37, Equinox admits that defendants and their minor children were tenants of the Property and that defendants signed a Lease Extension and Modification on or about October 1, 2017. Equinox denies the remaining allegations of paragraph 37.

4. In response to the allegations of paragraph 38, Equinox admits that it is a limited liability company with a business address of 214 Oak Meadow Drive, Simpsonville, SC 29681 and that it owned the Property at all times relevant to the complaint.

5. In response to the allegations of paragraph 39, Equinox specifically denies that it committed any act or omission that caused damages to Defendants. Equinox lacks sufficient information to form a belief as to the truth of the remaining paragraphs and, therefore, denies same.

6. Equinox lacks sufficient information to form a belief as to the truth of the allegations of paragraph 40 and, therefore, denies same.

7. Equinox denies the allegations of paragraph 41.

8. In response to the allegations of paragraph 42, Equinox admits that the City of Greer served two notices to Equinox on or about October 26, 2017 and December 27, 2017, refers to the subject notices, and denies all allegations inconsistent therewith. Equinox denies the remaining allegations of paragraph 42.

9. In response to the allegation of paragraph 43, Equinox admits that it did not provide notice to the defendants because they had already vacated the premises and terminated the lease. Equinox denies all remaining allegations of paragraph 43.

10. Equinox denies the allegations of paragraph 44.

11. Equinox lacks sufficient information to form a belief as to the truth of the allegations of paragraph 45 and, therefore, denies same.

12. In response to the allegations of paragraph 46, Equinox admits that the defendants were tenants of the Property during the times relevant to the complaint. Equinox denies the remaining allegations of paragraph 46.

13. Equinox denies the allegations of paragraph 47.

14. Equinox repeats and realleges the defenses stated in the previous paragraphs as if fully restated herein.

15. The allegations of paragraph 49 constitute a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

16. Equinox denies the allegations of paragraph 50.

17. In response to the allegations of paragraph 51, Equinox alleges that all issues identified by the defendants in May 2017 were adequately remedied and that the defendants subsequently terminated the lease agreement. The remaining allegations constitute a legal conclusion to which no response is required. To the extent a response is required, such allegations are denied.

18. Equinox denies the allegations of paragraph 52.

19. Equinox denies the allegations of paragraph 53.

20. The allegations of paragraph 54 constitute a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

21. Equinox repeats and realleges the defenses stated in the previous paragraphs as if fully restated herein.

22. In response to the allegations of paragraph 56, Equinox denies that it breached any local housing laws or any implied warranty of habitability. The remaining allegations constitute a legal conclusion to which no response is required. To the extent a response is required, such allegations are denied.

23. Equinox denies the allegations of paragraph 57.

24. Equinox denies the allegations of paragraph 58.

25. In response to the allegations of paragraph 59, Equinox admits that the City of Greer served a violation to Equinox on or about October 26, 2017, refers to the subject notice, and denies all allegations inconsistent therewith. Equinox further admits that Richard B. Dreskin signed an

affidavit on or about October 26, 2017, refers to the subject affidavit, and denies all allegations inconsistent therewith. Equinox denies any remaining allegations of paragraph 59.

26. Equinox denies the allegations of paragraph 60.

27. Equinox denies the allegations of paragraph 61.

28. Equinox denies the allegations of paragraph 62.

29. Equinox denies the allegations of paragraph 63.

30. In response to the allegations of paragraph 64, Equinox repeats and realleges the defenses stated in the previous paragraphs as if fully restated herein.

31. Equinox denies the allegations of paragraph 65.

32. The allegations of paragraph 66 constitute a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

33. Equinox denies the allegations of paragraph 67.

34. In response to paragraph 75, Equinox repeats and realleges the defenses stated in the previous paragraphs as if fully restated herein.

35. Equinox denies the allegations of paragraph 69.

36. Equinox denies the allegations of paragraph 70.

37. Equinox denies the allegations of paragraph 71.

38. Equinox denies the allegations of paragraph 72.

39. Equinox denies the allegations of paragraph 73.

40. Equinox denies the allegations of paragraph 74.

41. Equinox repeats and realleges the defenses stated in the previous paragraphs as if fully restated herein.

42. Equinox denies the allegations of paragraph 76.

43. Equinox denies the allegations of paragraph 77.

44. Equinox denies each and every allegation of the Counterclaims not admitted, modified, or explained hereinabove.

FOR A SECOND DEFENSE

45. Equinox adopts and realleges the allegations of its previous defenses as if fully repeated herein.

46. Defendants have failed to state facts sufficient to constitute a cause of action, and the complaint should be dismissed.

FOR A THIRD DEFENSE

47. Equinox adopts and realleges the allegations of its previous defenses as if fully repeated herein.

48. Defendants' claims for relief are barred, in whole or in part, by the equitable doctrines of unclean hands, estoppel, and laches.

FOR A FOURTH DEFENSE

49. Equinox adopts and realleges the allegations of its previous defenses as if fully repeated herein.

50. Defendants have voluntarily and intentionally waived known rights against Equinox, and therefore Defendants' claims should be dismissed.

FOR A FIFTH DEFENSE

51. Equinox adopts and realleges the allegations of its previous defenses as if fully repeated herein.

52. Defendants have failed to mitigate their damages as required by law.

FOR A SIXTH DEFENSE

53. Equinox adopts and realleges the allegations of its previous defenses as if fully repeated herein.

54. Equinox alleges that even assuming it was negligent, careless, grossly negligent, willful, wanton, or reckless in any respect, and that any such conduct on its part operated as a proximate cause of Defendants' damages, if any, all of which is expressly denied and admitted solely for the purpose of this defense and no other, that Defendants' negligent, grossly negligent, reckless, willful, and wanton conduct contributed more than fifty percent to the cause of any breach of the standard of care and Defendants' resulting injuries and damages, if any. For that reason, Equinox is not liable to Defendants in any sum whatsoever.

FOR A SEVENTH DEFENSE

55. Equinox adopts and realleges the allegations of its previous defenses as if fully repeated herein.

56. Equinox alleges that even if it was negligent, careless, grossly negligent, reckless, willful, or wanton in any respect whatsoever, which is expressly denied and admitted solely for the purpose of this defense and no other, and even if any such conduct on its part operated as a greater than fifty percent cause of Defendants' resulting damages, if any, which is also expressly denied and admitted solely for the purpose of this defense and no other, Equinox is entitled to a determination as to the percentage that Defendants' negligent, grossly negligent, reckless, willful, and wanton conduct contributed to their damages and to a reduction of any amount awarded to Defendants in an amount equal to that percentage of Defendants' own negligent, grossly negligent, reckless, willful, and wanton conduct.

FOR AN EIGHTH DEFENSE

57. Equinox adopts and realleges the allegations of its previous defenses as if fully repeated herein.

58. Equinox alleges that the damages alleged by Defendants, if any, resulted from intervening and superseding acts of persons or entities for whom Equinox is not liable or responsible.

FOR A NINTH DEFENSE

59. Equinox adopts and realleges the allegations of its previous defenses as if fully repeated herein.

60. Equinox is entitled to an offset against any damages that it may owe to Defendants, if any, in the amounts to be determined by the trier of fact.

FOR A TENTH DEFENSE

61. Equinox adopts and realleges the allegations of its previous defenses as if fully repeated herein.

62. The lease agreement between Equinox and Defendants was materially breached by Defendants' failure to perform. Therefore, Defendants' claims should be dismissed.

FOR AN ELEVENTH DEFENSE

63. Equinox adopts and realleges the allegations of its previous defenses as if fully repeated herein.

64. Some or all of Defendants' claims may be barred because Equinox's conduct was at all times undertaken in good faith.

FOR A TWELFTH DEFENSE

65. Equinox adopts and realleges the allegations of its previous defenses as if fully repeated herein.

66. To the extent that the Counterclaims seek punitive and exemplary damages, such claims violate the rights of Equinox to procedural and/or substantive due process under the Fourteenth Amendment of the United States Constitution and the Constitution of the State of South Carolina, and therefore the Counterclaims fail to state a cause of action upon which either exemplary or punitive damages can be awarded.

FOR A THIRTEENTH DEFENSE

67. Equinox adopts and realleges the allegations of its previous defenses as if fully repeated herein.

68. Some or all of Defendants' claims are barred due to the doctrine of assumption of risk.

FOR A FOURTEENTH DEFENSE

69. Equinox adopts and realleges the allegations of its previous defenses as if fully repeated herein.

70. Some or all of Defendants' claims are barred due to the doctrine of accord and satisfaction.

WHEREFORE, having fully replied to the counterclaims alleged by Defendants Brandon Epps and Courtney Epps in their answer and counterclaim dated and filed January 15, 2018, Plaintiff Equinox, LLC prays that such counterclaims be dismissed with costs and for such other and further relief as the Court deems just and proper.

[Signature Page Follows]

Respectfully submitted,

s/Adam C. Bach

Adam C. Bach (#74885)

R. Hudson Smith (#101369)

ELLER TONNSEN BACH, LLC

1306 South Church Street

Greenville, SC 29605

Telephone: (864) 236-5013

Facsimile: (864) 312-4191

abach@etblawfirm.com

hsmith@etblawfirm.com

Attorneys for Plaintiff Equinox, LLC

February 14, 2018

Greenville, South Carolina

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	Case No. 2017-CP-42-04476
	)	
Equinox, LLC,	)	
	)	
Plaintiff,	)	AMENDED ANSWER AND
	)	AMENDED
v.	)	COUNTERCLAIM
	)	
Brandon & Courtney Epps,	)	
	)	
Defendants.	)	
	)	

COMES NOW Defendants Brandon and Courtney Epps, in the above action, to file this, their Amended Answer and Counterclaim, showing this Honorable Court the following:

PROCEDURAL HISTORY

Defendants were served with this action on December 14, 2017, with the Affidavit of Service filed December 15, 2017. Defendants were previously served with a Rule to Vacate or Show Cause (Civil Action No, 2017CV4210108684), which the Magistrate Court merged into the companion case for monetary damages, Civil Action No. 2017CV4210108685. In doing so, the Magistrate Court took notice that the Counterclaim exceeded the jurisdictional monetary limits of the Magistrate Court, as Defendants claim damages in excess of jurisdictional limits. Defendants properly filed their Counterclaim in Civil Action No. 2017CV4210108685 and that case is still pending. The Magistrate Court issued an Order transferring and consolidating the remaining issues to this action.

AMENDED ANSWER

1.

Defendants respectfully acknowledge the claims of Plaintiff concerning Equinox, LLC.

2.

Defendants respectfully deny the assertion as to the county of residency of Brandon Epps, as Mr. Epps is and was residing in Greenville County at the time of the filing of this action. With the anticipated consolidation of the Magistrate Court actions into this action, Brandon Epps waives jurisdictional argument.

3.

Defendants respectfully deny the assertions in Paragraph 3 of Plaintiff's Complaint, as Defendant Courtney Epps is and was a resident of Greenville County, South Carolina at the time of the filing of this action. With the anticipated consolidation of the Magistrate Court actions into this action, Courtney Epps waives jurisdictional argument.

4.

Defendants respectfully admit that the Court has personal jurisdiction over the parties and subject matter jurisdiction over the causes of action.

5.

Defendant Courtney Epps respectfully acknowledges the lease agreement for 618 Garden Rose Ct, Greer, SC 29651.

6.

Defendant Courtney Epps respectfully acknowledges the initial lease term was for approximately one (1) year and that she agreed to pay monthly rent.

7.

Defendants respectfully acknowledge the lease terms.

8.

Defendants respectfully disagree with the summary Section 8 by Plaintiff.

9.

Defendants respectfully responds that the lease speaks for itself.

10.

Defendants respectfully acknowledge the execution of the Lease Extension.

11.

Defendants respectfully acknowledge the terms of the Lease Extension.

12.

Defendants respectfully acknowledge the Lease Extension provides for monthly rent payment.

13.

Defendants respectfully deny the assertions contained in Paragraph 13 of Plaintiff's Amended Complaint.

14.

Defendants respectfully deny the assertions contained in Paragraph 14 of Plaintiff's Amended Complaint.

15.

Defendants respectfully deny the assertions contained in Paragraph 15 of Plaintiff's Amended Complaint and assert that they notified Landlord they were having to leave because of the uninhabitability of the home. Further, Defendants were foreclosed from taking items out of the home due to the mold contamination.

16.

Defendants respectfully deny the assertions in Paragraph 16 of Plaintiff's Amended Complaint and assert that the correspondence referenced actually happened in reverse.

17.

Defendants respectfully acknowledge the filing for ejectment and complaint on or about October 17, 2017 in Spartanburg County Magistrate Court.

18.

Defendants respectfully deny the assertions contained in Paragraph 18 of Plaintiff's Amended Complaint.

19.

Defendants respectfully admit the assertions contained in Paragraph 19 of Plaintiff's Amended Complaint.

20.

Defendants respectfully deny the assertions contained in Paragraph 20 of Plaintiff's Amended Complaint.

21.

Defendant Courtney Epps respectfully denies the assertions contained in Paragraph 21 of Plaintiff's Amended Complaint. Defendant Courtney Epps further asserts that the addition of this charge in Plaintiff's Amended Complaint constitutes a violation of her Constitution Right to Free Speech. Defendant further asserts that in these postings, Plaintiff was referred to only as "Landlord" and that the addition of the defamation claim constitutes frivolous litigation on the part of Plaintiff.

22.

Defendants respectfully acknowledge and deny parts of the assertions in Paragraph 22 of Plaintiff's Amended Complaint. Defendants respectfully deny that the Magistrate Court dismissed the Landlord's application for ejectment.

23.

Defendants respectfully deny the assertions in Paragraph 23 of the Plaintiff's Amended Complaint.

24.

Defendants respectfully deny the assertions in Paragraph 24 of the Plaintiff's Amended Complaint.

25.

Defendants respectfully deny the assertions in Paragraph 25 of the Plaintiff's Amended Complaint.

26.

Defendants respectfully are without sufficient knowledge to respond to the assertions contained in Paragraph 26 of Plaintiff's Amended Complaint.

27.

Defendants respectfully admits that they received notice that the property had been condemned and the reason stated but are without sufficient knowledge to address the balance of Paragraph 27 of the Plaintiff's Amended Complaint.

28.

Defendants respectfully deny the assertions in Paragraph 28 of the Plaintiff's Amended Complaint.

29.

Defendants respectfully deny the assertions in Paragraph 29 of the Plaintiff's Amended Complaint.

30.

Defendants respectfully acknowledge that Plaintiff restates foregoing assertions.

31.

Defendants respectfully deny the assertions in Paragraph 31 of the Plaintiff's Amended Complaint.

32.

Defendants respectfully deny the assertions in Paragraph 32 of the Plaintiff's Amended Complaint.

33.

Defendants respectfully deny the assertions in Paragraph 33 of the Plaintiff's Amended Complaint.

34.

Defendants respectfully acknowledge that Plaintiff restates foregoing assertions.

35.

Defendants respectfully deny the assertions in Paragraph 35 of the Plaintiff's Amended Complaint.

36.

Defendants respectfully deny the assertions in Paragraph 36 of the Plaintiff's Amended Complaint.

37.

Defendants respectfully deny the assertions in Paragraph 37 of the Plaintiff's Amended Complaint.

38.

Defendants respectfully deny the assertions in Paragraph 38 of the Plaintiff's Amended Complaint.

39.

Defendants respectfully acknowledge that Plaintiff restates foregoing assertions.

40.

Defendants respectfully deny the assertions in Paragraph 40 of the Plaintiff's Amended Complaint.

41.

Defendants respectfully deny the assertions in Paragraph 41 of the Plaintiff's Amended Complaint.

42.

Defendants respectfully acknowledge that Plaintiff restates foregoing assertions.

43.

Defendant Courtney Epps respectfully denies the assertions contained in Paragraph 43.

44.

Defendant Courtney Epps respectfully denies the assertions contained in Paragraph 44.

45.

Defendant Courtney Epps respectfully denies the assertions contained in Paragraph 45.

46.

Defendant Courtney Epps respectfully denies the assertions contained in Paragraph 46.

47.

Defendants respectfully acknowledge that Plaintiff restates foregoing assertions.

48.

Defendants respectfully acknowledge the recitation of a sentence in the Lease Contract in Paragraph 48 of the Plaintiff's Amended Complaint.

49.

Defendants respectfully deny the assertions in Paragraph 49 of the Plaintiff's Amended Complaint.

AMENDED COUNTERCLAIM FOR DAMAGES

50.

Defendants are subject to the jurisdiction of this Court by virtue of the Complaint filed. Additionally, the subject matter real property is located with the jurisdiction of this Court.

51.

Defendants and their six (6) minor children were tenants of the residential property located at 618 Garden Rose Court, Greer, South Carolina 29651 (hereinafter "The Property"). Defendants

co-signed a Lease Extension and Modification on or about October 1, 2017, which provision did not mention money owed to Plaintiff and which Extension was executed by Courtney Epps and substituted Brandon Epps for the original co-lessee. Defendants will add additional parties by motion as the Court directs.

52.

On information and belief, Equinox LLC is a limited liability company having a business address of 214 Oak Meadow Drive, Simpsonville, South Carolina 29681 and on information and belief, this Plaintiff has at all material times owned, managed and controlled The Property.

53.

The true names and/or capacities, whether individual, corporate, associate or otherwise, of Plaintiffs and Does 1 through 5, inclusive, are unknown to Defendants at this time, and who therefore Defendants sue by such fictitious names. Defendants are informed and believe and thereupon allege that each of the Plaintiffs to be fictitiously named by motion as a DOEs are legally responsible, negligently or in some other actionable manner, for the events and happenings hereinafter referred to, and thereby proximately and legally caused the injuries and damage to Defendants as hereinafter alleged. Defendants will ask leave of court to amend this action under the Motion previously filed or as directed by the Court to insert the true names and/or capacities of such fictitiously named Plaintiffs when the same have been ascertained.

54.

Upon information and believe at all times mentioned herein, Plaintiff and DOEs were the agent, employee and representative of each other, and in doing the things hereinafter alleged, was acting within the course and scope of such agency, service and representation, and directed, aided and abetted, authorized or ratified each and every act and conduct hereinafter alleged.

55.

Upon information and belief, at all times mentioned herein, Plaintiff was the co-tortfeasor of each of the other Plaintiffs in doing the things hereinafter alleged.

56.

The Property has been subject to at least one inspection by the City of Greer and found to be in violation of the International Property Maintenance Code adopted by the City of Greer that has resulted in a citation for violation of code, the property's uninhabitability acknowledged by the sworn signature of the lessor, Richard Dreskin, Managing Member of Equinox LLC on October 26th, 2017. Further, the subject property has now been condemned.

57.

Notwithstanding Plaintiffs' sworn assertion that he would not allow the subject property to be occupied, Plaintiffs failed to notify the tenant that the premise was found to be in violation of code and failed to notify the Defendants that the City of Greer had required that he certify it would be unoccupied and that he did so certify.

58.

The habitability violations addressed the interior of the Property including, but not limited to, an improperly waterproofed foundation known to Plaintiffs prior to the lease that resulted in water accumulating in the basement of the Property, resulting in mold infestation in floors, walls, insulation and HVAC ductwork. Further, the plumbing in the home was sub-standard and defective.

59.

During all relevant dates herein, Defendants lived at the Property and as a consequence of the conditions, Defendants have sustained injuries and health problems caused or exacerbated by the conditions. As a consequence of the conditions and the physical injuries caused by the conditions, Defendants have also sustained severe mental suffering, frustration and anxiety.

60.

Defendants resided as tenants of The Property during the period in which Plaintiffs owned, managed, or repaired the premises. During Plaintiff's tenancy, Plaintiff was exposed to the following substandard conditions:

- a) leaking plumbing;
- b) accumulation of water in the basement resulting from a bathroom leak through the floor above the basement;
- c) mold throughout the residence from the defective repair of foundational moisture.

61.

Defendants notified the Plaintiffs and its agents about the habitability violations, but Plaintiffs failed to correct the habitability conditions. Upon information and belief the Plaintiffs, and each of the Plaintiffs are experienced property owners or contractors and are aware that, absent appropriate maintenance and repair, serious habitability violations would develop that would seriously and materially affect Defendants' tenancy. In response, Plaintiff threatened to have Defendants evicted and sued for monies he claimed Defendants owed him.

62.

Defendants were forced to terminate the lease for cause and did so in writing due to not only the uninhabitable condition, but the negligent manner in which Plaintiffs futilely attempted to remedy the situation that exposed them to greater danger.

63.

Notwithstanding the valid termination, Plaintiff Equinox still maintains that the lease is continuing and is charging Defendants in its Complaint rent for the time period following Plaintiff Equinox's signature that it would not allow the property to be inhabited.

64.

Despite fully knowing that the contents could not be safely removed until the home was tented and treated for mold and refusing to do so in order that Defendants be able to retrieve their property, Plaintiffs sold all of Defendants' belongings to unwitting buyers.

FIRST CAUSE OF ACTION

(Breach of Contract)

65. Defendants re-allege and incorporate by reference every allegation contained in the preceding paragraphs of this Complaint as though set forth herein.

66. The Lease agreement, like all agreements in South Carolina, carries with it a duty of good faith and fair dealing for both parties.

67. Defendants and their children suffered actual and consequential damages as a result of the above-mentioned breach and are entitled to relief for the same.

68. If there is noncompliance by the landlord with a rental agreement or noncompliance with Section 27-40-440 materially affecting health and safety or the physical condition of the property, the tenant may deliver a written notice to the landlord specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than fourteen days after receipt of the notice if the breach is not remedied within fourteen days as stated in Section 27-40-610. Defendants delivered a written notice to the Plaintiff specifying the acts and omissions constituting the breach in May 2017 with no adequate remedy by Plaintiff. After many attempts by Defendants, Defendants terminated the rental agreement by letter in October, with termination stated as effective November 18, 2017.

69. As a direct and proximate result of the foregoing, Defendants are entitled to reasonable attorney's fees and costs pursuant to Section 27-40-330 of the South Carolina Residential Landlord Tenant Act.

70. As a direct and proximate result of Plaintiffs' breach of contract, Defendants have sustained personal injury, special, general and property damage in amounts to be determined at trial.

71. As stated in Article 7 of the South Carolina Residential Landlord Tenant Act, "if the landlord ("the plaintiff") fails to deliver possession of the dwelling unit to the tenant as provided in Section 27-40-410, rent abates until possession is delivered and the tenant ("defendants") may:

(1) terminate the rental agreement upon at least five days' written notice to the landlord and upon termination the landlord shall return all prepaid rent and security”.

SECOND CAUSE OF ACTION
(Breach of Warranty of Habitability)

72. Defendants re-allege and incorporate by reference every allegation contained in the preceding paragraphs of this Complaint as though set forth herein.

73. The defective conditions of the rental unit constitute a violation of local housing laws, which posed severe health and safety hazards and breach the implied warranty of habitability in accordance to the International Code Council Section 108, subsection 108.1.5 number 9, which states “a building or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, damage, faulty construction or arrangement, inadequate light, ventilation, mechanical or plumbing system, or otherwise, is determined by the code official to be unsanitary, unfit for human habitation or in such a condition that is likely to cause sickness or disease”.

74. Plaintiffs had actual and constructive notice of the defective conditions alleged herein, but despite such notice, failed to adequately repair and abate the conditions at The Property.

75. Defendants did not cause, create or contribute to the existence of the defective conditions alleged herein.

76. On or about October 26, 2017 the Plaintiff was notified in writing by a public code enforcement agency that the Plaintiff was required to correct some or all of the defective conditions at The Property within ten (10) days from the date of the letter. The Plaintiff signed an affidavit stating that not under any conditions was The Property to be leased, sold or otherwise occupied until all mold abatement requirements of the City of Greer's Codes Enforcement are satisfied.

77. Plaintiffs knew or should have known that permitting said defective conditions to exist at the outset of the lease threatened the physical and emotional health and well-being of Defendants or any renter, and posed a serious threat and danger to their health and safety.

78. By failing to correct or properly correct said defective conditions, Plaintiffs have breached the warranty of habitability implied in all rental contracts under the local International Code Council. Further, Plaintiffs have breached the warranty of habitability implied in all rental contracts by not abiding by the South Carolina Landlord Tenant Act, Article 3, Section 27-40-440, by knowingly renting an uninhabitable home at the outset and by failing to make all repairs and doing whatever is reasonably necessary to put and keep the premises in a fit and habitable condition after tenants discovered the defect hidden by Plaintiffs.

79. Because Plaintiffs' breach of the implied warranty of habitability, it has been necessary for Defendants to incur expenses and other special damages in an amount to be proven at trial.

80. As a direct and proximate result of Plaintiffs' breach of the warranty of habitability, Defendants have sustained personal injury, special, general and property damage in amounts to be determined at trial.

THIRD CAUSE OF ACTION

(Nuisance)

81. Defendant re-alleges, and incorporates by reference every allegation contained in the preceding paragraphs of this Complaint as though set forth herein.

82. The Defendants allege that the Plaintiff interfered with the Defendants right to privacy by not providing an announcement of their intent when entering the property to perform services at The Property.

83. As stated in the Landlord Tenant Act of South Carolina in Section 27-40-530, "a landlord shall not abuse the right of access or use it to harass the tenant. The code requires the landlord to announce his entry even for purposes of repair as state in (b). Nonetheless, the Plaintiff did not so announce.

84. As a direct and proximate result of Plaintiffs' nuisance, Defendants have sustained special and general damage in amounts to be determined at trial.

FOURTH CAUSE OF ACTION

(Negligence)

85. Defendants re-allege and incorporate by reference every allegation contained in the preceding paragraphs of this Complaint as though set forth herein.

86. As owners, operators and managers of The Property, the Defendants owed Plaintiff the duty to exercise reasonable care in the ownership, management, repair and control of The Property, including the safekeeping of Defendants' belongings.

87. These duties owed by Plaintiff to Defendants to exercise reasonable care include, but are not limited to: the duty to refrain from interfering with Defendants full use of and quiet enjoyment of their rented premises; the duty to comply with all applicable state and local laws governing Defendant's rights as tenant; the duty to present and maintain Defendant's premises in a safe, healthy and habitable condition for the entire term of Defendant's tenancy and the duty to not obstruct Defendant's full use and occupancy of their rented residences and the duty to preserve the Defendants' possessions until they could safely be removed.

88. Plaintiffs, by the conduct alleged above, so negligently and carelessly maintained, operated, repaired and managed The Property as to breach the duties that they owed to Defendants. Further, Plaintiffs negligently attempted to repair and correct the mold problems of the property and inappropriately sold property belonging to the Defendants in violation of the South Carolina Landlord and Tenant Act.

89. Plaintiffs' actions, at all times prior to, at the time of, during the lease, and after the proper termination of the lease with respect to mold at the Property were in reckless disregard of the foreseeable consequences to Defendants.

90. Because of Plaintiffs' negligence, it has been necessary for Plaintiffs to incur expenses and other special damages in an amount to be proven at trial.

91. As a direct and proximate result of these breaches of duty by the Plaintiffs, Defendants have sustained general, special and property damage in amounts to be determined at trial.

PUNITIVE DAMAGES

92. Defendants re-allege and incorporate by reference every allegation contained in the preceding paragraphs of this Complaint as though set forth herein.

93. The acts and/or omissions of the Plaintiffs, as stated above, were willful, wanton, grossly negligent, negligence per se, and/or in reckless disregard for the safety, health, mental wellbeing, life and intellectual and financial future tenants.

94. The conduct of the Plaintiffs as set forth above and including the retaliatory threats and lawsuits in violation of law justifies an award of punitive damages as to the Plaintiffs for each and every claim of the Defendants.

WHEREFORE, Defendants pray for the following damages and relief:

- (1) For offset monies in an amount to be determined at trial;
- (2) That Plaintiff's actions (as consolidated) as to Brandon Epps for monies due be dismissed as improperly pled;
- (3) For personal injury, general, special and property damage and loss in an amount to be determined at trial;
- (4) For Punitive Damages;
- (5) Reasonable attorney fees and attorney fees for the defense of the frivolous claim of defamation
- (6) Costs of suit;
- (7) For such other relief as the Court may deem just and proper.

This 9th Day of March, 2018.

s/Jan V. Hinson

Jan V. Hinson, Attorney for Defendants
S.C. Bar No. 101498
The Law Offices of Jan V. Hinson, P.C.
330 E. Coffee Street
Greenville, South Carolina 29601
(864) 527-5933

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	Case No. 2017-CP-42-04476
	)	
Equinox, LLC,	)	
	)	
Plaintiff,	)	
	)	DEFENDANT'S AMENDED
v.	)	ANSWER AND COUNTERCLAIM
	)	
Brandon & Courtney Epps,	)	
	)	
Defendants.	)	
_____	)	

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this date served plaintiff in the foregoing matter with a copy of the DEFENDANTS AMENDED ANSWER AND AMENDED COUNTERCLAIM filed with the Court via electronic filing to:

Adam C. Bach
1306 South Church Street
Greenville, SC 29605

This 9th day of March, 2018.

s/ Jan V. Hinson
Jan V. Hinson, Attorney for Defendants
S.C. Bar No. 101498
The Law Offices of Jan V. Hinson, P.C.
330 E. Coffee Street
Greenville, South Carolina 29601
(864) 527-5933

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	C. A. No. 2017-CP-42-04476
Equinox, LLC,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	REPLY TO AMENDED
	)	COUNTERCLAIMS
Brandon Epps and Courtney Epps,	)	
	)	
Defendants.	)	
	)	

The plaintiff, Equinox, LLC (“Equinox”), replying to the amended counterclaims alleged by Defendants Brandon Epps and Courtney Epps in their amended answer and amended counterclaim dated and filed March 9, 2018 (the “Amended Counterclaims”), would respectfully allege and show unto the Court as follows:

FOR A FIRST DEFENSE

1. Paragraphs 1 – 49 of the Amended Answer and Amended Counterclaim do not contain allegations directed at Equinox and, therefore, no response is required. To the extent a response is required, these allegations are denied.

2. Equinox admits the allegations of paragraph 50.

3. In response to the allegations of paragraph 51, Equinox admits that defendants and their minor children were tenants of the Property and that defendants signed a Lease Extension and Modification on or about October 1, 2017. Equinox denies the remaining allegations of paragraph 51.

4. In response to the allegations of paragraph 52, Equinox admits that it is a limited liability company with a business address of 214 Oak Meadow Drive, Simpsonville, SC 29681 and that it owned the Property at all times relevant to the amended complaint.

5. In response to the allegations of paragraph 53, Equinox specifically denies that it committed any act or omission that caused damages to Defendants. Equinox lacks sufficient information to form a belief as to the truth of the remaining paragraphs and, therefore, denies same.

6. Equinox lacks sufficient information to form a belief as to the truth of the allegations of paragraph 54 and, therefore, denies same.

7. Equinox denies the allegations of paragraph 55.

8. In response to the allegations of paragraph 56, Equinox admits that the City of Greer served two notices to Equinox on or about October 26, 2017 and December 27, 2017, refers to the subject notices, and denies all allegations inconsistent therewith. Equinox denies the remaining allegations of paragraph 56.

9. In response to the allegation of paragraph 57, Equinox admits that it did not provide notice to the defendants because they had already vacated the premises and terminated the lease. Equinox denies all remaining allegations of paragraph 57.

10. Equinox denies the allegations of paragraph 58.

11. Equinox denies the allegations of paragraph 59.

12. In response to the allegations of paragraph 60, Equinox admits that the defendants were tenants of the Property during the times relevant to the amended complaint. Equinox denies the remaining allegations of paragraph 60.

13. Equinox denies the allegations of paragraph 61.

14. In response to the allegations of paragraph 62, Equinox admits that the defendants attempted to terminate the Lease effective November 18, 2017 and denies the remaining allegations.

15. Equinox denies the allegations of paragraph 63.

16. Equinox denies the allegations of paragraph 64.

17. In response to paragraph 65, Equinox repeats and realleges the defenses stated in the previous paragraphs as if fully restated herein.

18. The allegations of paragraph 66 constitute a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

19. Equinox denies the allegations of paragraph 67.

20. In response to the allegations of paragraph 68, Equinox alleges that all issues identified by the defendants in May 2017 were adequately remedied and that the defendants subsequently terminated the lease agreement. The remaining allegations constitute a legal conclusion to which no response is required. To the extent a response is required, such allegations are denied.

21. Equinox denies the allegations of paragraph 69.

22. Equinox denies the allegations of paragraph 70.

23. The allegations of paragraph 71 constitute a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

24. In response to paragraph 72, Equinox repeats and realleges the defenses stated in the previous paragraphs as if fully restated herein.

25. In response to the allegations of paragraph 73, Equinox denies that it breached any local housing laws or any implied warranty of habitability. The remaining allegations constitute a legal conclusion to which no response is required. To the extent a response is required, such allegations are denied.

26. Equinox denies the allegations of paragraph 74.

27. Equinox denies the allegations of paragraph 75.

28. In response to the allegations of paragraph 76, Equinox admits that the City of Greer served a violation to Equinox on or about October 26, 2017, refers to the subject notice, and denies all allegations inconsistent therewith. Equinox further admits that Richard B. Dreskin signed an affidavit on or about October 26, 2017, refers to the subject affidavit, and denies all allegations inconsistent therewith. Equinox denies any remaining allegations of paragraph 76.

29. Equinox denies the allegations of paragraph 77.

30. Equinox denies the allegations of paragraph 78.

31. Equinox denies the allegations of paragraph 79.

32. Equinox denies the allegations of paragraph 80.

33. In response to paragraph 81, Equinox repeats and realleges the defenses stated in the previous paragraphs as if fully restated herein.

34. Equinox denies the allegations of paragraph 82.

35. The allegations of paragraph 83 constitute a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

36. Equinox denies the allegations of paragraph 84.

37. In response to paragraph 85, Equinox repeats and realleges the defenses stated in the previous paragraphs as if fully restated herein.

38. Equinox denies the allegations of paragraph 86.

39. Equinox denies the allegations of paragraph 87.

40. Equinox denies the allegations of paragraph 88.

41. Equinox denies the allegations of paragraph 89.

42. Equinox denies the allegations of paragraph 90.

43. Equinox denies the allegations of paragraph 91.

44. In response to paragraph 92, Equinox repeats and realleges the defenses stated in the previous paragraphs as if fully restated herein.

45. Equinox denies the allegations of paragraph 93.

46. Equinox denies the allegations of paragraph 94.

47. Equinox denies each and every allegation of the Amended Counterclaims not admitted, modified, or explained hereinabove.

FOR A SECOND DEFENSE

48. Equinox adopts and realleges the allegations of its previous defenses as if fully repeated herein.

49. Defendants have failed to state facts sufficient to constitute a cause of action, and the defendants' claims should be dismissed.

FOR A THIRD DEFENSE

50. Equinox adopts and realleges the allegations of its previous defenses as if fully repeated herein.

51. Defendants' claims for relief are barred, in whole or in part, by the equitable doctrines of unclean hands, estoppel, and laches.

FOR A FOURTH DEFENSE

52. Equinox adopts and realleges the allegations of its previous defenses as if fully repeated herein.

53. Defendants have voluntarily and intentionally waived known rights against Equinox, and therefore Defendants' claims should be dismissed.

FOR A FIFTH DEFENSE

54. Equinox adopts and realleges the allegations of its previous defenses as if fully repeated herein.

55. Defendants have failed to mitigate their damages as required by law.

FOR A SIXTH DEFENSE

56. Equinox adopts and realleges the allegations of its previous defenses as if fully repeated herein.

57. Equinox alleges that even assuming it was negligent, careless, grossly negligent, willful, wanton, or reckless in any respect, and that any such conduct on its part operated as a proximate cause of Defendants' damages, if any, all of which is expressly denied and admitted solely for the purpose of this defense and no other, that Defendants' negligent, grossly negligent, reckless, willful, and wanton conduct contributed more than fifty percent to the cause of any breach of the standard of care and Defendants' resulting injuries and damages, if any. For that reason, Equinox is not liable to Defendants in any sum whatsoever.

FOR A SEVENTH DEFENSE

58. Equinox adopts and realleges the allegations of its previous defenses as if fully repeated herein.

59. Equinox alleges that even if it was negligent, careless, grossly negligent, reckless, willful, or wanton in any respect whatsoever, which is expressly denied and admitted solely for the purpose of this defense and no other, and even if any such conduct on its part operated as a greater than fifty percent cause of Defendants' resulting damages, if any, which is also expressly denied and admitted solely for the purpose of this defense and no other, Equinox is entitled to a determination as to the percentage that Defendants' negligent, grossly negligent, reckless, willful,

and wanton conduct contributed to their damages and to a reduction of any amount awarded to Defendants in an amount equal to that percentage of Defendants' own negligent, grossly negligent, reckless, willful, and wanton conduct.

FOR AN EIGHTH DEFENSE

60. Equinox adopts and realleges the allegations of its previous defenses as if fully repeated herein.

61. Equinox alleges that the damages alleged by Defendants, if any, resulted from intervening and superseding acts of persons or entities for whom Equinox is not liable or responsible.

FOR A NINTH DEFENSE

62. Equinox adopts and realleges the allegations of its previous defenses as if fully repeated herein.

63. Equinox is entitled to an offset against any damages that it may owe to Defendants, if any, in the amounts to be determined by the trier of fact.

FOR A TENTH DEFENSE

64. Equinox adopts and realleges the allegations of its previous defenses as if fully repeated herein.

65. The lease agreement between Equinox and Defendants was materially breached by Defendants' failure to perform. Therefore, Defendants' claims should be dismissed.

FOR AN ELEVENTH DEFENSE

66. Equinox adopts and realleges the allegations of its previous defenses as if fully repeated herein.

67. Some or all of Defendants' claims may be barred because Equinox's conduct was at all times undertaken in good faith.

FOR A TWELFTH DEFENSE

68. Equinox adopts and realleges the allegations of its previous defenses as if fully repeated herein.

69. To the extent that the Counterclaims seek punitive and exemplary damages, such claims violate the rights of Equinox to procedural and/or substantive due process under the Fourteenth Amendment of the United States Constitution and the Constitution of the State of South Carolina, and therefore the Counterclaims fail to state a cause of action upon which either exemplary or punitive damages can be awarded.

FOR A THIRTEENTH DEFENSE

70. Equinox adopts and realleges the allegations of its previous defenses as if fully repeated herein.

71. Some or all of Defendants' claims are barred due to the doctrine of assumption of risk.

FOR A FOURTEENTH DEFENSE

72. Equinox adopts and realleges the allegations of its previous defenses as if fully repeated herein.

73. Some or all of Defendants' claims are barred due to the doctrine of accord and satisfaction.

WHEREFORE, having fully replied to the amended counterclaims alleged by Defendants Brandon Epps and Courtney Epps in their amended answer and amended counterclaim dated and

filed March 9, 2018, Plaintiff Equinox, LLC prays that such counterclaims be dismissed with costs and for such other and further relief as the Court deems just and proper.

Respectfully submitted,

s/Adam C. Bach

Adam C. Bach (#74885)

R. Hudson Smith (#101369)

ELLER TONNSEN BACH, LLC

1306 South Church Street

Greenville, SC 29605

Telephone: (864) 236-5013

Facsimile: (864) 312-4191

abach@etblawfirm.com

hsmith@etblawfirm.com

Attorneys for Plaintiff Equinox, LLC

March 23, 2018

Greenville, South Carolina

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	Case No. 2017-CP-42-04476
	)	
Equinox, LLC,	)	
	)	
Plaintiff,	)	
	)	JOINT MOTION TO ADD
	)	NECESSARY PARTIES
v.	)	
	)	
Brandon & Courtney Epps,	)	
	)	
Defendants.	)	
	)	

COMES NOW the parties, Defendants Brandon and Courtney Epps and Equinox, LLC, pursuant to Rule 14, 19 and 20(a), respectfully files this motion to join additional parties to this action. The Defendants' damages extend to their six minor children and Defendant Courtney Epps' business, Outside the Box Business Solutions LLC. Thus, the parties bring this request to amend the caption to add Outside the Box Business Solutions LLC and themselves as Next Friends of Alexis Marion Hucks, 15, Adrienne Belle Hucks, 14, Wells Skipper Hucks, 12, Sawyer Lane Epps, 13, Cooper Wade Epps, 10, and Lilli Madelyn Epps, 4 as 3rd Party Plaintiffs in the Counterclaim against Equinox, LLC.

BRIEF IN SUPPORT

Under the South Carolina Rules of Civil Procedure Rule 19 (a) and 20, a person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a

practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party. If he should join as a plaintiff but refuses to do so, he may be made a defendant, or, in a proper case, an involuntary plaintiff.

The parties additionally move this Court for an Order continuing the discovery period until further Order of this Court.

WHEREFORE, the parties move this Court for an order adding necessary parties and a revision of the caption herein to read:

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

COUNTY OF SPARTANBURG

Case No. 2017-CP-42-04476

Equinox, LLC,
Plaintiff,

v.

Brandon & Courtney Epps,
Defendants.

and

Outside the Box Business Solutions LLC and
Brandon and Courtney Epps, as Next of Friends
of Alexis Marion Hucks, Adrienne Belle Hucks
Wells Skipper Hucks, Sawyer Lane Epps,
Copper Wade Epps, Lilli Madelyn Epps
3rd Party Plaintiffs

v.

Equinox LLC
3rd Party Defendant

[Signatures on next page]

Drafted by:

s/Jan V. Hinson

Jan V. Hinson
Attorney for Defendants
South Carolina Bar No. 101498
The Law Offices of Jan V. Hinson, P.C.
330 E. Coffee Street
Greenville, SC 29601
(864) 527-5933

Consented to by:

s/Adam C. Bach

Adam C. Bach (S.C. Bar #74885)
ELLER TONNSEN BACH, LLC
1306 South Church Street
Greenville, SC 29605
Telephone: (864) 236-5013
Facsimile: (864) 312-4191
abach@etblawfirm.com
Attorney for Plaintiff

This 21st day of November, 2018.

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Case No. 2017-CP-42-04476

Equinox, LLC,

Plaintiff,

v.

Brandon & Courtney Epps,

Defendants.

and

Outside the Box Business Solutions LLC and
Brandon and Courtney Epps, as Next of
Friends
of Alexis Marion Hucks, Adrienne Belle
Hucks

Wells Skipper Hucks, Sawyer Lane Epps,
Copper Wade Epps, Lilli Madelyn Epps

3rd Party Plaintiffs

v.

Equinox LLC

3rd Party Defendant

**MOTION FOR WITHDRAWAL OF
APPEARANCE AND TO STAY
PROCEEDINGS**

Movant, Jan V. Hinson ("Counsel"), respectfully moves for withdrawal of her appearance as counsel for Defendants/ Brandon and Courtney Epps, et al, in the above-referenced matter, and to stay proceedings in this matter for fourteen (14) days to allow Defendants opportunity to obtain substitute counsel or to ready themselves to proceed pro se. In support thereof, Counsel states the following:

1. Counsel's withdrawal is client elected and therefore should be granted. Defendants wish to proceed as pro se.

2. Counsel moves for a stay of all proceedings in this matter for fourteen (14) days following the Court's order on this motion. Counsel does not, however, seek amendment to the

Scheduling Order. The Defendant's mailing address is as follows: 417 Graypointe Drive, Greer, South Carolina 29650 and telephone number is (843) 450-8123.

3. Finally, Counsel has complied with her duty to consult under Local Civil Rule 7.02 before filing this motion and conferred with opposing counsel. Counsel for Defendant Equinox LLC does not object to this motion.

WHEREFORE, Jan V. Hinson of The Law Offices of Jan V. Hinson, P.C. moves for an Order granting a withdrawal of her appearance as counsel for Brandon and Courtney Epps, and providing that she is relieved as counsel for Defendants.

This 6th day of March, 2019.

s/ Jan V. Hinson
Jan V. Hinson
Attorney for Defendants
South Carolina Bar No. 101498

The Law Offices of Jan V. Hinson, P.C.
330 E. Coffee Street
Greenville, SC 29601
(864) 527-5933

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

COUNTY OF SPARTANBURG

Case No. 2017-CP-42-04476

Equinox, LLC,

Plaintiff,

CERTIFICATE OF SERVICE

v.

Brandon & Courtney Epps,

Defendants.

and

Outside the Box Business Solutions LLC and
Brandon and Courtney Epps, as Next of
Friends

of Alexis Marion Hucks, Adrienne Belle
Hucks

Wells Skipper Hucks, Sawyer Lane Epps,
Copper Wade Epps, Lilli Madelyn Epps

3rd Party Plaintiffs

v.

Equinox LLC

3rd Party Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing **MOTION TO WITHDRAW** were served upon counsel for the plaintiff in the above-entitled action this date by depositing same in the United States Mail, sufficient postage affixed thereon, and addressed as follows:

Adam C. Bach
1306 South Church Street
Greenville, SC 29605

Brandon and Courtney Epps
417 Graypointe Drive
Greer, South Carolina 29650

[Signature on next page]

This 6th day of March, 2019.

s/ Jan V. Hinson
Jan V. Hinson
Attorney for Defendants
South Carolina Bar No. 101498

Greenville, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Equinox, LLC,

Plaintiff,

vs.

Brandon Epps and Courtney Epps,

Defendants.

Outside the Box Business Solutions, LLC
and Brandon and Courtney Epps, as Next of
Friends of Alexis Marion Hucks, Adrienne
Belle Hucks, Wells Skipper Hucks, Sawyer
Lane Epps, Copper Wade Epps, and Lilli
Madelyn Epps,

Third-Party Plaintiffs,

vs.

Equinox, LLC,

Third-Party Defendant.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

C. A. No. 2017-CP-42-04476

**MOTION TO DISMISS THIRD-PARTY
COMPLAINT AND/OR FOR PARTIAL
SUMMARY JUDGMENT**

TO: DEFENDANTS/THIRD-PARTY PLAINTIFFS BRANDON EPPS AND COURTNEY EPPS OUTSIDE THE BOX BUSINESS SOLUTIONS, LLC AND BRANDON AND COURTNEY EPPS, AS NEXT OF FRIENDS OF ALEXIS MARION HUCKS, ADRIANNE BELLE HUCKS, WELLS SKIPPER HUCKS, SAWYER LANE EPPS, COPPER WADE EPPS, AND LILLI MADELYN EPPS

YOU WILL PLEASE TAKE NOTICE, that Plaintiff/Third-Party Defendant Equinox, LLC will move at a date and time to be set by the Court, pursuant to Rules 12(b)(6) and 56 of the *South Carolina Rules of Civil Procedure*, for an order dismissing the claims of Third-Party Plaintiffs. This motion is based upon the following grounds:

1. On February 14, 2018, Plaintiff Equinox, LLC filed its amended complaint against Brandon Epps and Courtney Epps alleging claims of breach of contract, quantum meruit, conversion, defamation, and for attorney's fees.

2. On March 9, 2018, the defendants filed an "amended answer and amended counterclaim" alleging counterclaims of breach of contract, breach of warranty of habitability, nuisance, negligence, and for punitive damages. The pleading does not purport to assert any claims on behalf of any of the Third-Party Plaintiffs.

3. No pleadings have been filed by Defendants or Third-Party Plaintiffs since the March 9, 2018 filing.

4. On November 21, 2018, former counsel for Defendants filed a document entitled "Joint Motion to Add Necessary Parties" (the "Motion") seeking to "amend the caption to add Outside the Box Business Solutions LLC and themselves as Next Friends of Alexis Marion Hucks, 15, Adrienne Belle Hucks, 14, Wells Skipper Hucks, 12, Sawyer Lane Epps, 13, Cooper Wade Epps, 10, and Lilli Madelyn Epps, 4 as 3rd Party Plaintiffs in the Counterclaim against Equinox, LLLC." The Court issued an order granting the Motion on December 3, 2018.

5. Three months later, on March 6, 2019, former counsel for Defendants filed a motion seeking to withdraw as counsel and to stay the proceedings for fourteen (14) days to allow Defendants to obtain substitute counsel or to ready themselves to proceed *pro se*.

6. On March 11, 2019, the Court issued an order granting the motion to withdraw and issuing a stay of proceedings for fourteen (14) days.

7. Although more than a month has passed since the entry of the Court's order granting the withdrawal of counsel and staying the proceedings, neither Defendants nor Third-

Party Plaintiffs have obtained substitute counsel or sought to file amended pleadings setting forth the claims of the Third-Party Plaintiffs.

8. Pursuant to South Carolina law, a non-lawyer cannot represent a corporation or limited liability company in the circuit or appellate courts of this State. Because it is not represented by an attorney, the claims of Third-Party Plaintiff Outside the Box Business Solutions, LLC must be dismissed as a matter of law. *See Renaissance Enterprises, Inc. v. Summit Teleservices, Inc.*, 334 S.C. 649, 515 S.E.2d 257 (1999).

9. Pursuant to Rule 17(c), SCRPC, Third-Party Plaintiffs Alexis Marion Hucks, Adrienne Belle Hucks, Wells Skipper Hucks, Sawyer Lane Epps, Copper Wade Epps, and Lilli Madelyn Epps (the “Children”) do not have capacity to represent themselves in this Court without the appointment of a representative or *guardian ad litem*. Because no such representative has been appointed for the Children and no attorney has appeared on their behalf, their claims must be dismissed.

10. Finally, the Third-Party Plaintiffs have failed to file any pleading in this matter setting forth facts that would constitute a claim under South Carolina law following the issuance of the Court’s order granting of the amendment of the caption. Therefore, any claims asserted by the Third-Party Plaintiffs fail as a matter of law.

11. Plaintiff/Third-Party Defendant Equinox, LLC is therefore entitled to an order dismissing the claims of the Third-Party Plaintiffs and/or granting partial summary judgment in favor of Equinox, LLC as to Third-Party Plaintiffs’ claims.

This motion is based upon the pleadings filed in this action, upon any future memorandum of law submitted by the movant(s), and upon applicable common and statutory law.

Signature Page Follows

Respectfully submitted,

s/Adam C. Bach

Adam C. Bach (S.C. Bar #74885)
R. Hudson Smith (S.C. Bar #101369)
ELLER TONNSEN BACH, LLC
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Attorneys for Plaintiff/Third-Party
Defendant Equinox, LLC

April 26, 2019

Greenville, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Case No. 2017-CP-42-04476

Equinox, LLC,

Plaintiff,

v.

Brandon & Courtney Epps,

Defendants.

and

Outside the Box Business Solutions LLC and
Brandon and Courtney Epps, as Next of
Friends

of Alexis Marion Hucks, Adrienne Belle
Hucks

Wells Skipper Hucks, Sawyer Lane Epps,
Copper Wade Epps, Lilli Madelyn Epps
3rd Party Plaintiffs

v.

Equinox LLC

3rd Party Defendant

**WITHDRAWAL OF CLAIMS OF
THIRD PARTY PLAINTIFF
OUTSIDE THE BOX BUSINESS
SOLUTIONS LLC
AND
MOTION FOR AMENDMENT OF
STYLE OF CASE**

2019 MAY -6 AM 11:25

CLERK OF COURT
SPARTANBURG COUNTY

COMES NOW Defendants Brandon and Courtney Epps, pro se, to withdraw the claims of Outside the Box Business Solutions LLC herein.

Defendants Brandon and Courtney Epps wish to withdraw the claims of Outside of the Box Business Solutions LLC from the above civil action number and amend the caption accordingly.

WHEREFORE, Defendants move this Honorable Court to DISMISS Outside the Box

Business Solutions LLC as a third-party Plaintiff and a revision of the caption herein to read:

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Case No. 2017-CP-42-04476

Equinox, LLC,
Plaintiff,
v.

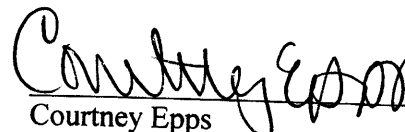
Brandon & Courtney Epps,
Defendants.
and

Brandon and Courtney Epps, as Next of Friends
of Alexis Marion Hucks, Adrienne Belle Hucks
Wells Skipper Hucks, Sawyer Lane Epps,
Copper Wade Epps, Lilli Madelyn Epps
Counterclaim Plaintiffs
v.

Equinox LLC
Counterclaim Defendant

This 6th day of May, 2019

417 Graypointe Drive
Greer, SC 29650
(864) 450-8123


Courtney Epps
Defendant Pro Se

2019 MAY -6 AM 11:25

CLERK OF COURT
SPARTANBURG COUNTY

Common Pleas

Clerk : Amy Cox

Spartanburg County

Spartanburg, SC 29304

Phone:(864) 596-2591 Fax:(864) 596-2239

Received From: Epps, Courtney
417 Graypoitne Drive
Greer, SC 29650

Paying for: Self
Transaction Type: Payment

Payment Type: Cash \$25.00
Total Paid: \$25.00

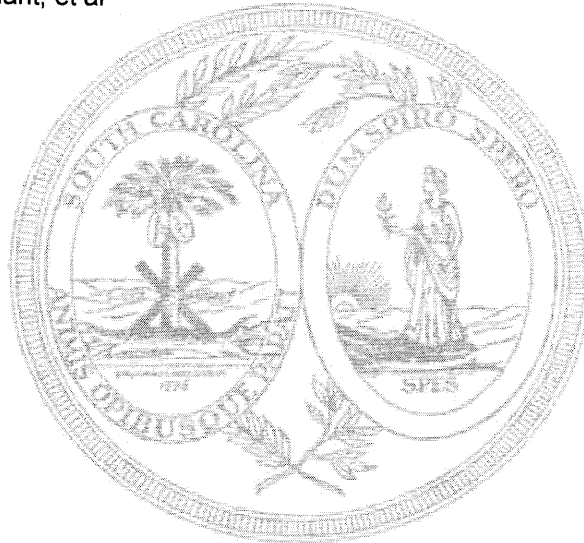
Date: 5/ 6/2019
Receipt #: 125092
Clerk: c42mflemin

Reference #: CASH
Comment: Motion/Proposed Order filing fee
Non-Refundable

Total Received: \$25.00
Change Due: \$0.00

You may check the status of your Spartanburg case at:
<http://www.sccourts.org/caseSearch/>

Case #	Caption	Previous Balance	Amount Paid	Balance Due
2017CP4204476	Equinox, Llc , plaintiff, et al VS Brandon Epps , defendant, et al	\$25.00	\$25.00	\$0.00



Total Cases: 1	\$25.00	\$25.00	\$0.00

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	C. A. No. 2017-CP-42-04476
Equinox, LLC,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	MOTION FOR SUMMARY
	)	JUDGMENT OF PLAINTIFF/THIRD-
Brandon Epps and Courtney Epps,	)	PARTY DEFENDANT EQUINOX, LLC
	)	
Defendants.	)	
	)	
Outside the Box Business Solutions, LLC	)	
and Brandon and Courtney Epps, as Next of	)	
Friends of Alexis Marion Hucks, Adrienne	)	
Belle Hucks, Wells Skipper Hucks, Sawyer	)	
Lane Epps, Cooper Wade Epps, and Lilli	)	
Madelyn Epps,	)	
	)	
Third-Party Plaintiffs,	)	
	)	
vs.	)	
	)	
Equinox, LLC,	)	
	)	
Third-Party Defendant.	)	
	)	

TO: DEFENDANTS/THIRD-PARTY PLAINTIFFS BRANDON EPPS AND COURTNEY EPPS, *PRO SE*

YOU WILL PLEASE TAKE NOTICE, that Plaintiff/Third-Party Defendant Equinox, LLC (“Equinox”) will move at a date and time to be set by the Court, pursuant to Rule 56 of the *South Carolina Rules of Civil Procedure*, for an order entering summary judgment as a matter of law in its favor against Defendants/Third-Party Plaintiffs Courtney Epps and Brandon Epps. This motion is based upon the following grounds:

1. This case relates to the breach of a lease agreement between Plaintiff/Third-Party Defendant Equinox, LLC (“Equinox”) and Defendants/Third-Party Plaintiffs Brandon Epps and Courtney Epps (“the Epps”).

2. Under a lease agreement dated February 1, 2016 and its amendment dated October 1, 2017 (the “Lease”), Equinox agreed to rent the premises located at 618 Garden Rose Court, Greer, SC 29651 (the “Premises”) to the Epps for an original term of one (1) year beginning February 1, 2016 to January 31, 2017 with an additional one-year term beginning October 1, 2017 to September 30, 2018. *See* R. Dreskin Aff., Exs. A and B.

3. In May 2017, the Epps reported a leak to Equinox for the first time originating from an overflowing toilet, a condition which was caused by the Epps. Under Section 8 of the Lease, the Epps were required to repair this condition. *See* Dep of Paul Fazzone, p. 14, line 5 – p. 15, line 25; p. 18, line 10 – p. 19, line 10; p. 33, line 17 – p. 34, line 12.

4. When it was removed from the Premises, no mold was visible on the drywall, and it was promptly placed on the curb outside. Because the municipal trash service would not remove the drywall, it was exposed to the elements for multiple weeks where it developed mold. It was subsequently removed by Equinox. *See* Dep. of Paul Fazzone, p. 19, line 20-p. 20; line 22, p. 29, lines 7-21.

5. In October 2017, Equinox notified the Epps of unpaid rent due and outstanding. The Epps responded that they would not be paying rent due to alleged medical conditions caused by mold and that they would prematurely terminate the Lease early effective November 18, 2017. *See* R. Deskin. Aff, ¶¶ 11-13.

6. Although the Epps had abandoned the Premises, they left behind numerous items of personal property, trash cans full of trash, unwashed dishes, a pantry and refrigerator full of food, and other waste in the Premises that had to be removed. *See* R. Dreskin. Aff, ¶ 15.

7. A mold inspection company hired by Equinox inspected the property on November 1, 2017 and November 22, 2017. Its report revealed that the only area of suspected mold growth on the Premises occurred where the Epps overflowed a guest bathroom toilet and damaged the surrounding hardwood floor. The report also documented that the Epps' property exhibited no visible mold and did not require decontamination. *See* R. Dreskin Aff, ¶ 17, Ex. D.

8. Neither Equinox nor Mr. Fazzone observed mold at the Property aside from a small amount of mold caused by the Epps' overflowing the guest bathroom toilet. *See* Dep. of Paul Fazzone, p. 21, line 9 – p. 22, line 14; *see* R. Dreskin Aff. ¶¶ 9, 14.

9. There is no genuine issue of material fact that (i) the Lease is an enforceable contract between Equinox and the Epps; (ii) the Epps breached the Lease by failing to timely pay rent, failing to repair the Premise, failing to reimbursement Equinox for repairs to the Premises, abandoning the Premises, and other breaches; and (iii) Equinox has suffered damages as a result of the Epps' breaches.

10. There is no genuine issue of material fact that there is no medical causation between the alleged mold at the Premises and the injuries claimed by the Epps.

11. Equinox is entitled to recover its actual and consequential damages from the Epps to include reimbursement for repairs, late fees, prejudgment interest, costs, and expenses, to include reasonable attorney's fees.

12. There is no genuine issue of material fact that Equinox is entitled to recover its actual and consequential damages from the Epps to include reimbursement for repairs, late fees, prejudgment interest, costs, and expenses, to include reasonable attorney's fees.

13. There is no genuine issue of material fact that Equinox did not breach any contractual or legal duty owed by Equinox to the Epps by failing to repair the leak reported by the Epps or failing to remediate mold reported by the Epps.

14. There is no genuine issue of material fact that Equinox proximately caused any damages to the Epps, including the Epps' alleged medical conditions or damage to the property they abandoned at the Premises.

15. Plaintiff/Third-Party Defendant Equinox, LLC is therefore entitled to an order granting it summary judgment as a matter of law.

This motion is based upon the pleadings filed in this action, the filed affidavit of Richard Dreskin, the attached excerpts of the deposition testimony of Paul Fazzone, any future memorandum of law submitted by the movant, any future affidavit filed by the movant, and upon applicable common and statutory law.

[Signature page to follow.]

Respectfully submitted,

s/Adam C. Bach

Adam C. Bach (S.C. Bar #74885)
R. Hudson Smith (S.C. Bar #101369)
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Attorneys for Plaintiff/Third-Party
Defendant Equinox, LLC

August 22, 2019

Greenville, South Carolina

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

- - -

EQUINOX, LLC,
Plaintiff,

CIVIL ACTION NO.:

vs.

2017-CP-42-04476

BRANDON EPPS AND COURTNEY EPPS,
Defendants,

and

BRANDON AND COURTNEY EPPS, AS
NEXT OF FRIENDS OF ALEXIS MARION
HUCKS, ADRIANNE BELLE HUCKS,
WELLS SKIPPER HUCKS, SAWYER LANE
EPPS, COOPER WADE EPPS, LILLI
MADELYN EPPS,

Third-Party Plaintiffs,

vs.

EQUINOX, LLC,
Third-Party Defendant.

DEPOSITION OF PAUL FAZZONE

DATE TAKEN: Tuesday, July 16, 2019

TIME BEGAN: 10:23 a.m.

TIME ENDED: 10:55 a.m.

LOCATION: Eller Tonnsen Bach, LLC
1306 South Church Street
Greenville, South Carolina

REPORTED BY: Deidre Osborne
EveryWord, Inc.
P.O. Box 1459
Columbia, South Carolina 29202
803-212-0012

1 APPEARANCES:

2 ELLER TONNSEN BACH, LLC
3 BY: ADAM C. BACH, ESQUIRE
4 1306 South Church Street
5 Greenville, South Carolina 29605
6 864-236-5013
7 abach@etblawfirm.com
8 Attorney for Plaintiff and Third-Party Defendant,
9 Equinox, LLC
10
11
12
13
14

15 ALSO PRESENT:

16 Richard Dreskin
17
18
19
20
21
22
23
24
25

I N D E X

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Examination By Mr. Bach	6
Certificate of Reporter	36

E X H I B I T S

PLAINTIFF'S	DESCRIPTION	MARKED
1	Letter Dated 6/5/2019 and Notice of Deposition of Paul Fazzone	4
2	Colored Photograph	13
3	Colored Photograph	17
4	Colored Photographs	28

1 (It is hereby stipulated and agreed by and
2 between counsel for the respective parties that
3 this deposition is being taken in accordance with
4 the South Carolina Rules of Civil Procedure and
5 that the deponent waives reading and signing of
6 this deposition transcript.)

7 MR. BACH: I'm going to mark this as Exhibit
8 1.

9 - - -

10 (Letter Dated 6/5/2019 and Notice of Deposition
11 of Paul Fazzone marked Plaintiff's Exhibit Number
12 1, for identification.)

13 - - -

14 MR. BACH: I'm sorry. Let's go off the
15 record for a second.

16 - - -

17 (A discussion was held off the record.)

18 - - -

19 MR. BACH: Mr. Fazzone, thank you for being
20 here today. My name is Adam Bach, and I
21 represent Equinox, LLC, in a lawsuit concerning a
22 property that I believe you performed some work
23 on that's the subject of a complaint concerning
24 mold -- some mold issues.

25 Just before we began, I've marked as Exhibit

1 Number 1 the notice that we sent to the
2 defendant, Courtney -- Brandon and Courtney Epps.
3 The notice is dated June 5, 2019, and it provides
4 notice that Mr. Fazzone's deposition will take
5 place on Tuesday, July 16, 2019, at 10 a.m.

6 Madam Court Reporter, what is the current
7 time?

8 THE COURT REPORTER: 10:24.

9 MR. BACH: Current time is 10:24, and no one
10 has appeared for the Epps or any of the Epps
11 defendants that received this notice. Attorney
12 Jan Henson previously represented the Epps, and
13 she moved to withdraw as counsel in March 2019.
14 In her motion to withdraw, she provided the
15 defendants' mailing address as 417 Graypointe
16 Drive, Greer, South Carolina 29650. That is the
17 address to which we sent notice of this
18 deposition. The time being 10:24 and the Epps
19 having not appeared, we are going to proceed with
20 the deposition as noticed.

21 Did you swear the witness?

22 THE COURT REPORTER: I have.

23 - - -

24 PAUL FAZZONE, after having been first duly
25 sworn, was examined and testified as follows:

1 Q. Okay. Is this the toilet in the powder room
2 we were just talking about?

3 A. Yes.

4 Q. And is the wood that I see here that's a
5 little bit darker color, is that where some water got
6 on the floor?

7 A. Yes.

8 Q. Okay. The fact that the wood next to the
9 toilet was wet, what does that indicate to you what
10 happened?

11 A. Well, it kind of tells you that, you know,
12 the toilet, of course, would be your source of water,
13 where the water was coming from. And at this point,
14 you know, you really can't tell if the water's coming
15 from the top or the bottom or the back. Alls we can
16 do is flush the toilet a lot, and at the time that we
17 flushed the toilet and checked the back, there was no
18 leaking.

19 Q. Okay. Did y'all see any water leaking out
20 of the seal of the toilet?

21 A. No.

22 Q. Did you -- did you see any evidence of water
23 underneath, directly underneath, the toilet?

24 A. No.

25 Q. Would water directly underneath the toilet

1 indicate that the toilet was leaking?

2 A. With the amount of water that dripped --
3 that came out on the drywall, every time I flushed
4 this toilet, if the seal was leaking, it would have
5 pushed water out from underneath it. Absolutely.

6 Q. So there was no evidence the seal was
7 leaking?

8 A. No.

9 Q. There was no evidence the toilet was
10 leaking?

11 A. No.

12 Q. Okay. So what do you think happened that
13 caused this discoloration?

14 A. In my opinion in years of experience with
15 dealing with bathroom remodels, which is basically
16 the foundation of our construction company now is
17 kitchens and bathrooms, the toilet was overflowed.

18 Q. Okay. How many years have you been in the
19 remodeling/construction industry?

20 A. 40 years.

21 Q. So your 40 years of experience would lead
22 you to believe that you did not -- there was nothing
23 wrong with the toilet. The problem was the toilet
24 was overflowing?

25 A. Yes.

1 y'all remove the toilet?

2 A. No, not at that -- well, yeah, we actually
3 did take the toilet up and replaced the seal and
4 cleaned up the floor because the first time this had
5 happened, that was all of the damage that was there,
6 so it wasn't -- it wasn't damage that was permanent
7 or destructive to the foundation of the bathroom. It
8 didn't rot any of the wood or cause any structural
9 damage.

10 Q. So when you took the toilet up, did you see
11 any evidence of water leaking down beneath it?

12 A. No.

13 Q. All right. So what -- and, now, tell me
14 about what that picture shows.

15 A. Well, this here is the drywall that is in
16 the family room, and you would have to put these
17 pictures together to kind of understand when the
18 toilet was overflowed or the water came out of the
19 top of it, it had traveled down the top of the wood.
20 It's going to follow the top of the wood over to the
21 wall, and at the wall plate there's a seam, and there
22 was a seam in the plywood. That wall plate and seam
23 is over this family room, and that's where the water
24 was leaking down from.

25 Q. Let me stop you there. So if there had been

1 a problem with the seal of the toilet or the toilet
2 had been leaking, you would have expected to see the
3 water damage directly beneath the toilet.

4 A. Directly beneath it. It should have damaged
5 that closet and the wall in the closet, and it was
6 completely dry and clean.

7 Q. Okay. But if the toilet's overflowing, the
8 water is going to run to the wall, and that's where
9 you would see damage like this where it's --

10 A. Right.

11 Q. -- at the seam of --

12 A. It's just common theory that water is going
13 to travel to the lowest point, and the lowest point
14 in that bathroom was the wall between the powder room
15 and the master bedroom which was also the wall
16 directly above the family room.

17 Q. And so that, again, would lend support to
18 your opinion that this was a toilet overflow.

19 A. Yes, sir.

20 Q. Okay. And then when you took that drywall
21 down, did you observe it after it was taken down?

22 A. I did not. The drywall was removed and put
23 out for -- at the curb for removal, you know,
24 disposal, because, again, we weren't here, so it was
25 put out at the front curb, you know, to be taken

1 away, but I have never -- I've never seen it or
2 gotten any pictures of it when it was originally --
3 when the leak originally happened.

4 Q. Okay. So you didn't see it when it was
5 first taken out, correct?

6 A. No.

7 Q. Did you ever talk to Cody about it when it
8 was first taken out?

9 A. Yes.

10 Q. Okay. What did Cody say about it?

11 A. Wet drywall.

12 Q. Okay.

13 A. It was wet, and they took out the wet
14 drywall. Pretty much, you know, when you have a
15 leak, you get the dripping, and you get a water
16 stain, and they just took it out and got that out
17 because drywall does not withstand any kind of
18 moisture or water whatsoever. Once it's wet, it's
19 dead. It has to be removed.

20 Q. And so do you recall: Did Cody say anything
21 about there being any mold in the drywall?

22 A. No.

23 Q. All right. Did you observe -- and I'm not
24 going to mark these yet, but did you observe the
25 drywall when it was moved out to the curb like this?

1 A. No.

2 Q. Okay. Somebody else did?

3 A. Yeah.

4 Q. Did somebody come and haul it away?

5 A. Yes.

6 Q. Okay. Was that PJ?

7 A. I think Paul Jr. had taken it up -- taken it
8 away after we returned from Connecticut.

9 Q. During your time in the house, working on
10 the house, did you ever observe any mold in the
11 basement?

12 A. Actual black mold, no.

13 Q. Okay. Any mold at all?

14 A. Very little. But, of course, this was after
15 the second time it leaked and -- or the toilet had
16 overflowed, whatever the problem was that she was
17 having. Several months later she had had water
18 again, and we removed the drywall again, and there --
19 on one of the floor joists, there was a little bit of
20 green, but it was dry.

21 Q. Did that green mold, was that in the
22 location where the water was running because the
23 toilet overflowed?

24 A. Yes. In the same exact spot actually.

25 Q. Okay. Tell me about the second issue she

1 had. Tell me about that.

2 A. It was the same thing again but not quite as
3 severe. Same place, same issue. A little bit of
4 water had gotten on the drywall and caused the water
5 mark and everything. And at that time I did observe
6 it, and there was no mold on the drywall. There was
7 no mold on the back of the drywall. This was all new
8 drywall that we had replaced from the previous
9 damage. There was no mold, no green, no black,
10 nothing at all on the backside of the drywall the
11 second time it had leaked.

12 Q. Okay. And -- and you actually personally
13 observed that, correct?

14 A. Yes.

15 Q. And the second overflow, you're saying leak,
16 but was that also an overflow or was that a leak?

17 A. That was an overflow because, again, there
18 was still no, you know, problem around the bottom of
19 the toilet or the back of the toilet. The two issues
20 you look for is the seal at the bottom of the toilet
21 and the seal between the tank and the toilet.

22 Q. During all your time working at the house,
23 both the first time and the second time, did you ever
24 observe any place where this toilet was leaking?

25 A. No.

1 BY MR. BACH:

2 Q. In your experience -- what I've just marked,
3 these two pictures, as Exhibit 4, you see on the
4 second picture here there's some -- there's some
5 areas that look like they're moldy?

6 A. Right.

7 Q. In your experience in 40 years of
8 construction, if you leave Sheetrock sitting outside
9 in the conditions for two to three weeks, is this
10 what it's going to look like?

11 A. Yes.

12 Q. Okay. Do you believe that that -- that --
13 in your opinion, do you believe that that -- that
14 area as it's darkened and moldy looking happened
15 because of its exposure to the weather?

16 A. Yeah, absolutely. Even in this picture
17 here, you can see where the Sheetrock is sitting
18 against the grass where it's wet. That dark -- that
19 dark shadowing on that Sheetrock right there is wet
20 from the moisture and the dew coming up from the
21 ground.

22 Everything on this side here that is painted
23 Sheetrock, because it's protected by the paint, you
24 can see does not have any mold or anything on it.
25 Sheetrock will mold -- mold over a painted area but

1 Q. Okay. And were you there when the floor was
2 taken up?

3 A. Yes.

4 Q. Okay. What did you see?

5 A. When the floor was taken up, the hardwood
6 flooring that you see here in this picture sustained
7 most of the damage. The subfloor underneath, the
8 plywood underneath, floor joists underneath, did not
9 have any damage to them. Okay? They had a little
10 bit of water marking on them which was cleaned up,
11 but there was no rot or decay from that wood under
12 the toilet.

13 Q. Okay. Does that -- does that, again,
14 indicate to you that it was an overflow and not a
15 leak?

16 A. Right. Because if the -- if the seal was
17 leaking, it's going to leak in between the floors and
18 leak down so that flooring underneath which is a
19 subfloor would sustain more damage than the hardwood
20 floor underneath, simple, because the hardwood floor
21 is a solid oak flooring, and the plywood underneath
22 is a particle board which would have deteriorated
23 much sooner than the hardwood would have. And the
24 hardwood itself had more damage to the face than it
25 did to the back.

1 Q. Okay. Did you observe any mold when the
2 floor was taken up?

3 A. There was some black on the floor on the
4 plywood. I'm going to say approximately about 6
5 inches wide, about 6 feet long in between the -- the
6 joints of the hardwood where the water had seeped
7 down from the top, and it made a little line going
8 across.

9 Q. Was that mold in a location where water
10 would have penetrated due to a toilet overflow --

11 A. Yes. Yes, sir.

12 Q. -- and not a leak of the toilet?

13 A. Not a leak.

14 MR. BACH: Anything else?

15 MR. DRESKIN: Ask him how much he paid
16 the -- the mold abatement vender.

17 BY MR. BACH:

18 Q. How much did you pay the mold abatement
19 vender?

20 A. I know it was a minimum, and I believe it
21 was around \$500 because my son handles all that. I
22 never saw the receipt, so I don't know exactly what
23 the amount was, but I do know it was a minimum. It
24 was minimum clean-up, and they were not there more
25 than 20 minutes.

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MR. DRESKIN: I -- I'm satisfied.

MR. BACH: Okay. All right. Mr. Fazzone,
thank you for your time. That's all the
questions I have.

THE WITNESS: Okay.

- - -

(Witness excused.)

- - -

(Deposition concluded at 10:55 a.m.)

- - -



ELLER TONNSEN BACH
Attorneys at Law

Adam C. Bach
Licensed in South Carolina and North Carolina
abach@etblawfirm.com

1306 South Church Street
Greenville, SC 29605
Telephone (864) 236-5013
Facsimile (864) 312-4191

June 5, 2019

Brandon Epps and Courtney Epps
417 Graypointe Drive
Greer, SC 29650

Re: Equinox, LLC vs. Brandon Epps and Courtney Epps, et al vs. Equinox, LLC
C. A. No. 2017-CP-23-04476

Dear Mr. and Mrs. Epps:

Enclosed for service upon you is a notice of deposition of Paul Fazzone and subpoena for the same. The deposition is scheduled for Tuesday, July 16, 2019, beginning at 10:00 a.m. The deposition will be held in our office. Our office will arrange the court reporter.

Thank you for your attention to this matter.

Sincerely,

ELLER TONNSEN BACH, LLC

Adam C. Bach

ACB/amp
Enclosures



Greenville, South Carolina | Charlotte, North Carolina | etblawfirm.com

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Equinox, LLC,

Plaintiff,

vs.

Brandon Epps and Courtney Epps,

Defendants,

and

Brandon and Courtney Epps, as Next of
Friends of Alexis Marion Hucks, Adrienne
Belle Hucks, Wells Skipper Hucks, Sawyer
Lane Epps, Cooper Wade Epps, Lilli
Madelyn Epps,

Third Party Plaintiffs,

vs.

Equinox, LLC,

Third Party Defendant.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

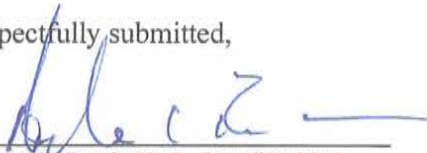
C. A. No. 2017-CP-42-04476

**NOTICE OF DEPOSITION OF
PAUL FAZZONE**

TO: PRO SE DEFENDANTS AND THIRD-PARTY PLAINTIFFS BRANDON EPPS AND COURTNEY EPPS AND AS NEXT OF FRIENDS OF ALEXIS MARION HUCKS, ADRIANNE BELLE HUCKS, WELLS SKIPPER HUCKS, SAWYER LANE EPPS, COOPER WADE EPPS, LILLI MADELYN EPPS

YOU WILL PLEASE TAKE NOTICE that on **Tuesday, July 16, 2019, at 10:00 a.m.** the undersigned attorneys for the plaintiff Equinox, LLC will take the deposition of **Paul Fazzone** at the law office off **Eller Tonnsen Bach, LLC** located at **1306 S. Church Street, Greenville, South Carolina** upon oral examination pursuant to Rule 30 of the *South Carolina Rules of Civil Procedure*, before a Notary Public or some other officer authorized by law to take depositions. The oral examination will continue from day to day until completed.

Respectfully submitted,



Adam C. Bach (S.C. Bar #74885)
R. Hudson Smith (S.C. Bar #101369)
ELLER TONNSEN BACH, LLC
1306 South Church Street
Greenville, SC 29605
Telephone: (864) 236-5013
Facsimile: (864) 312-4191
abach@etblawfirm.com
hsmith@etblawfirm.com

Attorneys for Plaintiff and Third-party
defendant, Equinox, LLC

June 5, 2019
Greenville, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Equinox, LLC,

Plaintiff,

vs.

Brandon Epps and Courtney Epps,

Defendants,

and

Brandon and Courtney Epps, as Next of
Friends of Alexis Marion Hucks, Adrienne
Belle Hucks, Wells Skipper Hucks, Sawyer
Lane Epps, Cooper Wade Epps, Lilli
Madelyn Epps,

Third Party Plaintiffs,

vs.

Equinox, LLC,

Third Party Defendant.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

C. A. No. 2017-CP-42-04476

CERTIFICATE OF SERVICE

This is to certify that I, Amy M. Price, an employee of the law firm of Eller Tonnsen Bach, LLC have this day served a true and correct copy of the within and foregoing plaintiff/third party defendant Equinox, LLC's notice of deposition of Paul Fazzzone upon *pro se* defendants Brandon Epps and Courtney Epps by depositing same in the United States mail with sufficient postage thereon to assure delivery as follows, to-wit:

Brandon Epps and Courtney Epps
417 Graypointe Drive
Greer, SC 29650

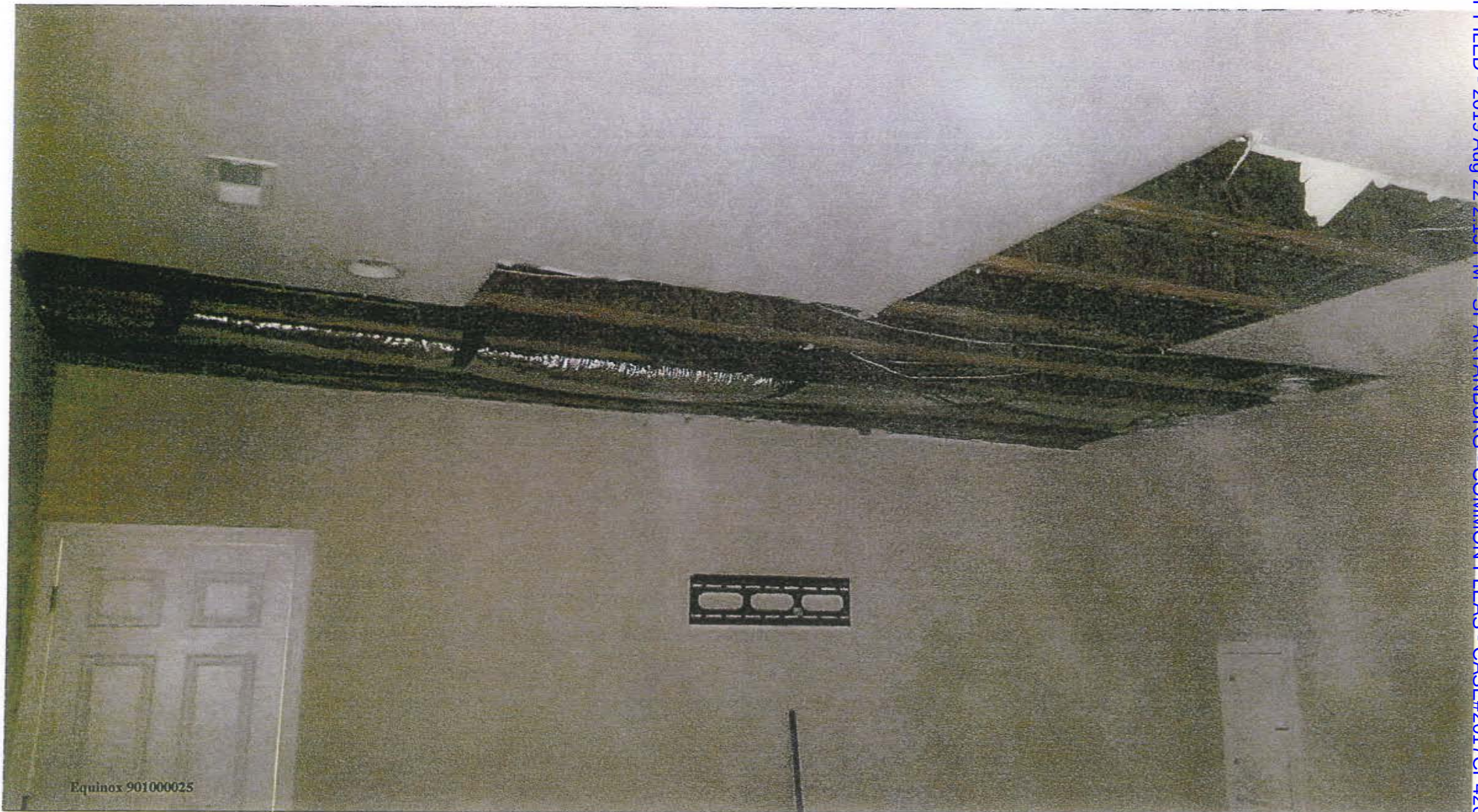
This 5th day of June, 2019.

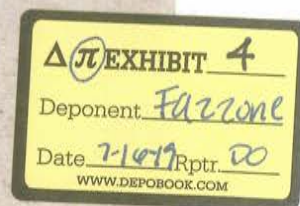
By:

A handwritten signature in blue ink, appearing to read "Amy M. Price", written over a horizontal line.

Amy M. Price, Paralegal
1306 S. Church Street
Greenville, SC 29605









STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT
C.A. No. 2017-CP-42-04476

EQUINOX, LLC,

Plaintiff,

vs.

BRANDON EPPS & COURTNEY EPPS,

Defendants,

BRANDON EPPS AND COURTNEY
EPPS, as Next of Friends of ALEXIS
MARION HUCKS, ADRIANNE BELLE
HUCKS, WELLS SKIPPER HUCKS,
SAWYER LANE EPPS,
COOPER WADE EPPS, and LILI
MADELYN EPPS,

Third-Party Plaintiffs,

vs.

EQUINOX, LLC,

Third-Party Defendant.

**DEFENDANTS' RESPONSE TO
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

Defendants, through counsel, hereby respond to Plaintiff's Motion for Summary Judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure as follows.

1. Defendants and Third-Party Plaintiffs (collectively referred to as "Defendants") refer the Court to the affidavits of Courtney Epps, Dr. Bettina Herbert, Brent C. Horton, Richard B. Dreskin ("Dreskin") and Michael Hudgens¹ and the deposition testimony of Richard Dreskin

¹ We anticipate receiving a signed affidavit in advance of the hearing, and will supplement accordingly.

and Brandon Epps all of which have been attached hereto and are incorporated herein by reference.

2. The following facts, which are uncontroverted, illustrate a deeply troubling abuse by Equinox, LLC and its owner Dreskin in leasing property to Defendants.

- a) Mr. and Mrs. Epps entered into a lease agreement with Equinox, LLC for 618 Garden Rose Court, Greer, South Carolina ("Property"). Pursuant to S.C. Code Ann. 27-40-440, Equinox was required to provide certain essential services, including 1) "comply with the requirements of applicable building and housing codes materially affecting health and safety"; and 2) "make all repairs and do whatever is reasonably necessary to put and keep the premises in a fit and habitable condition."
- b) Defendants reported multiple instances of water intrusion and mold contamination from March 2017 through October 2017. *See Epps Affidavit and Deposition of Dreskin.*
- c) On October 26, 2017, the City of Greer issued a violation notice in which Equinox was informed that the conditions in the home constituted a violation as defined in the International Property Maintenance Code. *See Violation Notice, Exhibit 5 to Deposition of Dreskin.*
- d) Also on October 26, 2017, Dreskin executed an affidavit in which he stated "Regarding the house located at 618 Garden Rose Court, Greer, SC: Under no conditions will I allow the property to be leased, sold, or otherwise occupied until all mold abatement requirements of the City of Greer's Code Enforcement are satisfied." *See attached Dreskin Affidavit.*

- e) The prohibition against any inhabitation of the property remained in place for two to three months thereafter. *See Deposition of Dreskin p. 40.*
- f) Nevertheless, Equinox and Dreskin attempted to force Defendants to pay lease payments while the property was condemned and while Dreskin affirmed that he would not allow anyone to occupy the property. *See Deposition of Dreskin, p. 71 and Affidavit and Itemization of Accounts executed by Dreskin and filed on August 23 2019.*
- g) Dreskin retained a mold remediation company – Advantaclean – to investigate the premises and provide a report. In that report, Advantaclean recommended that the entire house be treated for mold. Dreskin rejected that recommendation. *Deposition of Dreskin p. 45-46.*
- h) Despite a condemnation notice and recommendation to treat the entire home for mold – which was rejected – Equinox discarded or sold Defendants’ possessions. *Deposition of Dreskin p. 34-35.*

3. In addition to these undisputed facts, Defendants have now presented substantial evidence, including the Affidavits of Brent C. Horton and Courtney Epps, which show that the health and safety issues which caused the condemnation of the Property, were the result of a long term systemic water intrusion issue that Equinox and Dreskin failed to remediate.

4. Despite these egregious facts, Equinox somehow believes that it is entitled to damages from Defendants. And even more troubling, Equinox believes that it is entitled to Summary Judgment against Defendants on all claims. As set forth below and as will be further addressed at the hearing of this matter genuine issues of material fact exist as to all claims and thus Summary Judgment should be denied.

5. Plaintiff first argues that it is entitled to Summary Judgment as to the enforceability of the Lease, breach thereof by failing to timely pay rent, repair the premises, reimburse for repairs, abandonment of the premises, other breaches, and resulting damages. Genuine issues of material fact exist as to each of these issues. As set forth in the Affidavit of Courtney W. Epps, Deposition of Richard Dreskin in its entirety and specifically page 39, lines 1-25; page 40, lines 1-14, Page 61, lines 13-16, Page 71, lines 7-13, and the Affidavit of Brett C Horton, Equinox failed to provide essential services, failed to remedy unsafe conditions, and wrongfully disposed of and sold Defendants' personal property. To the extent Plaintiff contends that all rent was not properly paid – which is denied – any such payment obligations were obviated by Plaintiff's material breach of the Lease and offset by Defendants' substantial damages.

6. Moreover, there is a material issue of fact as to what caused the water intrusion and mold and whether Defendants were in any way responsible for such damage. The substantial evidence presented by Defendants shows that the Property had a long history of water intrusion issues, of which Equinox and Dreskin were well aware. The Affidavit of Brent C. Horton explains in detail his conclusions that the water intrusion – and resulting mold – was not the result of an overflowing toilet as Plaintiff contends.

7. Indeed, there is an issue of material fact as to whether Equinox attempted to delegate certain duties under S.C. Code. Ann. 27-40-440(a)(5) in the Lease in bad faith and for the purpose of evading obligations of the Landlord. However, there can be no dispute that Equinox retained its duties to make all repairs and do whatever was necessary to keep the premises in a fit and habitable condition pursuant to S.C. Code Ann. 27-40-440(a)(2). Given that

the Property was condemned by the City of Greer after repeated notices from Defendants of the issues, there can be no doubt that Equinox breached its statutory obligations.

8. In addition to issues raised regarding the claims for Breach of Contract, Plaintiff alleges that it is entitled to Summary Judgment as to Defendants' claim for personal injury because Defendants have failed to provide evidence of medical causation, specifically that Defendants have failed to show a causal link between the numerous medical issues suffered by the Epps family and the mold at 618 Garden Rose Court. As set forth in the Affidavit of Dr. Bettina Herbert – and reports attached thereto – Defendants have presented sufficient evidence to create a genuine issue of material fact on this issue.

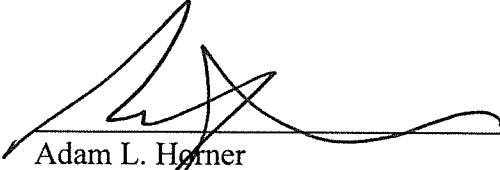
9. Defendants have presented ample evidence that they fully complied with the Lease Agreement. They have further showed that Equinox breached the Lease Agreement and violated several provisions of the South Carolina Residential Landlord Tenant Act. Further, Defendants have shown that Equinox is in breach of its warranties of habitability, was negligent, is liable for nuisance, and is subject to punitive damages. Finally, Defendants have shown that there is a genuine issue of material fact as to damages.

10. As such, Plaintiff's Motion for Summary Judgment should be denied.

[Signature on Following Page]

This the 18th day of October, 2019.

JAMES, McELROY & DIEHL, P.A.

By: 

Adam L. Horner
South Carolina Bar No. 78166
525 N. Tryon Street, Suite 700
Charlotte, NC 28202
Telephone: (704) 372-9870
Email: ahorner@jmdlaw.com
Attorney for Defendants

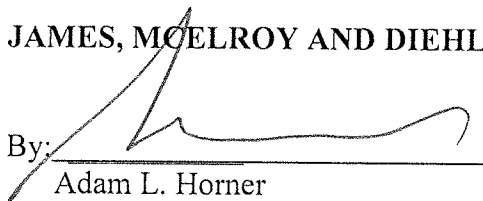
CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date a copy of the foregoing
DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT
was filed with the Court using the electronic filing system, which will transmit notification of
such filing, constituting service thereof, to Plaintiff's counsel of record as follows:

Adam C. Bach
R. Hudson Smith
Eller Tonnsen Bach, LLC
1306 South Church Street
Greenville, SC 29605
Tel 864.236.5013
Fax 864.312.4191
Attorneys for Plaintiff

This the 16 day of October, 2019.

JAMES, MOELROY AND DIEHL, P.A.

By: 

Adam L. Horner
525 North Tryon, Suite 700
Charlotte, NC 28202
Telephone: 704-372-9870
Email: ahorner@jmdlaw.com
Attorney for Defendants/Third-Party Plaintiffs

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
2017-CP-04476

EQUINOX, LLC,

Plaintiff,

vs.

BRANDON EPPS & COURTNEY EPPS,
Defendants.

BRANDON EPPS AND COURTNEY
EPPS, as Next of Friends of ALEXIS
MARION HUCKS, ADRIANNE BELLE
HUCKS, WELLS SKIPPER HUCKS,
SAWYER LANE EPPS, COOPER WADE
EPPS, and LILI MADELYN EPPS,

Third-Party Plaintiffs,

vs.

EQUINOX, LLC,

Third-Party Defendant.

**MOTION FOR LEAVE
TO AMEND ANSWER**

Defendants and Third-Party Plaintiffs, Brandon Epps, Courtney Epps, and Brandon Epps and Courtney Epps, as Next of Friends of Alexis Marion Hucks, Adrienne Belle Hucks, Wells Skipper Hucks, Sawyer Lane Epps, Cooper Wade Epps, and Lili Madelyn Epps (collectively “Defendants”), respectfully move the Court for leave to Amend their Amended Answer. In support of these Motions, Defendants show the Court as follows:

Motion for Leave to Amend Answer

1. Pursuant to Rule 15(a) of the South Carolina Rules of Civil Procedure, Defendants moves the Court to allow them to file the Second Amended Answer and Counterclaims, attached hereto as **Exhibit A**.

2. Plaintiff commenced the present action by filing the Complaint on December 7, 2017.

3. Defendants filed their Answer and Counterclaim in the present action on January 15, 2018.

4. Plaintiff filed its Amended Complaint on February 14, 2018.

5. Defendants filed their Amended Answer and Amended Counterclaim on March 9, 2018.

6. Prior counsel for Defendants, Jan V. Hinson, withdrew from all matters on March 6, 2019.

7. Despite diligent efforts to obtain new counsel, Defendants were without representation from March 6, 2019 until September 20, 2019, at which time Adam L. Horner of James, McElroy & Diehl, P.A. was retained.

8. With the consent of the parties, the trial in this matter has been continued from November 11, 2019, and will be reset on or after April 20, 2020.

9. Defendants have been working diligently to prepare their case from 2017 through the present, including the many months during which they were *pro se*, and now with their present counsel.

10. Defendants have identified the previously unnamed individual, formerly identified throughout Defendants' pleadings as "Does 1 through 5" as Richard B. Dreskin ("Mr.

Dreskin”), and have learned new information supporting additional counterclaims against Third-Party Defendant, Equinox, LLC, and Mr. Dreskin.

11. Accordingly, Defendants seek now to amend their Amended Answer and Amended Counterclaims to bring additional counterclaims against Third-Party Defendant, Equinox, LLC, and Mr. Dreskin.

12. These counterclaims are arguably compulsory counterclaims which must be brought in the present action.

13. For these reasons, Defendants submit that good cause exists to grant this Motion, and that the Court should exercise its discretion to allow this Motion.

14. A copy of the proposed Second Amended Answer and Counterclaims is attached hereto as **Exhibit A**.

15. Undersigned counsel has conferred with counsel for Plaintiff, who does not consent to the relief requested in this Motion.

WHEREFORE, Defendants respectfully request that the Court grant them leave to file the attached Second Amended Answer and Counterclaims.

This the 6th day of December, 2019.

JAMES, MCELROY AND DIEHL, P.A.

By: s/ Adam L. Horner

Adam L. Horner
525 North Tryon, Suite 700
Charlotte, NC 28202
Telephone: 704-372-9870
Email: ahorner@jmdlaw.com
Attorneys for Defendants and Third-Party Plaintiffs

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date a copy of the foregoing **Motion for Leave to Amend Answer** was filed with the Court using the electronic filing system, which will transmit notification of such filing, constituting service thereof, to Plaintiff's counsel of record as follows:

Adam C. Bach
R. Hudson Smith
Eller Tonnsen Bach, LLC
1306 South Church Street
Greenville, SC 29605
Tel 864.236.5013
Fax 864.312.4191
Attorneys for Plaintiff

This the 6th day of December, 2019.

JAMES, MCELROY AND DIEHL, P.A.

By: s/ Adam L. Horner
Adam L. Horner
525 North Tryon, Suite 700
Charlotte, NC 28202
Telephone: 704-372-9870
Email: ahorner@jmdlaw.com
Attorneys for Defendants and Third-Party Plaintiffs

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
CIVIL CASE NO.: 2017-CP-04476

EQUINOX, LLC,)
)
)
Plaintiff,)
)
vs.)

**DEFENDANTS’
SECOND AMENDED ANSWER
AND COUNTERCLAIMS**

BRANDON EPPS & COURTNEY EPPS,)
)
Defendants,)
_____)

BRANDON EPPS AND COURTNEY)
EPPS, as Next of Friends of ALEXIS)
MARION HUCKS, ADRIANNE BELLE)
HUCKS, WELLS SKIPPER HUCKS,)
SAWYER LANE EPPS, COOPER WADE)
EPPS, and LILI MADELYN EPPS,)
Third-Party Plaintiffs,)

vs.)
)
EQUINOX, LLC & RICHARD B.)
DRESKIN,)
Third-Party Defendants.)
_____)

Brandon Epps, Courtney Epps, and Brandon Epps and Courtney Epps, as Next of Friends of Alexis Marion Hucks, Adrienne Belle Hucks, Wells Skipper Hucks, Sawyer Lane Epps, Cooper Wade Epps, and Lili Madelyn Epps (collectively “Defendants”), pursuant to Rule 15 of the South Carolina Rules of Civil Procedure, and as justice so requires, hereby submit their Second Amended Answer and Counterclaims, and show this Honorable Court the following:

ANSWER

1.

Defendants respectfully acknowledge the claims of Plaintiff concerning Equinox, LLC.

2.

Defendants respectfully deny the assertion as to the county of residency of Brandon Epps, as Mr. Epps is and was residing in Greenville County at the time of the filing of this action. With the anticipated consolidation of the Magistrate Court actions into this action, Brandon Epps waives jurisdictional argument.

3.

Defendants respectfully deny the assertions in Paragraph 3 of Plaintiff's Complaint, as Defendant Courtney Epps is and was a resident of Greenville County, South Carolina at the time of the filing of this action. With the anticipated consolidation of the Magistrate Court actions into this action, Courtney Epps waives jurisdictional argument.

4.

Defendants respectfully admit that the Court has personal jurisdiction over the parties and subject matter jurisdiction over the causes of action.

5.

Defendant Courtney Epps respectfully acknowledges the lease agreement for 618 Garden Rose Ct, Greer, SC 29651.

6.

Defendant Courtney Epps respectfully acknowledges the initial lease term was for approximately one (1) year and that she agreed to pay monthly rent.

7.

Defendants respectfully acknowledge the lease terms.

8.

Defendants respectfully disagree with the summary Section 8 by Plaintiff.

9.

Defendants respectfully responds that the lease speaks for itself.

10.

Defendants respectfully acknowledge the execution of the Lease Extension.

11.

Defendants respectfully acknowledge the terms of the Lease Extension.

12.

Defendants respectfully acknowledge the Lease Extension provides for monthly rent payment.

13.

Defendants respectfully deny the assertions contained in Paragraph 13 of Plaintiff's Amended Complaint.

14.

Defendants respectfully deny the assertions contained in Paragraph 14 of Plaintiff's Amended Complaint.

15.

Defendants respectfully deny the assertions contained in Paragraph 15 of Plaintiff's Amended Complaint and assert that they notified Landlord they were having to leave because of the uninhabitability of the home. Further, Defendants were foreclosed from taking items out of the home due to the mold contamination.

16.

Defendants respectfully deny the assertions in Paragraph 16 of Plaintiff's Amended Complaint and assert that the correspondence referenced actually happened in reverse.

17.

Defendants respectfully acknowledge the filing for ejectment and complaint on or about October 17, 2017 in Spartanburg County Magistrate Court.

18.

Defendants respectfully deny the assertions contained in Paragraph 18 of Plaintiff's Amended Complaint.

19.

Defendants respectfully admit the assertions contained in Paragraph 19 of Plaintiff's Amended Complaint.

20.

Defendants respectfully deny the assertions contained in Paragraph 20 of Plaintiff's Amended Complaint.

21.

Defendant Courtney Epps respectfully denies the assertions contained in Paragraph 21 of Plaintiff's Amended Complaint. Defendant Courtney Epps further asserts that the addition of this charge in Plaintiff's Amended Complaint constitutes a violation of her Constitution Right to Free Speech. Defendant further asserts that in these postings, Plaintiff was referred to only as "Landlord" and that the addition of the defamation claim constitutes frivolous litigation on the part of Plaintiff.

22.

Defendants respectfully acknowledge and deny parts of the assertions in Paragraph 22 of Plaintiff's Amended Complaint. Defendants respectfully deny that the Magistrate Court dismissed the Landlord's application for ejectment.

23.

Defendants respectfully deny the assertions in Paragraph 23 of the Plaintiff's Amended Complaint.

24.

Defendants respectfully deny the assertions in Paragraph 24 of the Plaintiff's Amended Complaint.

25.

Defendants respectfully deny the assertions in Paragraph 25 of the Plaintiff's Amended Complaint.

26.

Defendants respectfully are without sufficient knowledge to respond to the assertions contained in Paragraph 26 of Plaintiff's Amended Complaint.

27.

Defendants respectfully admits that they received notice that the property had been condemned and the reason stated but are without sufficient knowledge to address the balance of Paragraph 27 of the Plaintiff's Amended Complaint.

28.

Defendants respectfully deny the assertions in Paragraph 28 of the Plaintiff's Amended Complaint.

29.

Defendants respectfully deny the assertions in Paragraph 29 of the Plaintiff's Amended Complaint.

30.

Defendants respectfully acknowledge that Plaintiff restates foregoing assertions.

31.

Defendants respectfully deny the assertions in Paragraph 31 of the Plaintiff's Amended Complaint.

32.

Defendants respectfully deny the assertions in Paragraph 32 of the Plaintiff's Amended Complaint.

33.

Defendants respectfully deny the assertions in Paragraph 33 of the Plaintiff's Amended Complaint.

34.

Defendants respectfully acknowledge that Plaintiff restates foregoing assertions.

35.

Defendants respectfully deny the assertions in Paragraph 35 of the Plaintiff's Amended Complaint.

36.

Defendants respectfully deny the assertions in Paragraph 36 of the Plaintiff's Amended Complaint.

37.

Defendants respectfully deny the assertions in Paragraph 37 of the Plaintiff's Amended Complaint.

38.

Defendants respectfully deny the assertions in Paragraph 38 of the Plaintiff's Amended Complaint.

39.

Defendants respectfully acknowledge that Plaintiff restates foregoing assertions.

40.

Defendants respectfully deny the assertions in Paragraph 40 of the Plaintiff's Amended Complaint.

41.

Defendants respectfully deny the assertions in Paragraph 41 of the Plaintiff's Amended Complaint.

42.

Defendants respectfully acknowledge that Plaintiff restates foregoing assertions.

43.

Defendant Courtney Epps respectfully denies the assertions contained in Paragraph 43.

44.

Defendant Courtney Epps respectfully denies the assertions contained in Paragraph 44.

45.

Defendant Courtney Epps respectfully denies the assertions contained in Paragraph 45.

46.

Defendant Courtney Epps respectfully denies the assertions contained in Paragraph 46.

47.

Defendants respectfully acknowledge that Plaintiff restates foregoing assertions.

48.

Defendants respectfully acknowledge the recitation of a sentence in the Lease Contract in Paragraph 48 of the Plaintiff's Amended Complaint.

49.

Defendants respectfully deny the assertions in Paragraph 49 of the Plaintiff's Amended Complaint.

AMENDED COUNTERCLAIMS FOR DAMAGES

50.

Defendants are subject to the jurisdiction of this Court by virtue of the Complaint filed. Additionally, the subject matter real property is located with the jurisdiction of this Court.

51.

Defendants and their six (6) minor children were tenants of the residential property located at 618 Garden Rose Court, Greer, South Carolina 29651 (hereinafter "The Property"). Defendants

co-signed a Lease Extension and Modification on or about October 1, 2017, which provision did not mention money owed to Plaintiff and which Extension was executed by Courtney Epps and substituted Brandon Epps for the original co-lessee. Defendants will add additional parties by motion as the Court directs.

52.

On information and belief, Equinox LLC is a limited liability company having a business address of 214 Oak Meadow Drive, Simpsonville, South Carolina 29681 and on information and belief, this Plaintiff has at all material times owned, managed and controlled The Property.

53.

The true names and/or capacities, whether individual, corporate, associate or otherwise, of Plaintiffs and Does 1 through 5, inclusive, are unknown to Defendants at this time, and who therefore Defendants sue by such fictitious names. Defendants are informed and believe and thereupon allege that each of the Plaintiffs to be fictitiously named by motion as a DOEs are legally responsible, negligently or in some other actionable manner, for the events and happenings hereinafter referred to, and thereby proximately and legally caused the injuries and damage to Defendants as hereinafter alleged. Defendants will ask leave of court to amend this action under the Motion previously filed or as directed by the Court to insert the true names and/or capacities of such fictitiously named Plaintiffs when the same have been ascertained.¹

54.

Upon information and believe at all times mentioned herein, Plaintiff and DOEs were the agent, employee and representative of each other, and in doing the things hereinafter alleged, was acting within the course and scope of such agency, service and representation, and directed, aided and abetted, authorized or ratified each and every act and conduct hereinafter alleged.

¹ At the time of filing the Amended Answer and Counterclaims in this case, Defendants had not identified Does 1 through 5. At the time of filing this Second Amended Answer and Counterclaims, Defendants have identified Richard B. Dreskin as among the previously unnamed Does legally responsible, negligently or in some other actionable manner for the harms incurred.

55.

Upon information and belief, at all times mentioned herein, Plaintiff was the co-tortfeasor of each of the other Plaintiffs in doing the things hereinafter alleged.

56.

The Property has been subject to at least one inspection by the City of Greer and found to be in violation of the International Property Maintenance Code adopted by the City of Greer that has resulted in a citation for violation of code, the property's uninhabitability acknowledged by the sworn signature of the lessor, Richard Dreskin, Managing Member of Equinox LLC on October 26th, 2017. Further, the subject property has now been condemned.

57.

Notwithstanding Plaintiffs' sworn assertion that he would not allow the subject property to be occupied, Plaintiffs failed to notify the tenant that the premise was found to be in violation of code and failed to notify the Defendants that the City of Greer had required that he certify it would be unoccupied and that he did so certify.

58.

The habitability violations addressed the interior of the Property including, but not limited to, an improperly waterproofed foundation known to Plaintiffs prior to the lease that resulted in water accumulating in the basement of the Property, resulting in mold infestation in floors, walls, insulation and HVAC ductwork. Further, the plumbing in the home was sub-standard and defective. Upon information and belief, prior tenants who leased The Property before the Epps endured the same or similar experiences with water intrusion and mold, and reported these issues to Richard B. Dreskin.

59.

During all relevant dates herein, Defendants lived at the Property and as a consequence of the conditions, Defendants have sustained injuries and health problems caused or exacerbated by the conditions. As a consequence of the conditions and the physical injuries caused by

the conditions, Defendants have also sustained severe mental suffering, frustration and anxiety.

60.

Defendants resided as tenants of The Property during the period in which Plaintiffs owned, managed, or repaired the premises. During Plaintiff's tenancy, Plaintiff was exposed to the following substandard conditions:

- a) leaking plumbing;
- b) accumulation of water in the basement resulting from a bathroom leak through the floor above the basement;
- c) mold throughout the residence from the defective repair of foundational moisture.

61.

Defendants notified the Plaintiffs and its agents about the habitability violations, but Plaintiffs failed to correct the habitability conditions. Upon information and belief the Plaintiffs and each of the Plaintiffs are experienced property owners or contractors and are aware that, absent appropriate maintenance and repair, serious habitability violations would develop that would seriously and materially affect Defendants' tenancy. In response, Plaintiff threatened to have Defendants evicted and sued for monies he claimed Defendants owed him.

62.

Defendants were forced to terminate the lease for cause and did so in writing due to not only the uninhabitable condition, but the negligent manner in which Plaintiffs futilely attempted to remedy the situation that exposed them to greater danger.

63.

Notwithstanding the valid termination, Plaintiff Equinox still maintains that the lease is continuing and is charging Defendants in its Complaint rent for the time period following Plaintiff Equinox's signature that it would not allow the property to be inhabited.

64.

Despite fully knowing that the contents could not be safely removed until the home was tented and treated for mold and refusing to do so in order that Defendants be able to retrieve their property, Plaintiffs sold all of Defendants' belongings to unwitting buyers.

**FIRST CAUSE OF ACTION
(Breach of Contract -- Equinox, LLC)**

65. Defendants re-allege and incorporate by reference every allegation contained in the preceding paragraphs of this Complaint as though set forth herein.

66. The Lease agreement, like all agreements in South Carolina, carries with it a duty of good faith and fair dealing for both parties.

67. Defendants and their children suffered actual and consequential damages as a result of the above-mentioned breach and are entitled to relief for the same.

68. If there is noncompliance by the landlord with a rental agreement or noncompliance with Section 27-40-440 materially affecting health and safety or the physical condition of the property, the tenant may deliver a written notice to the landlord specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than fourteen days after receipt of the notice if the breach is not remedied within fourteen days as stated in Section 27-40-610. Defendants delivered a written notice to the Plaintiff specifying the acts and omissions constituting the breach in May 2017 with no adequate remedy by Plaintiff. After many attempts by Defendants, Defendants terminated the rental agreement by letter in October, with termination stated as effective November 18, 2017.

69. As a direct and proximate result of the foregoing, Defendants are entitled to reasonable attorney's fees and costs pursuant to Section 27-40-330 of the South Carolina Residential Landlord Tenant Act.

70. As a direct and proximate result of Plaintiffs' breach of contract, Defendants have sustained personal injury, special, general and property damage in amounts to be determined at trial.

71. As stated in Article 7 of the South Carolina Residential Landlord Tenant Act, “if the landlord (“the plaintiff”) fails to deliver possession of the dwelling unit to the tenant as provided in Section 27-40-410, rent abates until possession is delivered and the tenant (“defendants”) may:

(1) terminate the rental agreement upon at least five days’ written notice to the landlord and upon termination the landlord shall return all prepaid rent and security”.

**SECOND CAUSE OF ACTION
(Breach of Warranty of Habitability -- Equinox, LLC)**

72. Defendants re-allege and incorporate by reference every allegation contained in the preceding paragraphs of this Complaint as though set forth herein.

73. The defective conditions of the rental unit constitute a violation of local housing laws, which posed severe health and safety hazards and breach the implied warranty of habitability in accordance to the International Code Council Section 108, subsection 108.1.5 number 9, which states “a building or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, damage, faulty construction or arrangement, inadequate light, ventilation, mechanical or plumbing system, or otherwise, is determined by the code official to be unsanitary, unfit for human habitation or in such a condition that is likely to cause sickness or disease”.

74. Plaintiffs had actual and constructive notice of the defective conditions alleged herein, but despite such notice, failed to adequately repair and abate the conditions at The Property.

75. Defendants did not cause, create or contribute to the existence of the defective conditions alleged herein.

76. On or about October 26, 2017 the Plaintiff was notified in writing by a public code enforcement agency that the Plaintiff was required to correct some or all of the defective conditions at The Property within ten (10) days from the date of the letter. The Plaintiff signed an affidavit stating that not under any conditions was The Property to be

leased, sold or otherwise occupied until all mold abatement requirements of the City of Greer's Codes Enforcement are satisfied.

77. Plaintiffs knew or should have known that permitting said defective conditions to exist at the outset of the lease threatened the physical and emotional health and well-being of Defendants or any renter, and posed a serious threat and danger to their health and safety.

78. By failing to correct or properly correct said defective conditions, Plaintiffs have breached the warranty of habitability implied in all rental contracts under the local International Code Council. Further, Plaintiffs have breached the warranty of habitability implied in all rental contracts by not abiding by the South Carolina Landlord Tenant Act, Article 3, Section 27-40-440, by knowingly renting an uninhabitable home at the outset and by failing to make all repairs and doing whatever is reasonably necessary to put and keep the premises in a fit and habitable condition after tenants discovered the defect hidden by Plaintiffs.

79. Because Plaintiffs' breach of the implied warranty of habitability, it has been necessary for Defendants to incur expenses and other special damages in an amount to be proven at trial.

80. As a direct and proximate result of Plaintiffs' breach of the warranty of habitability, Defendants have sustained personal injury, special, general and property damage in amounts to be determined at trial.

**THIRD CAUSE OF ACTION
(Nuisance -- Equinox, LLC)**

81. Defendant re-alleges, and incorporates by reference every allegation contained in the preceding paragraphs of this Complaint as though set forth herein.

82. The Defendants allege that the Plaintiff interfered with the Defendants right to privacy by not providing an announcement of their intent when entering the property to perform services at The Property.

83. As stated in the Landlord Tenant Act of South Carolina in Section

27-40-530, “a landlord shall not abuse the right of access or use it to harass the tenant. The code requires the landlord to announce his entry even for purposes of repair as state in (b). Nonetheless, the Plaintiff did not so announce.

84. As a direct and proximate result of Plaintiffs’ nuisance, Defendants have sustained special and general damage in amounts to be determined at trial.

**FOURTH CAUSE OF ACTION
(Negligence -- Equinox, LLC)**

85. Defendants re-allege and incorporate by reference every allegation contained in the preceding paragraphs of this Complaint as though set forth herein.

86. As owners, operators and managers of The Property, the Defendants owed Plaintiff the duty to exercise reasonable care in the ownership, management, repair and control of The Property, including the safekeeping of Defendants’ belongings.

87. These duties owed by Plaintiff to Defendants to exercise reasonable care include, but are not limited to: the duty to refrain from interfering with Defendants full use of and quiet enjoyment of their rented premises; the duty to comply with all applicable state and local laws governing Defendant’s rights as tenant; the duty to present and maintain Defendant’s premises in a safe, healthy and habitable condition for the entire term of Defendant’s tenancy and the duty to not obstruct Defendant’s full use and occupancy of their rented residences and the duty to preserve the Defendants’ possessions until they could safely be removed.

88. Plaintiffs, by the conduct alleged above, so negligently and carelessly maintained, operated, repaired and managed The Property as to breach the duties that they owed to Defendants. Further, Plaintiffs negligently attempted to repair and correct the mold problems of the property and inappropriately sold property belonging to the Defendants in violation of the South Carolina Landlord and Tenant Act.

89. Plaintiffs’ actions, at all times prior to, at the time of, during the lease, and after the proper termination of the lease with respect to mold at the Property were in

reckless disregard of the foreseeable consequences to Defendants.

90. Because of Plaintiffs' negligence, it has been necessary for Plaintiffs to incur expenses and other special damages in an amount to be proven at trial.

91. As a direct and proximate result of these breaches of duty by the Plaintiffs, Defendants have sustained general, special and property damage in amounts to be determined at trial.

**FIFTH CAUSE OF ACTION
(Breach of Contract Accompanied by Fraudulent Act – All Defendants)**

92. Defendants repeat and re-allege the foregoing paragraphs as if fully set forth herein.

93. As alleged more fully above, Plaintiff breached its contractual obligations to Defendants.

94. In breaching its contractual obligations, Plaintiff acted fraudulently and with fraudulent intent to deceive Defendants by concealing the known water intrusion problem at the House prior to the execution of the lease and modification, as well as throughout the lease term.

95. Plaintiff's breach of its contractual obligations accompanied by fraud has directly and proximately caused damages to Defendants in an amount believed to exceed \$25,000, plus interest from the date of breach.

96. Defendants are entitled to a judgment against Plaintiff for all damages proximately caused by its breach, as well as punitive damages.

**SIXTH CAUSE OF ACTION
(Violation of South Carolina Unfair Trade Practices Act – All Defendants)
S.C. Code Ann. § 39-5-10, et seq.**

97. Defendants repeat and re-allege the foregoing paragraphs as if fully set forth herein.

98. Plaintiff's actions as described above were in the course of trade and commerce, are capable of repetition, and have harmed the public, as residential leases are things

of value which directly affect the citizens of South Carolina.

99. Plaintiff's action as described above, knowingly leasing a property with an unresolved water intrusion and mold problem, despite receiving comments and concerns from prior tenants regarding the same issues and intentionally failing to resolve or repair the issue, constitutes unfair and deceptive trade practices in violation of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10, et seq.

100. As a direct and proximate result of Plaintiff's unfair and deceptive practices and acts, Defendants have been damaged in an amount to be proven at trial, but which is believed to exceed \$25,000. As a result of Plaintiff willful and knowing violation of the South Carolina Unfair Trade Practices Act, Defendants are also entitled to recover treble damages pursuant to S.C. Code Ann. § 39-5-140(a).

**SEVENTH CAUSE OF ACTION
(Conversion – All Defendants)**

101. Defendants repeat and re-allege the foregoing paragraphs as if fully set forth herein.

102. Plaintiff intended to and did convert Defendants' personal property, refused to return the personal property to Defendants, and ultimately sold that personal property and retained the proceeds.

103. Plaintiff converted Defendants' personal property wrongfully and without Defendants' consent.

104. Defendants demanded that Plaintiff return their personal property but they were repeatedly denied access to the personal property.

105. As a direct and proximate cause of Plaintiff's conversion, Defendants have been damaged in an amount to be determined at trial, but believed to exceed \$25,000.

**EIGHTH CAUSE OF ACTION
(Alter Ego – All Defendants)**

106. Defendants repeat and re-allege the foregoing paragraphs as if fully set forth herein.

107. Defendant Richard B. Dreskin (“Dreskin”) maintains total domination and control of Equinox, LLC (“Equinox”), as illustrated by: his, and only his, communications with his tenants as landlord; upon information and belief receipt of payment as his personal residence, which is legally owned by Equinox; and his unilateral decision-making authority.

108. Upon information and belief, Equinox does not have any separate mind, will, or existence of its own, other than as a mere tool or instrumentality of Dreskin.

109. Upon information and belief, Dreskin exercises complete domination and control over Equinox, and has discretion to make decisions on its behalf.

110. Dreskin’s control of Equinox is demonstrated by Equinox’s failure to manifest any interest of its own separate from Dreskin’s interests. Equinox functions solely to achieve the goals of Dreskin.

111. Dreskin’s total domination of Equinox has resulted in inequitable consequences, including Equinox’s breach of the lease accompanied by fraud and breach of the warranty of habitability. Dreskin’s conduct, through his control of Equinox, has therefore resulted in injustice. Dreskin seeks to shield himself through the corporate form.

112. Permitting Dreskin to retain his purported separateness would promote wrong and injustice by permitting Dreskin to direct and control Equinox, causing it to breach its duties and promises to Defendants, without consequence.

113. As a result, Equinox is a mere alter ego of Dreskin.

114. As the alter ego of Equinox, Dreskin is jointly and severally liable, along with Equinox, for all damages in this action.

PUNITIVE DAMAGES – All Defendants

115. Defendants re-allege and incorporate by reference every allegation contained in the preceding paragraphs of this Complaint as though set forth herein.

116. The acts and/or omissions of the Plaintiffs, as stated above, were willful, wanton, grossly negligent, negligence per se, and/or in reckless disregard for the

safety, health, mental wellbeing, life and intellectual and financial future tenants.

117. The conduct of the Plaintiffs as set forth above and including the retaliatory threats and lawsuits in violation of law justifies an award of punitive damages as to the Plaintiffs for each and every claim of the Defendants.

WHEREFORE, Defendants pray for the following damages and relief:

1. For offset monies in an amount to be determined at trial;
2. That Plaintiffs' actions (as consolidated) as to Brandon Epps for monies due be dismissed as improperly pled;
3. For personal injury, general, special and property damage and loss in an amount to be determined at trial;
4. For Punitive Damages;
5. Reasonable attorney fees and attorney fees for the defense of the frivolous claim of defamation;
6. Costs of suit;
7. For such other relief as the Court may deem just and proper.

This ____ day of _____, 2019.

JAMES, McELROY & DIEHL, P.A.

By: _____
Adam L. Horner
525 North Tryon, Suite 700
Charlotte, NC 28202
Telephone: 704-372-9870
Email: ahorner@jmdlaw.com
Attorney for Defendants/Third-Party Plaintiffs

EXHIBIT A

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Defendants' Second Amended Answer and Counterclaims was served by Electronic Court Filing on all counsel of record, as follows:

Adam C. Bach
R. Hudson Smith
Eller Tonnsen Bach, LLC
1306 South Church Street
Greenville, SC 29605
Tel 864.236.5013
Fax 864.312.4191
Attorneys for Plaintiff

JAMES, McELROY & DIEHL. PA

By: /s/ Adam L. Horner
Adam L. Horner
525 North Tryon, Suite 700
Charlotte, NC 28202
Telephone: 704-372-9870
Email: ahorner@jmdlaw.com
Attorney for Defendants/Third-Party Plaintiffs

Dated: _____
Charlotte, North Carolina

STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS

SEVENTH JUDICIAL CIRCUIT

COUNTY OF SPARTANBURG

Case No. CIVIL CASE NO.: 2017-CP-42-04476

Equinox
EQUINOX, LLC,

ANSWER

AND
COUNTERCLAIMS

BRANDON EPPS & COURTNEY EPPS

Defendants,

Plaintiff,

BRANDON EPPS AND COURTNEY
EPPS, as Next of Friends of ALEXIS
MARION HUCKS, ADRIANNE BELLE
HUCKS, WELLS SKIPPER HUCKS,
SAWYER LANE EPPS, COOPER WADE
EPPS, and LILI MADELYN EPPS,

Third-Party Plaintiffs,

vs.

EQUINOX, LLC & RICHARD B.
DRESKIN,

Third-Party Defendants.

DE
FENDANT
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Brandon & Epps, Courtney Epps,

Defendants.

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~~AMENDED~~
~~COUNTERCLAIM~~
~~AMENDED~~
~~ANSWER AND~~

~~COMES NOW~~ Defendants and Brandon Epps and Courtney Epps, ~~as~~ Next of Friends of Alexis Marion Hucks, Adrienne Belle Hucks, Wells Skipper Hucks, Sawyer Lane Epps, Cooper Wade Epps, and Lili Madelyn Epps (collectively "Defendants"), pursuant to Rule 15 of the ~~above action~~, to file this, South Carolina Rules of Civil Procedure, and as justice so requires, hereby submit their ~~Second~~ Amended Answer and Counterclaim, ~~showing and show~~ this Honorable Court the following:

~~PROCEDURAL HISTORY~~

~~Defendants were served with this action on December 14, 2017, with the Affidavit of Service filed December 15, 2017. Defendants were previously served with a Rule to Vacate or Show Cause (Civil Action No. 2017CV4210108684), which the Magistrate Court merged into the companion case for monetary damages, Civil Action No. 2017CV4210108685. In doing so, the Magistrate Court took notice that the Counterclaim exceeded the jurisdictional monetary limits of the Magistrate Court, as Defendants claim damages in excess of jurisdictional limits. Defendants properly filed their Counterclaim in Civil Action No. 2017CV4210108685 and that case is still pending. The Magistrate Court issued an Order transferring and consolidating the remaining issues to this action.~~

~~AMENDED~~

~~ANSWER~~

1.

Defendants respectfully acknowledge the claims of Plaintiff concerning Equinox, LLC.

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2.

Defendants respectfully deny the assertion as to the county of residency of Brandon Epps, as Mr. Epps is and was residing in Greenville County at the time of the filing of this action. With the anticipated consolidation of the Magistrate Court actions into this action, Brandon Epps waives jurisdictional argument.

3.

Defendants respectfully deny the assertions in Paragraph 3 of Plaintiff's Complaint, as Defendant Courtney Epps is and was a resident of Greenville County, South Carolina at the time of the filing of this action. With the anticipated consolidation of the Magistrate Court actions into this action, Courtney Epps waives jurisdictional argument.

4.

Defendants respectfully admit that the Court has personal jurisdiction over the parties and subject matter jurisdiction over the causes of action.

5.

Defendant Courtney Epps respectfully acknowledges the lease agreement for 618 Garden Rose Ct, Greer, SC 29651.

6.

Defendant Courtney Epps respectfully acknowledges the initial lease term was for approximately one (1) year and that she agreed to pay monthly rent.

7.

Defendants respectfully acknowledge the lease terms.

8.

Defendants respectfully disagree with the summary Section 8 by Plaintiff.

9.

Defendants respectfully responds that the lease speaks for itself.

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10.

Defendants respectfully acknowledge the execution of the Lease Extension.

11.

Defendants respectfully acknowledge the terms of the Lease Extension.

12.

Defendants respectfully acknowledge the Lease Extension provides for monthly rent payment.

13.

Defendants respectfully deny the assertions contained in Paragraph 13 of Plaintiff's Amended Complaint.

14.

Defendants respectfully deny the assertions contained in Paragraph 14 of Plaintiff's Amended Complaint.

15.

Defendants respectfully deny the assertions contained in Paragraph 15 of Plaintiff's Amended Complaint and assert that they notified Landlord they were having to leave because of the uninhabitability of the home. Further, Defendants were foreclosed from taking items out of the home due to the mold contamination.

16.

Defendants respectfully deny the assertions in Paragraph 16 of Plaintiff's Amended Complaint and assert that the correspondence referenced actually happened in reverse.

17.

Defendants respectfully acknowledge the filing for ejectment and complaint on or about October 17, 2017 in Spartanburg County Magistrate Court.

18.

Defendants respectfully deny the assertions contained in Paragraph 18 of Plaintiff's Amended Complaint.

19.

Defendants respectfully admit the assertions contained in Paragraph 19 of Plaintiff's Amended Complaint.

20.

Defendants respectfully deny the assertions contained in Paragraph 20 of Plaintiff's Amended Complaint.

21.

Defendant Courtney Epps respectfully denies the assertions contained in Paragraph 21 of Plaintiff's Amended Complaint. Defendant Courtney Epps further asserts that the addition of this charge in Plaintiff's Amended Complaint constitutes a violation of her Constitution Right to Free Speech. Defendant further asserts that in these postings, Plaintiff was referred to only as "Landlord" and that the addition of the defamation claim constitutes frivolous litigation on the part of Plaintiff.

22.

Defendants respectfully acknowledge and deny parts of the assertions in Paragraph 22 of Plaintiff's Amended Complaint. Defendants respectfully deny that the Magistrate Court dismissed the Landlord's application for ejectment.

23.

Defendants respectfully deny the assertions in Paragraph 23 of the Plaintiff's Amended Complaint.

24.

Defendants respectfully deny the assertions in Paragraph 24 of the Plaintiff's Amended Complaint.

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25.

Defendants respectfully deny the assertions in Paragraph 25 of the Plaintiff's Amended Complaint.

26.

Defendants respectfully are without sufficient knowledge to respond to the assertions contained in Paragraph 26 of Plaintiff's Amended Complaint.

27.

Defendants respectfully admits that they received notice that the property had been condemned and the reason stated but are without sufficient knowledge to address the balance of Paragraph 27 of the Plaintiff's Amended Complaint.

28.

Defendants respectfully deny the assertions in Paragraph 28 of the Plaintiff's Amended Complaint.

29.

Defendants respectfully deny the assertions in Paragraph 29 of the Plaintiff's Amended Complaint.

30.

Defendants respectfully acknowledge that Plaintiff restates foregoing assertions.

31.

Defendants respectfully deny the assertions in Paragraph 31 of the Plaintiff's Amended Complaint.

32.

Defendants respectfully deny the assertions in Paragraph 32 of the Plaintiff's Amended Complaint.

Defendants respectfully deny the assertions in Paragraph 33 of the Plaintiff's Amended Complaint.

Defendants respectfully acknowledge that Plaintiff restates foregoing assertions.

Defendants respectfully deny the assertions in Paragraph 35 of the Plaintiff's Amended Complaint.

Defendants respectfully deny the assertions in Paragraph 36 of the Plaintiff's Amended Complaint.

Defendants respectfully deny the assertions in Paragraph 37 of the Plaintiff's Amended Complaint.

Defendants respectfully deny the assertions in Paragraph 38 of the Plaintiff's Amended Complaint.

Defendants respectfully acknowledge that Plaintiff restates foregoing assertions.

Defendants respectfully deny the assertions in Paragraph 40 of the Plaintiff's Amended Complaint.

Defendants respectfully deny the assertions in Paragraph 41 of the Plaintiff's Amended Complaint.

42.

Defendants respectfully acknowledge that Plaintiff restates foregoing assertions.

43.

Defendant Courtney Epps respectfully denies the assertions contained in Paragraph 43.

44.

Defendant Courtney Epps respectfully denies the assertions contained in Paragraph 44.

45.

Defendant Courtney Epps respectfully denies the assertions contained in Paragraph 45.

46.

Defendant Courtney Epps respectfully denies the assertions contained in Paragraph 46.

47.

Defendants respectfully acknowledge that Plaintiff restates foregoing assertions.

48.

Defendants respectfully acknowledge the recitation of a sentence in the Lease Contract in Paragraph 48 of the Plaintiff's Amended Complaint.

49.

Defendants respectfully deny the assertions in Paragraph 49 of the Plaintiff's Amended Complaint.

AMENDED COUNTERCLAIM COUNTERCLAIMS FOR DAMAGES

50.

Defendants are subject to the jurisdiction of this Court by virtue of the Complaint filed. Additionally, the subject matter real property is located with the jurisdiction of this Court.

51.

Defendants and their six (6) minor children were tenants of the residential property located at 618

Garden Rose Court, Greer, South Carolina 29651 (hereinafter "The Property"). Defendants

co-signed a Lease Extension and Modification on or about October 1, 2017, which provision did not mention money owed to Plaintiff and which Extension was executed by Courtney Epps and substituted Brandon Epps for the original co-lessee. Defendants will add additional parties by motion as the Court directs.

52.

On information and belief, Equinox LLC is a limited liability company having a business address of 214 Oak Meadow Drive, Simpsonville, South Carolina 29681 and on information and belief, this Plaintiff has at all material times owned, managed and controlled The Property.

53.

The true names and/or capacities, whether individual, corporate, associate or otherwise, of Plaintiffs and Does 1 through 5, inclusive, are unknown to Defendants at this time, and who therefore Defendants sue by such fictitious names. Defendants are informed and believe and thereupon allege that each of the Plaintiffs to be fictitiously named by motion as a DOEs are legally responsible, negligently or in some other actionable manner, for the events and happenings hereinafter referred to, and thereby proximately and legally caused the injuries and damage to Defendants as hereinafter alleged. Defendants will ask leave of court to amend this action under the Motion previously filed or as directed by the Court to insert the true names and/or capacities of such fictitiously named Plaintiffs when the same have been ascertained.¹

54.

Upon information and believe at all times mentioned herein, Plaintiff and DOEs were the agent, employee and representative of each other, and in doing the things hereinafter alleged, was acting within the course and scope of such agency, service and representation, and directed, aided and abetted, authorized or ratified each and every act and conduct hereinafter alleged.

55.

Upon information and belief, at all times mentioned herein, Plaintiff was the co-tortfeasor of each of the other Plaintiffs in doing the things hereinafter alleged.

¹ At the time of filing the Amended Answer and Counterclaims in this case, Defendants had not identified Does 1 through 5. At the time of filing this Second Amended Answer and Counterclaims, Defendants have identified Richard B. Dreskin as among the previously unnamed Does legally responsible, negligently or in some other actionable manner for the harms incurred.

56.

The Property has been subject to at least one inspection by the City of Greer and found to be in violation of the International Property Maintenance Code adopted by the City of Greer that has resulted in a citation for violation of code, the property's uninhabitability acknowledged by the sworn signature of the lessor, Richard Dreskin, Managing Member of Equinox LLC on October 26th, 2017. Further, the subject property has now been condemned.

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57.

Notwithstanding Plaintiffs' sworn assertion that he would not allow the subject property to be occupied, Plaintiffs failed to notify the tenant that the premise was found to be in violation of code and failed to notify the Defendants that the City of Greer had required that he certify it would be unoccupied and that he did so certify.

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58.

The habitability violations addressed the interior of the Property including but not limited to, an improperly waterproofed foundation known to Plaintiffs prior to the lease that resulted in water accumulating in the basement of the Property, resulting in mold infestation in floors, walls, insulation and HVAC ductwork. Further, the plumbing in the home was sub-standard and defective. Upon information and belief, prior tenants who leased The Property before the Epps endured the same or similar experiences with water intrusion and mold, and reported these issues to Richard B. Dreskin.

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59.

During all relevant dates herein, Defendants lived at the Property and as a consequence of the conditions, Defendants have sustained injuries and health problems caused or exacerbated by the conditions. As a consequence of the conditions and the physical injuries caused by the conditions, Defendants have also sustained severe mental suffering, frustration and anxiety.

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60.

Defendants resided as tenants of The Property during the period in which Plaintiffs owned, managed, or repaired the premises. During Plaintiff's tenancy, Plaintiff was exposed to the following substandard

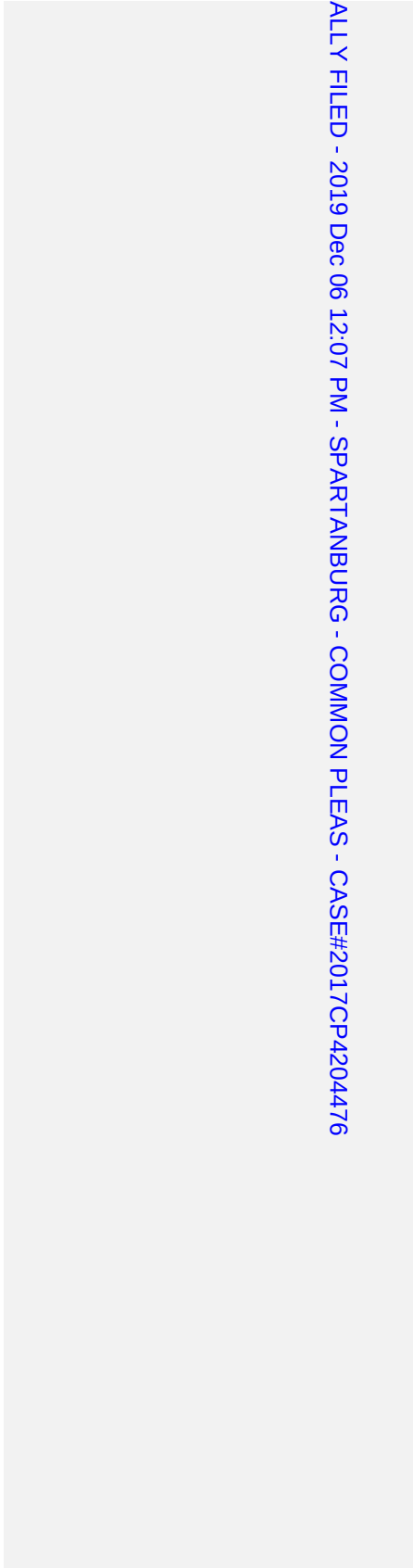
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conditions:

a) leaking plumbing;

b) accumulation of water in the basement resulting from a bathroom leak through the floor above the basement;

c) mold throughout the residence from the defective repair of foundational moisture.

61.

Defendants notified the Plaintiffs and its agents about the habitability violations, but Plaintiffs failed to correct the habitability conditions. Upon information and belief the Plaintiffs and each of the Plaintiffs are experienced property owners or contractors and are aware that, absent appropriate maintenance and repair, serious habitability violations would develop that would seriously and materially affect Defendants' tenancy. In response, Plaintiff threatened to have Defendants evicted and sued for monies he claimed Defendants owed him.

62.

Defendants were forced to terminate the lease for cause and did so in writing due to not only the uninhabitable condition, but the negligent manner in which Plaintiffs futilely attempted to remedy the situation that exposed them to greater danger.

63.

Notwithstanding the valid termination, Plaintiff Equinox still maintains that the lease is continuing and is charging Defendants in its Complaint rent for the time period following Plaintiff Equinox's signature that it would not allow the property to be inhabited.

64.

Despite fully knowing that the contents could not be safely removed until the home was tented and treated for mold and refusing to do so in order that Defendants be able to retrieve their property, Plaintiffs sold all of Defendants' belongings to unwitting buyers.

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FIRST CAUSE OF ACTION
(Breach of Contract -- Equinox, LLC)

65. Defendants re-allege and incorporate by reference every allegation contained in the preceding paragraphs of this Complaint as though set forth herein.

66. The Lease agreement, like all agreements in South Carolina, carries with it a duty of good faith and fair dealing for both parties.

67. Defendants and their children suffered actual and consequential damages as a result of the above-mentioned breach and are entitled to relief for the same.

68. If there is noncompliance by the landlord with a rental agreement or noncompliance with Section 27-40-440 materially affecting health and safety or the physical condition of the property, the tenant may deliver a written notice to the landlord specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than fourteen days after receipt of the notice if the breach is not remedied within fourteen days as stated in Section 27-40-610. Defendants delivered a written notice to the Plaintiff specifying the acts and omissions constituting the breach in May 2017 with no adequate remedy by Plaintiff. After many attempts by Defendants, Defendants terminated the rental agreement by letter in October, with termination stated as effective November 18, 2017.

69. As a direct and proximate result of the foregoing, Defendants are entitled to reasonable attorney's fees and costs pursuant to Section 27-40-330 of the South Carolina Residential Landlord Tenant Act.

70. As a direct and proximate result of Plaintiffs' breach of contract, Defendants have sustained personal injury, special, general and property damage in amounts to be determined at trial.

71. As stated in Article 7 of the South Carolina Residential Landlord Tenant Act, "if the landlord ("the plaintiff") fails to deliver possession of the dwelling unit to the tenant as provided in Section 27-40-410, rent abates until possession is delivered and the tenant ("defendants") may:

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▲ (1) terminate the rental agreement upon at least five days' written notice to the landlord and upon termination the landlord shall return all prepaid rent and security".

SECOND CAUSE OF ACTION
(Breach of Warranty of Habitability -- Equinox, LLC)

72. ▲ Defendants re-allege and incorporate by reference every allegation contained in the preceding paragraphs of this Complaint as though set forth herein.

73. ▲ The defective conditions of the rental unit constitute a violation of local housing laws, which posed severe health and safety hazards and breach the implied warranty of habitability in accordance to the International Code Council Section 108, subsection 108.1.5 number 9, which states "a building or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, damage, faulty construction or arrangement, inadequate light, ventilation, mechanical or plumbing system, or otherwise, is determined by the code official to be unsanitary, unfit for human habitation or in such a condition that is likely to cause sickness or disease".

74. ▲ Plaintiffs had actual and constructive notice of the defective conditions alleged herein, but despite such notice, failed to adequately repair and abate the conditions at The Property.

75. ▲ Defendants did not cause, create or contribute to the existence of the defective conditions alleged herein.

76. ▲ On or about October 26, 2017 the Plaintiff was notified in writing by a public code enforcement agency that the Plaintiff was required to correct some or all of the defective conditions at The Property within ten (10) days from the date of the letter. The Plaintiff signed an affidavit stating that not under any conditions was The Property to be leased, sold or otherwise occupied until all mold abatement requirements of the City of Greer's Codes Enforcement are satisfied.

77. ▲ Plaintiffs knew or should have known that permitting said defective conditions to exist at the outset of the lease threatened the physical and emotional health and well-being of Defendants or any renter, and posed a serious threat and danger to their health and safety.

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78. By failing to correct or properly correct said defective conditions, Plaintiffs have breached the warranty of habitability implied in all rental contracts under the local International Code Council. Further, Plaintiffs have breached the warranty of habitability implied in all rental contracts by not abiding by the South Carolina Landlord Tenant Act, Article 3, Section 27-40-440, by knowingly renting an uninhabitable home at the outset and by failing to make all repairs and doing whatever is reasonably necessary to put and keep the premises in a fit and habitable condition after tenants discovered the defect hidden by Plaintiffs.

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79. Because Plaintiffs' breach of the implied warranty of habitability, it has been necessary for Defendants to incur expenses and other special damages in an amount to be proven at trial.

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80. As a direct and proximate result of Plaintiffs' breach of the warranty of habitability, Defendants have sustained personal injury, special, general and property damage in amounts to be determined at trial.

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THIRD CAUSE OF ACTION (Nuisance -- Equinox, LLC)

81. Defendant re-alleges, and incorporates by reference every allegation contained in the preceding paragraphs of this Complaint as though set forth herein.

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82. The Defendants allege that the Plaintiff interfered with the Defendants right to privacy by not providing an announcement of their intent when entering the property to perform services at The Property.

83. As stated in the Landlord Tenant Act of South Carolina in Section 27-40-530, "a landlord shall not abuse the right of access or use it to harass the tenant. The code requires the landlord to announce his entry even for purposes of repair as state in (b). Nonetheless, the Plaintiff did not so announce.

84. As a direct and proximate result of Plaintiffs' nuisance, Defendants have sustained special and general damage in amounts to be determined at trial.

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**FOURTH CAUSE OF ACTION
(Negligence -- Equinox, LLC)**

85. Defendants re-allege and incorporate by reference every allegation contained in the preceding paragraphs of this Complaint as though set forth herein.

86. As owners, operators and managers of The Property, the Defendants owed Plaintiff the duty to exercise reasonable care in the ownership, management, repair and control of The Property, including the safekeeping of Defendants' belongings.

87. These duties owed by Plaintiff to Defendants to exercise reasonable care include, but are not limited to: the duty to refrain from interfering with Defendants full use of and quiet enjoyment of their rented premises; the duty to comply with all applicable state and local laws governing Defendant's rights as tenant; the duty to present and maintain Defendant's premises in a safe, healthy and habitable condition for the entire term of Defendant's tenancy and the duty to not obstruct Defendant's full use and occupancy of their rented residences and the duty to preserve the Defendants' possessions until they could safely be removed.

88. Plaintiffs, by the conduct alleged above, so negligently and carelessly maintained, operated, repaired and managed The Property as to breach the duties that they owed to Defendants. Further, Plaintiffs negligently attempted to repair and correct the mold problems of the property and inappropriately sold property belonging to the Defendants in violation of the South Carolina Landlord and Tenant Act.

89. Plaintiffs' actions, at all times prior to, at the time of, during the lease, and after the proper termination of the lease with respect to mold at the Property were in reckless disregard of the foreseeable consequences to Defendants.

90. Because of Plaintiffs' negligence, it has been necessary for Plaintiffs to incur expenses and other special damages in an amount to be proven at trial.

91. As a direct and proximate result of these breaches of duty by the Plaintiffs, Defendants have sustained general, special and property damage in amounts to be determined at trial.

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FIFTH CAUSE OF ACTION

(Breach of Contract Accompanied by Fraudulent Act – All Defendants)

92. Defendants repeat and re-allege the foregoing paragraphs as if fully set forth herein.

93. As alleged more fully above, Plaintiff breached its contractual obligations to Defendants.

94. In breaching its contractual obligations, Plaintiff acted fraudulently and with fraudulent intent to deceive Defendants by concealing the known water intrusion problem at the House prior to the execution of the lease and modification, as well as throughout the lease term.

95. Plaintiff's breach of its contractual obligations accompanied by fraud has directly and proximately caused damages to Defendants in an amount believed to exceed \$25,000, plus interest from the date of breach.

96. Defendants are entitled to a judgment against Plaintiff for all damages proximately caused by its breach, as well as punitive damages.

SIXTH CAUSE OF ACTION

(Violation of South Carolina Unfair Trade Practices Act – All Defendants)

S.C. Code Ann. § 39-5-10, et seq.

97. Defendants repeat and re-allege the foregoing paragraphs as if fully set forth herein.

98. Plaintiff's actions as described above were in the course of trade and commerce, are capable of repetition, and have harmed the public, as residential leases are things of value which directly affect the citizens of South Carolina.

99. Plaintiff's action as described above, knowingly leasing a property with an unresolved water intrusion and mold problem, despite receiving comments and concerns from prior tenants regarding the same issues and intentionally failing to resolve or repair the issue, constitutes unfair and deceptive trade practices in violation of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10, et seq.

100. As a direct and proximate result of Plaintiff's unfair and deceptive practices and acts, Defendants have been damaged in an amount to be proven at trial, but which is believed to exceed \$25,000. As a result of Plaintiff willful and knowing violation of the South Carolina Unfair Trade Practices Act, Defendants are also entitled to recover treble damages pursuant to S.C. Code Ann. § 39-5-140(a).

SEVENTH CAUSE OF ACTION
(Conversion – All Defendants)

101. Defendants repeat and re-allege the foregoing paragraphs as if fully set forth herein.

102. Plaintiff intended to and did convert Defendants' personal property, refused to return the personal property to Defendants, and ultimately sold that personal property and retained the proceeds.

103. Plaintiff converted Defendants' personal property wrongfully and without Defendants' consent.

104. Defendants demanded that Plaintiff return their personal property but they were repeatedly denied access to the personal property.

105. As a direct and proximate cause of Plaintiff's conversion, Defendants have been damaged in an amount to be determined at trial, but believed to exceed \$25,000.

EIGHTH CAUSE OF ACTION
(Alter Ego – All Defendants)

106. Defendants repeat and re-allege the foregoing paragraphs as if fully set forth herein.

107. Defendant Richard B. Dreskin ("Dreskin") maintains total domination and control of Equinox, LLC ("Equinox"), as illustrated by: his, and only his, communications with his tenants as landlord; upon information and belief receipt of payment as his personal residence, which is legally owned by Equinox; and his unilateral decision-making authority.

108. Upon information and belief, Equinox does not have any separate mind, will, or existence of its own, other than as a mere tool or instrumentality of Dreskin.

109. Upon information and belief, Dreskin exercises complete domination and control over Equinox, and has discretion to make decisions on its behalf.

110. Dreskin's control of Equinox is demonstrated by Equinox's failure to manifest any interest of its own separate from Dreskin's interests. Equinox functions solely to achieve the goals of Dreskin.

111. Dreskin's total domination of Equinox has resulted in inequitable consequences, including Equinox's breach of the lease accompanied by fraud and breach of the warranty of habitability. Dreskin's conduct, through his control of Equinox, has therefore resulted in injustice. Dreskin seeks to shield himself through the corporate form.

112. Permitting Dreskin to retain his purported separateness would promote wrong and injustice by permitting Dreskin to direct and control Equinox, causing it to breach its duties and promises to Defendants, without consequence.

113. As a result, Equinox is a mere alter ego of Dreskin.

114. As the alter ego of Equinox, Dreskin is jointly and severally liable, along with Equinox, for all damages in this action.

PUNITIVE DAMAGES – All Defendants

92-115. Defendants re-allege and incorporate by reference every allegation contained in the preceding paragraphs of this Complaint as though set forth herein.

93-116. The acts and/or omissions of the Plaintiffs, as stated above, were willful, wanton, grossly negligent, negligence per se, and/or in reckless disregard for the safety, health, mental wellbeing, life and intellectual and financial future tenants.

94-117. The conduct of the Plaintiffs as set forth above and including the retaliatory threats and lawsuits in violation of law justifies an award of punitive damages as to the Plaintiffs for each and every claim of the Defendants.

WHEREFORE, Defendants pray for the following damages and relief:

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- (1) 1. For offset monies in an amount to be determined at trial;
- (2) 2. That ~~Plaintiffs~~ Plaintiffs' actions (as consolidated) as to Brandon Epps for monies due be dismissed as improperly pled;
- (3) 3. For personal injury, general, special and property damage and loss in an amount to be determined at trial;
- (4) 4. For Punitive Damages;
- (5) 5. Reasonable attorney fees and attorney fees for the defense of the frivolous claim of defamation;
- (6) 6. Costs of suit;
- (7) 7. For such other relief as the Court may deem just and proper.

This ____ day of ~~November~~, 2019.

JAMES, McELROY & DIEHL, P.A.

By: _____
 Adam L. Horner
 525 North Tryon, Suite 700
 Charlotte, NC 28202
 Telephone: 704-372-9870
 Email: ahorner@jmdlaw.com
 Attorney for Defendants/Third-Party Plaintiff

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STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
) SEVENTH JUDICIAL CIRCUIT
 COUNTY OF SPARTANBURG)
) Case No. 2017 CP 42-04476
)
 Equinox, LLC,)
)
 Plaintiff,)
)
) **DEFENDANTS' AMENDED**
) **ANSWER AND COUNTERCLAIM**
)
 v.)
)
 Brandon & Courtney Epps,)
)
 Defendants.)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this date served plaintiff in the foregoing
 matter with a copy of the DEFENDANTS AMENDED ANSWER AND
 AMENDED COUNTERCLAIM filed
 with the Defendants' Second Amended Answer and Counterclaims was served by Electronic Court
 via electronic filing to Filing on all counsel of record, as follows:

Adam C. Bach
 R. Hudson Smith
 Eller Tonnsen Bach, LLC
 1306 South Church Street
 Greenville, SC 29605
 Tel 864.236.5013
 Fax 864.312.4191
 Attorneys for Plaintiff

This ____ day of November, 2019.

JAMES, McELROY & DIEHL, P.A., PA

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By: _____

By: /s/ Adam L. Horner

Adam L. Horner
525 North Tryon, Suite 700
Charlotte, NC 28202
Telephone: 704-372-9870
Email: ahorner@jmdlaw.com
Attorney for Defendants/Third-Party
~~Plaintiff~~Plaintiffs

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Charlotte, North Carolina

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STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
2017-CP-04476

EQUINOX, LLC,

Plaintiff,

vs.

BRANDON EPPS & COURTNEY EPPS,

Defendants.

BRANDON EPPS AND COURTNEY EPPS, as
Next of Friends of ALEXIS MARION HUCKS,
ADRIANNE BELLE HUCKS, WELLS SKIPPER
HUCKS, SAWYER LANE EPPS, COOPER
WADE EPPS, and LILI MADELYN EPPS,

Third-Party Plaintiffs,

vs.

EQUINOX, LLC,

Third-Party Defendant.

**MOTION TO RESTORE ACTION
TO ACTIVE TRIAL ROSTER**

Defendants and Third-Party Plaintiffs Brandon Epps and Courtney Epps, individually and as Next of Friends of Alexis Marion Hucks, Adrienne Belle Hucks, Wells Skipper Hucks, Sawyer Lane Epps, Cooper Wade Epps, and Lili Madelyn Epps (collectively, “the Epps”), move the Court Pursuant to Rule 40(j) of the South Carolina Rules of Civil Procedure to restore this matter to the active trial roster. Plaintiff is moving the Court to restore the case to the jury trial roster pursuant to the Consent Order Stipulation Striking Case from Docket Pursuant to Rule 40(j) previously entered by the Court. In accordance with Rule 40(j), SCRCP, Plaintiff requests that the Order not be entered for a period of ten (10) days after service of the Motion.

Respectfully submitted,

JAMES, MCELROY AND DIEHL, P.A.

By: s/ Jennifer M. Houti
Jennifer M. Houti
525 North Tryon, Suite 700
Charlotte, NC 28202
Telephone: 704-372-9870
Email: jhouti@jmdlaw.com
*Attorneys for Defendants and Third-Party
Plaintiffs*

April 2, 2020.
Charlotte, North Carolina

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date a copy of the foregoing **Motion to Restore Action to Active Trial Roster** was filed with the Court using the electronic filing system, which will transmit notification of such filing, constituting service thereof, to Plaintiff's counsel of record as follows:

Adam C. Bach
R. Hudson Smith
Eller Tonnsen Bach, LLC
1306 South Church Street
Greenville, SC 29605
Tel 864.236.5013
Fax 864.312.4191
Attorneys for Plaintiff

Respectfully submitted,

JAMES, MCELROY AND DIEHL, P.A.

By: s/ Jennifer M. Houti
Jennifer M. Houti
525 North Tryon, Suite 700
Charlotte, NC 28202
Telephone: 704-372-9870
Email: jhouti@jmdlaw.com
Attorneys for Defendants and Third-Party Plaintiffs

April 2, 2020.
Charlotte, North Carolina

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

2020-CP-_____

COURTNEY EPPS AND BRANDON
 EPPS, individually, and as Next of Friends of
 ALEXIS MARION HUCKS, ADRIANNE
 BELLE HUCKS, WELLS SKIPPER
 HUCKS, SAWYER LANE EPPS, COOPER
 WADE EPPS, and LILLI MADELYN EPPS,

SUMMONS

Plaintiff,

vs.

RICHARD B. DRESKIN and EQUINOX,
 LLC,

Defendant.

TO: Richard Dreskin
 214 Oak Meadow Drive
 Simpsonville, SC 29681

You are hereby summed and required to answer the Complaint, herewith served upon you, and to serve a copy of your answer to same upon the subscriber at 525 N. Tryon Street, Suite 700, Charlotte, NC 28202, within thirty (30) days after the service hereof, exclusive of the day of such service. If you fail to answer within that time, you will be considered to be in default and the Plaintiffs will move before the Court for the relief demanded in the Complaint.

Charlotte, North Carolina
 Dated: April 16, 2020

/s/ Jennifer M. Houti
 Jennifer M. Houti (SC Bar No.: 102055)
 JAMES, McELROY & DIEHL, P.A.
 525 N. Tryon Street, Suite 700
 Charlotte, NC 28202
 Phone: (704) 372-9870
 Email: jhouti@jmdlaw.com
 Attorneys for Plaintiff

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

2020-CP-_____

COURTNEY EPPS AND BRANDON)
 EPPS, individually, and as Next of Friends of)
 ALEXIS MARION HUCKS, ADRIANNE)
 BELLE HUCKS, WELLS SKIPPER)
 HUCKS, SAWYER LANE EPPS, COOPER)
 WADE EPPS, and LILLI MADELYN EPPS,)

SUMMONS

Plaintiff,)

vs.)

RICHARD B. DRESKIN and EQUINOX,)
 LLC,)

Defendant.)

TO: Equinox, LLC
 c/o Richard B. Dreskin, Registered Agent
 214 Oak Meadow Drive
 Simpsonville, SC 29681

You are hereby summoned and required to answer the Complaint, herewith served upon you, and to serve a copy of your answer to same upon the subscriber at 525 N. Tryon Street, Suite 700, Charlotte, NC 28202, within thirty (30) days after the service hereof, exclusive of the day of such service. If you fail to answer within that time, you will be considered to be in default and the Plaintiffs will move before the Court for the relief demanded in the Complaint.

Charlotte, North Carolina
 Dated: April 16, 2020

/s/ Jennifer M. Houti
 Jennifer M. Houti (SC Bar No.: 102055)
 JAMES, McELROY & DIEHL, P.A.
 525 N. Tryon Street, Suite 700
 Charlotte, NC 28202
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 Attorneys for Plaintiff

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

2020-CP-

COURTNEY EPPS AND BRANDON
 EPPS, individually, and as Next of Friends of
 ALEXIS MARION HUCKS, ADRIANNE
 BELLE HUCKS, WELLS SKIPPER
 HUCKS, SAWYER LANE EPPS, COOPER
 WADE EPPS, and LILLI MADELYN EPPS,

Plaintiff,

vs.

RICHARD B. DRESKIN, M.D. and
 EQUINOX, LLC,

Defendant.

COMPLAINT**(Jury Trial Demanded)**

Plaintiffs Courtney Epps and Brandon Epps, individually, and as Next of Friends of Alexis Marion Hucks, Adrienne Belle Hucks, Wells Skipper Hucks, Sawyer Lane Epps, Cooper Wade Epps, and Lilli Madelyn Epps (collectively “Plaintiffs” or “the Epps”), complain of Defendant Richard B. Dreskin as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff Courtney Epps (“Mrs. Epps”) is an adult resident and citizen of Spartanburg County, South Carolina.

2. Plaintiff Brandon Epps (“Mr. Epps” and, jointly with Mrs. Epps, the “Epps”) is an adult resident and citizen of Spartanburg County, South Carolina.

3. Plaintiffs Alexis Marion Hucks, Adrienne Belle Hucks, Wells Skipper Hucks, Sawyer Lane Epps, Cooper Wade Epps, and Lilli Madelyn Epps are the minor children of Courtney Epps and Brandon Epps, and are residents and citizens of Spartanburg County, South Carolina.

4. Upon information and belief, Defendant Richard B. Dreskin, M.D. (“Dreskin”) is an adult resident and citizen of Greenville County, South Carolina.

5. Upon information and belief, Defendant Equinox, LLC (“Equinox”) is a South Carolina limited liability company with its principal place of business in Greenville, South Carolina.

6. This Court has personal jurisdiction over the parties and subject matter jurisdiction over Plaintiffs’ causes of action set forth herein.

7. This action arises from a scheme by Defendants to conceal long-term water intrusion issues affecting the residential premises Defendant Equinox leased to Mrs. Epps and her family, which caused Plaintiffs to suffer personal injuries and property damage.

FACTUAL ALLEGATIONS

8. Dreskin is the managing member of Equinox. Upon information and belief, Dreskin is the sole member of Equinox.

9. Upon information and belief, at all times relevant to the events described herein, Dreskin possesses complete financial and decision-making control over Equinox.

10. Equinox owns the real property and residence located at 618 Garden Rose Court, Greer, South Carolina, 29651 (the "House").

11. Equinox and Mrs. Epps entered into a written lease agreement (the "Lease"), pursuant to which Equinox leased the House to Epps from February 1, 2016 through January 31, 2017.

12. Dreskin executed the Lease on Equinox's behalf.

13. At all times relevant to the events described herein, Dreskin was the primary representative of, and the Epps' primary point of contact, with Equinox for all matters relating to the House and Lease.

14. In addition to homeschooling the six minor children at the House, Mrs. Epps ran her small business, Outside the Box Business Solutions, LLC, from the House.

Issues with the House & Notice to Dreskin

15. Shortly after moving into the House in February 2016, Plaintiffs began experiencing a number of adverse issues with the House, which became more frequent and severe over time.

16. Among other things, the bathtub, microwave, and refrigerator were all broken shortly after moving in, the first-floor air conditioning unit broke in the fall of 2016, and the stovetop malfunctioned approximately one year after Plaintiffs began occupying the House. Each time a problem arose, the Epps contacted Dreskin to request repairs or correction.

17. On September 28, 2016, the Epps reached out to Dreskin in need of immediate assistance after a spigot on the side of the house was exposed or otherwise uncapped, allowing a significant amount of water to continuously stream onto the ground beside the House.

18. On December 5, 2016, the Epps contacted Dreskin after the septic tank backed up into the basement of the House. Although plumbers addressed the septic tank itself, the Epps contacted Dreskin again after the cleanup crew failed to remove the urine-soaked property from the basement, leaving a foul smell and rendering the basement uninhabitable.

19. On February 6, 2017, the Epps notified Dreskin that, among other issues, the master bathroom faucet was leaking. The leaking faucet was never addressed.

20. On May 21, 2017, the Epps notified Dreskin of a water leak in the basement that came through the ceiling and soaked the carpet (the “First Leak”). Simultaneously, the Epps told Dreskin that they discovered mold on the ceiling of the basement closet.

21. On June 4, 2017, the Epps informed Dreskin that the wood floor in the guest bathroom was wet and had raised in areas. Additionally, the Epps reiterated the severity of the mold in the basement, the smell of which was worsening. The Epps followed up with Dreskin on June 6, 2017, after he failed to address the problem.

22. On June 13, 2017, after a contractor came and removed the moldy sheetrock, but nothing else, the Epps informed Dreskin that, although the moldy drywall had been ripped out, it had been left in the House, where it continued to smell and grow additional mold. The sheetrock was ultimately removed by the contractor at the Epps’ insistence, but not through any action taken by Dreskin.

23. Upon information and belief, Dreskin sent a contractor to merely rip out moldy sheetrock, but made no attempt to repair damage caused by the First Leak, remediate the mold and moisture issues, or to identify or repair the source of the water intrusion. Upon information and belief, this refusal continued from May 2017 through at least December 2017.

24. In September 2017, Dreskin told the Epps that they needed to sign a new contract agreeing to extend the term of the Lease, and that if they refused, he would evict them in five (5) days. The Epps could not find alternative housing within the five (5) day window Dreskin demanded and, accordingly, signed a Lease Extension and Modification Agreement effective October 1, 2017, which extended the Lease term through September 30, 2018 (the “Lease Modification”).

25. Dreskin signed the Lease Modification on behalf of Equinox.

Mold Inspections and Condemnation of the House

26. On October 11, 2017, in between the First Leak and Second Leak, prompted by Dreskin’s failure to take any measures to remediate the moisture and mold issues with the House, the Epps hired mold inspector Brent Horton (“Horton”), a certified technician from Mold and Air Inspections, to test the House for moisture and mold.

27. Horton conducted his initial inspection of the House on October 11, 2017. During the inspection and two subsequent visits, he collected samples from the basement, basement storage closet, bathroom, and air condition unit, as well as air quality samples.

28. The lab reports generated by Horton’s samples indicated heavy mold in the basement. The spore count, measured by testing the moisture in the air, measured more than 46 times the normal amount.

29. By letter dated October 12, 2017, the Epps informed Dreskin of the presence and spread of mold in the House, and thereby gave formal notice that, per the South Carolina Residential Landlord and Tenant Act, the Lease would terminate after fourteen (14) days, on October 26, 2017, if the issue was not resolved.

30. On October 16, 2017, the Epps notified Dreskin that the ceiling in the basement was leaking again (the "Second Leak"), just as it had in May 2017 when the First Leak was reported.

31. On October 17, 2017, upon receiving the report from Horton, the Epps notified Dreskin via email that they were moving to a hotel because of the *still* unaddressed moisture and mold in the House.

32. Horton conducted a second inspection on October 19, 2017 following the Second Leak. During the second inspection, Horton took infrared photographs of the basement, including the ceiling, which showed paths of water running across the ceiling. The infrared photographs also illustrated the saturation and moisture level present: the ceiling had multiple locations where the moisture level was at the highest level measurable by the infrared camera.

33. By letter dated October 25, 2017, the Epps informed Defendants that Plaintiffs were terminating the Lease effective November 18, 2017, due to moisture and mold issues, as outlined in the mold reports, which Defendants failed and refused to address.

34. On October 26, 2017, the City of Greer issued to Equinox a Violation Notice stating that the conditions in the House were "found to constitute a violation as defined in the International Property Maintenance Code adopted and amended by the City of Greer" (the "Violation Notice"). A true and accurate copy of this Violation Notice is attached hereto as **Exhibit A**.

35. Specifically, the Violation Notice indicated that "mold remediation" was required.

36. That same day, Dreskin executed an affidavit attesting that: "Under no conditions will I allow the property to be leased, sold or otherwise occupied until all mold abatement requirements of the City of Greer's Code Enforcement are satisfied ("Dreskin's Affidavit"). A true and accurate copy of Dreskin's Affidavit is attached hereto as **Exhibit B**.

37. Upon information and belief, Dreskin was personally aware of the poor condition of the Home, including resulting water intrusion, before leasing the House to the Epps, as he had repaired water damage in the House for prior tenants, while failing and refusing to address the source of the water intrusion.

38. Upon information and belief, Dreskin intentionally withheld this information from the Epps when negotiating the Lease and Modification Agreement, and throughout the Lease term.

39. In November 2017, the Epps engaged AdvantaClean of the Upstate to provide an estimate for the remediation of the mold and moisture in the House.

40. AdvantaClean conducted its initial inspection of the House on November 11, 2017.

41. During a subsequent inspection requested by Dreskin, AdvantaClean completed various surface and air tests, which confirmed the presence of fungal growth and mold spores in different areas of the House.

42. AdvantaClean then recommended the mold in the House be remediated, and the House then be tented in order to decontaminate its contents.

43. Dreskin refused to authorize the House to be tented or to allow the Epps' personal property to be decontaminated while still on the property, or to pay for any decontamination. The only remaining option of removing the property from the House to an off-site location for decontamination was prohibitively expensive for the Epps to undertake themselves.

44. Having been forced to abruptly move to relocate in October of 2017, the Epps left the bulk of their personal property at the House pending decontamination, with the intention of retrieving it after the mold was remediated and it was safe to do so. However, the Violation Notice and Dreskin prevented the Epps from reentering the House, and Dreskin prevented the property from being decontaminated.

45. During the middle of the Epps' one attempt to retrieve some irreplaceable items (including tax documents held by Courtney Epps' business), Dreskin in fact add new locks to the doors of the House to prevent them from continuing to try to retrieve any of their belongings.

46. While the Epps were away from the House and living elsewhere, and without providing the Epps with any prior notice, Dreskin reentered the House, removed the Epps' personal property, and sold or otherwise disposed of it. Upon information and belief, no decontamination was performed on the Epps' belongings prior to removal or sale. The Epps were forced to purchase all new necessary personal belongings.

47. Upon information and belief, Dreskin retained the proceeds from the sale of the Epps' property.

48. The Epps were thereafter forced to relocate and begin replacing all of the household and personal items sold by Dreskin, at great expense.

Mold-Related Medical Problems

49. In 2017, Plaintiffs began experiencing medical problems attributable to mold exposure.

50. Specifically, Mrs. Epps sought medical help for ringing in her ear, headache, and other ear problems, and sought treatment for mold-related health issues from a number of additional providers.

51. In October 2017, Mrs. Epps explained the severity of her medical problems to Dreskin, and demanded that a mold inspector be sent to the House to test. Despite her illness and

demand, Dreskin failed and refused to hire a mold inspector until November 2017, after being required to do so by the City of Greer pursuant to the Violation Notice.

52. Mr. Epps also sought medical treatment for injuries resulting from exposure to moisture, mold, and particulates.

53. Sawyer Epps underwent a CT scan of his head that identified a cyst at the base of his left maxillary sinus, with additional issues in his right maxillary sinus as well. Sawyer Epps subsequently underwent surgery to have the cyst removed. He also developed a fungal infection in his cornea, resulting in daily visits to a surgeon to save the cornea. Upon information and belief, the cyst and the fungal infection were attributable to severe mold exposure.

54. Cooper Epps suffered symptoms related to mold and moisture exposure including, but not limited to, decreased concentration, rhinosinusitis, leg cramps, and fatigue.

55. Wells Hucks suffered symptoms of mold and moisture exposure including, but not limited to, congestion and sneezing.

56. Alexis Hucks also suffered symptoms of mold and moisture exposure, and has been diagnosed with an allergy to both Cladosporium and Penicillium.

57. Lilli Epps suffered symptoms of mold and moisture exposure including, but not limited to, chronic cough, chronic rhinosinusitis, chronic laryngitis, and fatigue.

58. Adrienne Epps suffered from migraines, hormonal imbalances, and sinus issues as a result of severe mold exposure.

59. All of the Plaintiffs' health issues and symptoms were a direct and proximate result of exposure to mold in the House. Such exposure was, in term, the direct and proximate result of Defendants' willful concealment of the House's condition, including prior events of water intrusion.

Rent Payments Under the Lease and Lease Modification

60. During the Lease term, the Epps and Dreskin orally agreed that the Epps would make monthly rent payments in two (2) installments: half of the rent paid on the first of the month, and the other half of the rent paid on the fifteenth day of the month.

61. Despite this agreement, and without communicating with the Epps, Dreskin charged the Epps late fees for partial rent payments made after the fifth day of the month.

62. Dreskin also charged the Epps interest on the amounts owed, and allowed that amount owed to accumulate from month to month without notifying the Epps that late fees were accruing.

63. Further, Dreskin continued to charge the Epps rent for the period during which the Epps were forced to live in a hotel and the House was declared uninhabitable pursuant to the City of Greer's Violation Notice.

FIRST CAUSE OF ACTION
(Piercing the Corporate Veil/Alter Ego – Defendant Dreskin)

65. Plaintiffs repeat and re-allege the foregoing paragraphs as if fully set forth herein.

66. Defendant Dreskin maintains total domination and control of Equinox, as illustrated by at least the following: his status as the sole managing member of Equinox; his communications with the Epps as landlord; his unilateral decision-making authority on behalf of Equinox; his execution of the affidavit required by the City of Greer on behalf of Equinox; and, upon information and belief, his receipt and use of rent payments to Equinox at his personal residence, which is owned by Equinox.

67. Upon information and belief, Equinox does not observe corporate formalities.

68. Upon information and belief, Defendants have comingled their funds.

69. Upon information and belief, Equinox does not have any separate mind, will, or existence of its own, other than as a mere tool or instrumentality of Dreskin.

70. Upon information and belief, Dreskin exercises complete domination and control over Equinox, and has absolute discretion to make decisions on its behalf.

71. Dreskin's control of Equinox is demonstrated by Equinox's failure to manifest any interest of its own separate from Dreskin's interests. Equinox functions solely to achieve the goals of Dreskin.

72. Dreskin's total domination of Equinox has resulted in inequitable consequences, including Equinox's breach of the lease accompanied by fraud. Dreskin's conduct, through his control of Equinox, has therefore resulted in injustice. Dreskin seeks to shield himself through the corporate form.

73. Permitting Dreskin to retain his purported separateness would promote wrong and injustice by permitting Dreskin to direct and control Equinox, causing it to breach its duties and promises to Plaintiffs, without consequence.

74. As a result, Equinox is a mere alter ego of Dreskin.

75. As the alter ego of Equinox, Dreskin is jointly and severally liable for all of the acts and omissions of Equinox, including its breaches of contract, nuisance, negligence, and breach of warranty of habitability.

SECOND CAUSE OF ACTION
(Breach of Contract – Defendant Dreskin)

76. Plaintiffs repeat and re-allege the foregoing paragraphs as if fully set forth herein.

77. The Lease and Lease Modification (collectively, the “Agreements”) are valid contracts between Equinox and Mrs. Epps, and Equinox and the Epps, respectively.

78. Pursuant to S.C. Code Ann. § 27-40-110, as leases of residential property in South Carolina, the Agreements are subject to, and regulated by, the rights and obligations of the Residential Landlord and Tenant Act, Title 27, Chapter 40 of the South Carolina Code of Laws.

79. Pursuant to S.C. Code Ann. § 27-40-440(a)(1) and (2), a landlord of leased residential premises shall, among other requirements, “comply with the requirements of applicable building and housing codes materially affecting health and safety;” and “make all repairs and do whatever is reasonably necessary to put and keep the premises in a fit and habitable condition[.]”

80. Violation of an applicable building or housing code affecting health and safety and a failure to maintain the premises in a habitable condition – i.e. a violation of S.C. Code Ann. § 27-40-440(a) – constitutes a material breach of a residential lease agreement, including the Agreements.

81. Pursuant to S.C. Code Ann. § 27-40-610(a), material noncompliance by the landlord with either the lease or § 27-40-440 permits the tenant to deliver written notice to the landlord of the acts or omissions constituting breach, and that the rental agreement will terminate on a date not less than fourteen (14) days after receipt of that notice if the breach is not remedied.

82. The Agreements were executed for good and valuable consideration.

83. The Epps fulfilled their material obligations under the Agreements by paying rent in accordance with the oral agreement between the parties.

84. Equinox materially breached the Agreements as explained in greater detail in the paragraphs above, by failing to keep the premises in a fit and habitable condition.

85. Equinox further materially breached the Agreements by failing to comply with the applicable building and house codes materially affecting health and safety, which resulted in the House ultimately being condemned by the City of Greer.

86. Equinox further materially breached the Agreements when he refused to recognize the termination of the Agreements fourteen (14) days after receipt of the notice of breach sent by the Epps in October 2017, and continued to charge the Epps rent under the Modification Agreement.

87. Equinox’s breaches of the Agreements are material, and directly and proximately damaged Plaintiffs in an amount to be proven at trial, plus interest from the date of breach, plus attorneys’ fees.

88. As the alter ego of Equinox, Dreskin is jointly and severally liable with Equinox for its numerous material breaches of the Agreements.

THIRD CAUSE OF ACTION

(Breach of Contract Accompanied by Fraudulent Act – All Defendants)

89. Plaintiffs repeat and re-allege the foregoing paragraphs as if fully set forth herein.

90. As alleged more fully above, Equinox breached contractual obligations to the Epps under the Agreements.

91. In breaching its contractual obligations, Equinox acted fraudulently and with fraudulent intent to deceive the Epps by concealing from them the known water intrusion and mold problems at the House before executing the Lease and Lease Modification, as well as throughout the Lease term.

92. Equinox's breach of contractual obligations accompanied by fraud directly and proximately caused Plaintiffs to suffer personal injuries and property damages as set forth above, in an amount to be proven at trial, plus interest from the date of breach.

93. As the alter ego of Equinox, Dreskin is jointly and severally liable with Equinox for its breach of contract accompanied by fraudulent act.

FOURTH CAUSE OF ACTION

(Violation of the SC Residential Landlord and Tenant Act, S.C. Code Ann. § 27-40-10, *et seq.* – All Defendants)

94. Plaintiffs repeat and re-allege the foregoing paragraphs as if fully set forth herein.

95. As alleged more fully above, Equinox violated the South Carolina Residential Landlord and Tenant Act, S.C. Code Ann. § 27-40-10, *et seq.*, by, among other things, failing and refusing to repair the House after receiving notice from Plaintiffs of defects.

96. Specifically, after Plaintiffs notified Equinox of the First Leak and the presence of water and mold (and after having prior knowledge of previous water intrusion), Equinox, through Dreskin, failed and refused to take any action to repair and correct the issue, failed to maintain the House in a fit and habitable condition, and failed to comply with applicable building and housing codes.

97. Equinox's violation of S.C. Code Ann. § 27-40-10, *et seq.*, directly and proximately caused Plaintiffs to suffer personal injuries and property damages as set forth above, in an amount to be proven at trial, plus interest from the date of breach.

98. As the alter ego of Equinox, Dreskin is jointly and severally liable with Equinox for its violation of S.C. Code Ann. § 27-40-10, *et seq.*

FIFTH CAUSE OF ACTION

(Violation of South Carolina Unfair Trade Practices Act – All Defendants)

S.C. Code Ann. § 39-5-10, *et seq.*

99. Plaintiffs repeat and re-allege the foregoing paragraphs as if fully set forth herein.

100. Defendants' actions as described above were in the course of trade and commerce, are capable of repetition, and have harmed the public, as residential leases are things of value which directly affect the citizens of South Carolina.

101. Defendants' actions as described above, in knowingly leasing a property with an unresolved water intrusion and mold problem, despite receiving comments and concerns from prior tenants regarding the same issues and intentionally failing to resolve or repair the issue, failing to inform the Epps of prior mold and moisture issues with the House, and insistence that the mold and moisture were falsely caused by the Epps, constitute unfair and deceptive trade practices in violation of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10, *et seq.*

102. As a direct and proximate result of Defendants' unfair and deceptive practices and acts, Plaintiffs have been damaged in an amount to be proven at trial. As a result of Dreskin's willful and knowing violation of the South Carolina Unfair Trade Practices Act, Plaintiffs are also entitled to recover treble damages pursuant to S.C. Code Ann. § 39-5-140(a).

103. In addition to his direct violations of the South Carolina Unfair Trade Practices Act, Dreskin is also jointly and severally liable as the alter ego of Equinox for Equinox's unfair and deceptive trade practices.

SIXTH CAUSE OF ACTION

(Conversion – All Defendants)

104. Plaintiffs repeat and re-allege the foregoing paragraphs as if fully set forth herein.

105. Dreskin, for himself and/or on behalf of Equinox, intended to and did convert the Epps' personal property when he refused to return the personal property inside the House, and ultimately sold that personal property and retained the proceeds.

106. Dreskin, for himself and/or on behalf of Equinox, converted the Epps' personal property wrongfully and without their consent.

107. The Epps demanded that Dreskin and Equinox return their personal property but they were repeatedly denied access to their personal property.

108. As a direct and proximate cause of Dreskin's and/or Equinox's conversion, the Epps have been damaged in an amount to be determined at trial.

109. To the extent the conversion of the Epps' personal property was carried out by Equinox, Dreskin, as the alter ego of Equinox, is jointly and severally liable with Equinox for

that conversion.

SEVENTH CAUSE OF ACTION
(Attorney's Fees – All Defendants)
S.C. Code Ann. § 27-40-610.

110. Plaintiffs repeat and re-allege the foregoing paragraphs as if fully set forth herein.

111. As explained in greater detail in the above paragraphs, the South Carolina Residential Landlord and Tenant Act (“RLTA”), S.C. Code Ann. § 27-40-440, imposes statutory obligations on a landlord.

112. Failure by a landlord, after notice from the tenant, to do what is reasonably necessary to keep the premises in habitable condition is a breach of the duty imposed by the RLTA.

113. Pursuant to S.C. Code Ann. § 27-40-610, if the landlord’s noncompliance with the lease or § 27-40-440 is willful, the tenant may recover reasonable attorney’s fees.

114. The Epps repeatedly gave notice to the Defendant of water intrusion into the House, mold in the House, and continuous, unresolved moisture in the House.

115. The water intrusion, mold, and continuous moisture rendered the House unfit and uninhabitable.

116. The Violation Notice issued by the City of Greer and declaring the House uninhabitable pending mold remediation further illustrates the unfit and uninhabitable condition of the House.

117. Further, upon information and belief, Equinox and Dreskin were aware of the water intrusion, mold, and moisture issues inside the House based on notice from prior tenants, and intentionally concealed those issues from the Epps, attempted to blame the Epps for the issues, refused to remediate the mold, failed to identify, or attempt to identify, the source of the issues, and willfully failed to comply with S.C. Code Ann. § 27-40-440.

118. Pursuant to S.C. Code Ann. § 27-40-440 and S.C. Code Ann. § 27-40-610, as a result of Equinox’s willful noncompliance, Plaintiffs are entitled to actual damages, plus costs and reasonable attorneys’ fees.

119. As the alter ego of Equinox, Dreskin is jointly and severally liable for Equinox’s willful noncompliance and violation of S.C. Code Ann. § 27-40-440 and for payment of Plaintiffs’ reasonable attorneys’ fees pursuant to § 27-40-610.

PUNITIVE DAMAGES – Defendant Dreskin

120. Plaintiffs repeat and re-allege the foregoing paragraphs as if fully set forth herein.

121. Dreskin’s acts and/or omissions, as stated above, were willful, wanton, grossly

negligent, negligent per se, and/or in reckless disregard for the safety, health, mental wellbeing, life and intellectual and financial future of the Epps.

122. Dreskin's conduct, as set forth above, justifies an award of punitive damages to the Epps for each and every claim against Dreskin.

123. Further, as the alter ego of Equinox, Dreskin is jointly and severally liable for Equinox's willful, wanton, grossly negligent, and reckless conduct and punitive damages.

WHEREFORE, Plaintiffs pray for the following:

1. Entry of a judgment in Plaintiffs' favor and against Defendants, jointly and severally, on all claims, in an amount to be determined at trial;
2. An award of punitive damages on all claims;
3. An award of their reasonable attorney's fees to the fullest extent permitted by applicable law;
4. That the costs of this suit be taxed against Defendant;
5. For a jury trial on all issues so triable; and
6. For such other relief as the Court may deem just and proper.

JAMES, McELROY & DIEHL, P.A.

/s/ Jennifer M. Houti

Jennifer M. Houti

S.C. Bar No. 102055

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Facsimile: (704) 333-5508

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Attorneys for Plaintiff

Dated: April 16, 2020
Charlotte, North Carolina

EXHIBIT A



10/26/2017

EQUINOX LLC
214 OAK MEADOW DR
SIMPSONVILLE, SC
29681

VIOLATION NOTICE

**RE: Lot At – 618 GARDEN ROSE CT :
Case: V17-025751
VIOLATION: Other Violations-Mold
remediation Required**

Dear Owner and/or Occupant,

You are hereby advised that the conditions described below have been found to constitute a violation as defined in the International Property Maintenance Code adopted and amended by the City of Greer. You have **ten (10) days** from the date of this letter to correct these violations.

•

RIGHT TO APPEAL

You may appeal this notice with the City Board of Adjustments and Appeals within **twenty (20) days** of the date of this notice. **The appeal must be in writing and provide the following – Sent to 301 E. Poinsett Street, Greer, SC 29651 Attn: Code Enforcement.**

1. The identity of the building and/or property by street address or legal description.
2. Your legal interest.
3. The specific order or section being appealed.
4. The issues on which you wish to be heard.
5. Your signature, mailing address, and a separate submission of a one hundred dollar (\$100.00) filing fee with the appeal.

YOUR FAILURE TO APPEAL IN THE TIME SPECIFIED WILL CONSTITUTE A WAIVER OF ALL RIGHTS TO AN ADMINISTRATIVE HEARING.

FAILURE TO COMPLY

Your failure to comply with this letter shall result in the City of Greer taking lawful measures to compel your compliance, including, but not limited to criminal prosecution. Each day of a continuing violation shall be deemed a separate offense, each punishable upon conviction by a fine of up to **one thousand eighty-seven dollars and fifty cents (\$1,087.50) and/or imprisonment of up to thirty (30) days.**

Should you have any questions please contact the Code Enforcement office at (864) 801-2041.

Sincerely,

Tor Ellstrom

Tor Ellstrom
Code Enforcement Officer

ELECTRONICALLY FILED - 2020 Apr 16 11:35 AM - SPARTANBURG - COMMON PLEAS - CASE#2020CPCP4201301

EXHIBIT B

STATE OF SOUTH CAROLINA)

)

)

COUNTY OF Greenville)

)

Equinox, LLC)

)

AFFIDAVIT

214 Oak Meadow Dr)

)

STREET ADDRESS)

)

Simpsonville, SC 29681)

)

CITY, STATE ZIP)

)

864-458-8521)

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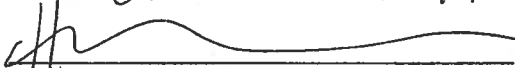
TELEPHONE)

)

I, Richard B. Dreskin, Managing Member, Equinox, LLC, being of legal age and being duly sworn, attest the following:

Regarding the house located 618 Garden Rose Court, Greer, SC: Under no conditions will I allow the property to be leased, sold or otherwise occupied until all mold abatement requirements of the City of Greer's Codes Enforcement are satisfied.

SWORN TO BEFORE ME, THIS 26th
DAY OF October, 20 17




Richard B. Dreskin, Managing member, Equinox, LLC

NOTARY PUBLIC FOR
SOUTH CAROLINA

MY COMMISSION EXPIRES: 5/17/2026

**HELEN BOURDIER
NOTARY PUBLIC
SOUTH CAROLINA
MY COMMISSION EXPIRES 5-17-2026**

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

2020-CP-42-1301

COURTNEY EPPS and BRANDON EPPS,
individually, and as Next of Friends of ALEXIS
MARION HUCKS, ADRIANNE BELL HUCKS,
WELLS SKIPPER HUCKS, SAWYER LANE
EPPS, COOPER WADE EPPS, and LILLI
MADELYN EPPS,

Plaintiffs,

v.

RICHARD B. DRESKIN, M.D. and
EQUINOX, LLC,

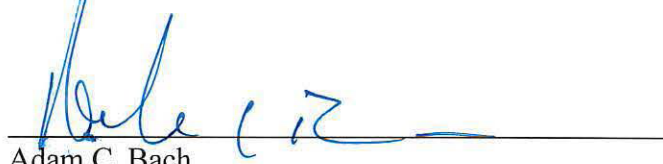
Defendants.

ACCEPTANCE OF SERVICE

I, Adam C. Bach, as counsel for Defendants Richard B. Dreskin, M.D. and Equinox, LLC ("Defendants"), and with authority by Defendants, hereby accept service of the Summons and Complaint and waive further notice of it.

This the 28th day of April, 2020.

ELLER TONNSEN BACH, LLC



Adam C. Bach
R. Hudson Smith
Eller TonnSEN Bach, LLC
1306 South Church Street
Greenville, SC 29605
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date a copy of the foregoing ACCEPTANCE OF SERVICE was filed with the Court using the electronic filing system, which will transmit notification of such filing, constituting service thereof, to Plaintiff's counsel of record as follows:

Adam C. Bach
R. Hudson Smith
Eller Tonnsen Bach, LLC
1306 South Church Street
Greenville, SC 29605
Fax (864) 312.4191
Attorneys for Defendants

This the 28th day of April, 2020

JAMES, MCELROY AND DIEHL, P.A.

By: s/ Jennifer M. Houti
Jennifer M. Houti
525 North Tryon, Suite 700
Charlotte, NC 28202
Telephone: 704-372-9870
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Attorneys for Plaintiffs

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

2017-CP-04476

EQUINOX, LLC,

Plaintiff,

vs.

BRANDON EPPS & COURTNEY EPPS,

Defendants.

BRANDON EPPS AND COURTNEY EPPS, as
Next of Friends of ALEXIS MARION HUCKS,
ADRIANNE BELLE HUCKS, WELLS SKIPPER
HUCKS, SAWYER LANE EPPS, COOPER
WADE EPPS, and LILI MADELYN EPPS,

Third-Party Plaintiffs,

vs.

EQUINOX, LLC,

Third-Party Defendant.

MOTION TO CONSOLIDATE

Defendants and Third-Party Plaintiffs Brandon Epps and Courtney Epps, individually and as Next of Friends of Alexis Marion Hucks, Adrienne Belle Hucks, Wells Skipper Hucks, Sawyer Lane Epps, Cooper Wade Epps, and Lili Madelyn Epps (collectively, “the Epps”), move the Court Pursuant to Rule 42(a) of the South Carolina Rules of Civil Procedure to consolidate this action with a related proceeding captioned, Courtney Epps, et al. v. Richard B. Dreskin, et al., Spartanburg County Court of Common Pleas Case No. 2020-CP-4201301 (the “New Action”). In support of this Motion, the Epps show the Court as follows:

1. Plaintiff Equinox, LLC (“Equinox”) commenced this action on December 7, 2017, and filed its Amended Complaint on February 14, 2018.

2. The Epps filed their Answer to the Amended Complaint and Counterclaims on March 9, 2018.

3. On December 6, 2019, the Epps filed a Motion for Leave to Amend their Answer to include additional counterclaims and third-party claims against Richard B. Dreskin (“Dreskin”), the managing member and principal of Equinox.

4. On January 23, 2020, before that motion could be heard, the parties signed and the Court entered a Consent Order Stipulation Striking the Case from Docket Pursuant to Rule (40)(j), which had the effect of removing this case from the active docket.

5. On April 6, 2020, the Epps filed a Motion to Restore Action to Active Trial Roster, to restore the case to the active docket and allow the Epps to schedule a hearing on their Motion for Leave to Amend.

6. However, the Covid-19 pandemic prevented the Epps from scheduling a hearing on their Motion for Leave to Amend prior to the expiration of potentially applicable statutes of limitations.

7. Accordingly, on April 16, 2020, the Epps commenced the New Action, asserting claims against Dreskin and Equinox that largely mirror the additional claims they sought to assert via the Motion for Leave to Amend. A copy of the Epps’ Complaint in the New Action is attached hereto as **Exhibit A**.

8. The time for Dreskin and Equinox to answer or otherwise respond to the Complaint in the New Action has not yet passed.

9. The New Action and the present action involve common questions of law and fact arising from the Epps' tenancy in a residential property owned by Equinox.

10. For the sake of judicial economy and efficiency, and to avoid unnecessary costs and delay, the Epps request that the New Action be consolidated with this action.

11. Equinox and Dreskin will not be prejudiced by consolidating the two actions.

12. The Epps have conferred with counsel for Equinox and Dreskin, who do not consent to consolidation.

WHEREFORE, the Epps respectfully request that the Court consolidate the action captioned Courtney Epps, et al. v. Richard B. Dreskin, et al., Spartanburg County Court of Common Pleas Case No. 2020-CP-4201301, with this action.

Respectfully submitted,

JAMES, MCELROY AND DIEHL, P.A.

By: s/ Jennifer M. Houti

Jennifer M. Houti
525 North Tryon, Suite 700
Charlotte, NC 28202
Telephone: 704-372-9870
Email: jhouti@jmdlaw.com
Attorneys for Defendants and Third-Party Plaintiffs

May 19, 2020.
Charlotte, North Carolina

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date a copy of the foregoing **Motion to Consolidate** was filed with the Court using the electronic filing system, which will transmit notification of such filing, constituting service thereof, to Plaintiff's counsel of record as follows:

Adam C. Bach
R. Hudson Smith
Eller Tonnsen Bach, LLC
1306 South Church Street
Greenville, SC 29605
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Fax 864.312.4191
Attorneys for Plaintiff

Respectfully submitted,

JAMES, MCELROY AND DIEHL, P.A.

By: s/ Jennifer M. Houti
Jennifer M. Houti
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Charlotte, NC 28202
Telephone: 704-372-9870
Email: jhouti@jmdlaw.com
Attorneys for Defendants and Third-Party Plaintiffs

May 19, 2020.
Charlotte, North Carolina

EXHIBIT A

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

2020-CP-_____

COURTNEY EPPS AND BRANDON)
EPPS, individually, and as Next of Friends of)
ALEXIS MARION HUCKS, ADRIANNE)
BELLE HUCKS, WELLS SKIPPER)
HUCKS, SAWYER LANE EPPS, COOPER)
WADE EPPS, and LILLI MADELYN EPPS,)

SUMMONS

Plaintiff,)

vs.)

RICHARD B. DRESKIN and EQUINOX,)
LLC,)

Defendant.)

TO: Richard Dreskin
214 Oak Meadow Drive
Simpsonville, SC 29681

You are hereby summed and required to answer the Complaint, herewith served upon you, and to serve a copy of your answer to same upon the subscriber at 525 N. Tryon Street, Suite 700, Charlotte, NC 28202, within thirty (30) days after the service hereof, exclusive of the day of such service. If you fail to answer within that time, you will be considered to be in default and the Plaintiffs will move before the Court for the relief demanded in the Complaint.

Charlotte, North Carolina
Dated: April 16, 2020

/s/ Jennifer M. Houti
Jennifer M. Houti (SC Bar No.: 102055)
JAMES, McELROY & DIEHL, P.A.
525 N. Tryon Street, Suite 700
Charlotte, NC 28202
Phone: (704) 372-9870
Email: jhouti@jmdlaw.com
Attorneys for Plaintiff

ELECTRONICALLY FILED - 2020 Apr 16 11:35 AM - SPARTANBURG - COMMON PLEAS - CASE#2020CP4201301
ELECTRONICALLY FILED - 2020 May 19 12:05 PM - SPARTANBURG - COMMON PLEAS - CASE#2017CP4204476

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

2020-CP-_____

COURTNEY EPPS AND BRANDON)
EPPS, individually, and as Next of Friends of)
ALEXIS MARION HUCKS, ADRIANNE)
BELLE HUCKS, WELLS SKIPPER)
HUCKS, SAWYER LANE EPPS, COOPER)
WADE EPPS, and LILLI MADELYN EPPS,)

SUMMONS

Plaintiff,)

vs.)

RICHARD B. DRESKIN and EQUINOX,)
LLC,)

Defendant.)

TO: Equinox, LLC
c/o Richard B. Dreskin, Registered Agent
214 Oak Meadow Drive
Simpsonville, SC 29681

You are hereby summoned and required to answer the Complaint, herewith served upon you, and to serve a copy of your answer to same upon the subscriber at 525 N. Tryon Street, Suite 700, Charlotte, NC 28202, within thirty (30) days after the service hereof, exclusive of the day of such service. If you fail to answer within that time, you will be considered to be in default and the Plaintiffs will move before the Court for the relief demanded in the Complaint.

Charlotte, North Carolina
Dated: April 16, 2020

/s/ Jennifer M. Houti
Jennifer M. Houti (SC Bar No.: 102055)
JAMES, McELROY & DIEHL, P.A.
525 N. Tryon Street, Suite 700
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Attorneys for Plaintiff

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

2020-CP-

COURTNEY EPPS AND BRANDON)
 EPPS, individually, and as Next of Friends of)
 ALEXIS MARION HUCKS, ADRIANNE)
 BELLE HUCKS, WELLS SKIPPER)
 HUCKS, SAWYER LANE EPPS, COOPER)
 WADE EPPS, and LILLI MADELYN EPPS,)

COMPLAINT

Plaintiff,

(Jury Trial Demanded)

vs.

RICHARD B. DRESKIN, M.D. and)
 EQUINOX, LLC,)

Defendant.

Plaintiffs Courtney Epps and Brandon Epps, individually, and as Next of Friends of Alexis Marion Hucks, Adrienne Belle Hucks, Wells Skipper Hucks, Sawyer Lane Epps, Cooper Wade Epps, and Lilli Madelyn Epps (collectively “Plaintiffs” or “the Epps”), complain of Defendant Richard B. Dreskin as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff Courtney Epps (“Mrs. Epps”) is an adult resident and citizen of Spartanburg County, South Carolina.

2. Plaintiff Brandon Epps (“Mr. Epps” and, jointly with Mrs. Epps, the “Epps”) is an adult resident and citizen of Spartanburg County, South Carolina.

3. Plaintiffs Alexis Marion Hucks, Adrienne Belle Hucks, Wells Skipper Hucks, Sawyer Lane Epps, Cooper Wade Epps, and Lilli Madelyn Epps are the minor children of Courtney Epps and Brandon Epps, and are residents and citizens of Spartanburg County, South Carolina.

4. Upon information and belief, Defendant Richard B. Dreskin, M.D. (“Dreskin”) is an adult resident and citizen of Greenville County, South Carolina.

5. Upon information and belief, Defendant Equinox, LLC (“Equinox”) is a South Carolina limited liability company with its principal place of business in Greenville, South Carolina.

6. This Court has personal jurisdiction over the parties and subject matter jurisdiction over Plaintiffs’ causes of action set forth herein.

7. This action arises from a scheme by Defendants to conceal long-term water intrusion issues affecting the residential premises Defendant Equinox leased to Mrs. Epps and her family, which caused Plaintiffs to suffer personal injuries and property damage.

FACTUAL ALLEGATIONS

8. Dreskin is the managing member of Equinox. Upon information and belief, Dreskin is the sole member of Equinox.

9. Upon information and belief, at all times relevant to the events described herein, Dreskin possesses complete financial and decision-making control over Equinox.

10. Equinox owns the real property and residence located at 618 Garden Rose Court, Greer, South Carolina, 29651 (the "House").

11. Equinox and Mrs. Epps entered into a written lease agreement (the "Lease"), pursuant to which Equinox leased the House to Epps from February 1, 2016 through January 31, 2017.

12. Dreskin executed the Lease on Equinox's behalf.

13. At all times relevant to the events described herein, Dreskin was the primary representative of, and the Epps' primary point of contact, with Equinox for all matters relating to the House and Lease.

14. In addition to homeschooling the six minor children at the House, Mrs. Epps ran her small business, Outside the Box Business Solutions, LLC, from the House.

Issues with the House & Notice to Dreskin

15. Shortly after moving into the House in February 2016, Plaintiffs began experiencing a number of adverse issues with the House, which became more frequent and severe over time.

16. Among other things, the bathtub, microwave, and refrigerator were all broken shortly after moving in, the first-floor air conditioning unit broke in the fall of 2016, and the stovetop malfunctioned approximately one year after Plaintiffs began occupying the House. Each time a problem arose, the Epps contacted Dreskin to request repairs or correction.

17. On September 28, 2016, the Epps reached out to Dreskin in need of immediate assistance after a spigot on the side of the house was exposed or otherwise uncapped, allowing a significant amount of water to continuously stream onto the ground beside the House.

18. On December 5, 2016, the Epps contacted Dreskin after the septic tank backed up into the basement of the House. Although plumbers addressed the septic tank itself, the Epps contacted Dreskin again after the cleanup crew failed to remove the urine-soaked property from the basement, leaving a foul smell and rendering the basement uninhabitable.

19. On February 6, 2017, the Epps notified Dreskin that, among other issues, the master bathroom faucet was leaking. The leaking faucet was never addressed.

20. On May 21, 2017, the Epps notified Dreskin of a water leak in the basement that came through the ceiling and soaked the carpet (the “First Leak”). Simultaneously, the Epps told Dreskin that they discovered mold on the ceiling of the basement closet.

21. On June 4, 2017, the Epps informed Dreskin that the wood floor in the guest bathroom was wet and had raised in areas. Additionally, the Epps reiterated the severity of the mold in the basement, the smell of which was worsening. The Epps followed up with Dreskin on June 6, 2017, after he failed to address the problem.

22. On June 13, 2017, after a contractor came and removed the moldy sheetrock, but nothing else, the Epps informed Dreskin that, although the moldy drywall had been ripped out, it had been left in the House, where it continued to smell and grow additional mold. The sheetrock was ultimately removed by the contractor at the Epps’ insistence, but not through any action taken by Dreskin.

23. Upon information and belief, Dreskin sent a contractor to merely rip out moldy sheetrock, but made no attempt to repair damage caused by the First Leak, remediate the mold and moisture issues, or to identify or repair the source of the water intrusion. Upon information and belief, this refusal continued from May 2017 through at least December 2017.

24. In September 2017, Dreskin told the Epps that they needed to sign a new contract agreeing to extend the term of the Lease, and that if they refused, he would evict them in five (5) days. The Epps could not find alternative housing within the five (5) day window Dreskin demanded and, accordingly, signed a Lease Extension and Modification Agreement effective October 1, 2017, which extended the Lease term through September 30, 2018 (the “Lease Modification”).

25. Dreskin signed the Lease Modification on behalf of Equinox.

Mold Inspections and Condemnation of the House

26. On October 11, 2017, in between the First Leak and Second Leak, prompted by Dreskin’s failure to take any measures to remediate the moisture and mold issues with the House, the Epps hired mold inspector Brent Horton (“Horton”), a certified technician from Mold and Air Inspections, to test the House for moisture and mold.

27. Horton conducted his initial inspection of the House on October 11, 2017. During the inspection and two subsequent visits, he collected samples from the basement, basement storage closet, bathroom, and air condition unit, as well as air quality samples.

28. The lab reports generated by Horton’s samples indicated heavy mold in the basement. The spore count, measured by testing the moisture in the air, measured more than 46 times the normal amount.

29. By letter dated October 12, 2017, the Epps informed Dreskin of the presence and spread of mold in the House, and thereby gave formal notice that, per the South Carolina Residential Landlord and Tenant Act, the Lease would terminate after fourteen (14) days, on October 26, 2017, if the issue was not resolved.

30. On October 16, 2017, the Epps notified Dreskin that the ceiling in the basement was leaking again (the "Second Leak"), just as it had in May 2017 when the First Leak was reported.

31. On October 17, 2017, upon receiving the report from Horton, the Epps notified Dreskin via email that they were moving to a hotel because of the *still* unaddressed moisture and mold in the House.

32. Horton conducted a second inspection on October 19, 2017 following the Second Leak. During the second inspection, Horton took infrared photographs of the basement, including the ceiling, which showed paths of water running across the ceiling. The infrared photographs also illustrated the saturation and moisture level present: the ceiling had multiple locations where the moisture level was at the highest level measurable by the infrared camera.

33. By letter dated October 25, 2017, the Epps informed Defendants that Plaintiffs were terminating the Lease effective November 18, 2017, due to moisture and mold issues, as outlined in the mold reports, which Defendants failed and refused to address.

34. On October 26, 2017, the City of Greer issued to Equinox a Violation Notice stating that the conditions in the House were "found to constitute a violation as defined in the International Property Maintenance Code adopted and amended by the City of Greer" (the "Violation Notice"). A true and accurate copy of this Violation Notice is attached hereto as **Exhibit A**.

35. Specifically, the Violation Notice indicated that "mold remediation" was required.

36. That same day, Dreskin executed an affidavit attesting that: "Under no conditions will I allow the property to be leased, sold or otherwise occupied until all mold abatement requirements of the City of Greer's Code Enforcement are satisfied ("Dreskin's Affidavit"). A true and accurate copy of Dreskin's Affidavit is attached hereto as **Exhibit B**.

37. Upon information and belief, Dreskin was personally aware of the poor condition of the Home, including resulting water intrusion, before leasing the House to the Epps, as he had repaired water damage in the House for prior tenants, while failing and refusing to address the source of the water intrusion.

38. Upon information and belief, Dreskin intentionally withheld this information from the Epps when negotiating the Lease and Modification Agreement, and throughout the Lease term.

39. In November 2017, the Epps engaged AdvantaClean of the Upstate to provide an estimate for the remediation of the mold and moisture in the House.

40. AdvantaClean conducted its initial inspection of the House on November 11, 2017.

41. During a subsequent inspection requested by Dreskin, AdvantaClean completed various surface and air tests, which confirmed the presence of fungal growth and mold spores in different areas of the House.

42. AdvantaClean then recommended the mold in the House be remediated, and the House then be tented in order to decontaminate its contents.

43. Dreskin refused to authorize the House to be tented or to allow the Epps' personal property to be decontaminated while still on the property, or to pay for any decontamination. The only remaining option of removing the property from the House to an off-site location for decontamination was prohibitively expensive for the Epps to undertake themselves.

44. Having been forced to abruptly move to relocate in October of 2017, the Epps left the bulk of their personal property at the House pending decontamination, with the intention of retrieving it after the mold was remediated and it was safe to do so. However, the Violation Notice and Dreskin prevented the Epps from reentering the House, and Dreskin prevented the property from being decontaminated.

45. During the middle of the Epps' one attempt to retrieve some irreplaceable items (including tax documents held by Courtney Epps' business), Dreskin in fact add new locks to the doors of the House to prevent them from continuing to try to retrieve any of their belongings.

46. While the Epps were away from the House and living elsewhere, and without providing the Epps with any prior notice, Dreskin reentered the House, removed the Epps' personal property, and sold or otherwise disposed of it. Upon information and belief, no decontamination was performed on the Epps' belongings prior to removal or sale. The Epps were forced to purchase all new necessary personal belongings.

47. Upon information and belief, Dreskin retained the proceeds from the sale of the Epps' property.

48. The Epps were thereafter forced to relocate and begin replacing all of the household and personal items sold by Dreskin, at great expense.

Mold-Related Medical Problems

49. In 2017, Plaintiffs began experiencing medical problems attributable to mold exposure.

50. Specifically, Mrs. Epps sought medical help for ringing in her ear, headache, and other ear problems, and sought treatment for mold-related health issues from a number of additional providers.

51. In October 2017, Mrs. Epps explained the severity of her medical problems to Dreskin, and demanded that a mold inspector be sent to the House to test. Despite her illness and

demand, Dreskin failed and refused to hire a mold inspector until November 2017, after being required to do so by the City of Greer pursuant to the Violation Notice.

52. Mr. Epps also sought medical treatment for injuries resulting from exposure to moisture, mold, and particulates.

53. Sawyer Epps underwent a CT scan of his head that identified a cyst at the base of his left maxillary sinus, with additional issues in his right maxillary sinus as well. Sawyer Epps subsequently underwent surgery to have the cyst removed. He also developed a fungal infection in his cornea, resulting in daily visits to a surgeon to save the cornea. Upon information and belief, the cyst and the fungal infection were attributable to severe mold exposure.

54. Cooper Epps suffered symptoms related to mold and moisture exposure including, but not limited to, decreased concentration, rhinosinusitis, leg cramps, and fatigue.

55. Wells Hucks suffered symptoms of mold and moisture exposure including, but not limited to, congestion and sneezing.

56. Alexis Hucks also suffered symptoms of mold and moisture exposure, and has been diagnosed with an allergy to both Cladosporium and Penicillium.

57. Lilli Epps suffered symptoms of mold and moisture exposure including, but not limited to, chronic cough, chronic rhinosinusitis, chronic laryngitis, and fatigue.

58. Adrienne Epps suffered from migraines, hormonal imbalances, and sinus issues as a result of severe mold exposure.

59. All of the Plaintiffs' health issues and symptoms were a direct and proximate result of exposure to mold in the House. Such exposure was, in term, the direct and proximate result of Defendants' willful concealment of the House's condition, including prior events of water intrusion.

Rent Payments Under the Lease and Lease Modification

60. During the Lease term, the Epps and Dreskin orally agreed that the Epps would make monthly rent payments in two (2) installments: half of the rent paid on the first of the month, and the other half of the rent paid on the fifteenth day of the month.

61. Despite this agreement, and without communicating with the Epps, Dreskin charged the Epps late fees for partial rent payments made after the fifth day of the month.

62. Dreskin also charged the Epps interest on the amounts owed, and allowed that amount owed to accumulate from month to month without notifying the Epps that late fees were accruing.

63. Further, Dreskin continued to charge the Epps rent for the period during which the Epps were forced to live in a hotel and the House was declared uninhabitable pursuant to the City of Greer's Violation Notice.

FIRST CAUSE OF ACTION
(Piercing the Corporate Veil/Alter Ego – Defendant Dreskin)

65. Plaintiffs repeat and re-allege the foregoing paragraphs as if fully set forth herein.

66. Defendant Dreskin maintains total domination and control of Equinox, as illustrated by at least the following: his status as the sole managing member of Equinox; his communications with the Epps as landlord; his unilateral decision-making authority on behalf of Equinox; his execution of the affidavit required by the City of Greer on behalf of Equinox; and, upon information and belief, his receipt and use of rent payments to Equinox at his personal residence, which is owned by Equinox.

67. Upon information and belief, Equinox does not observe corporate formalities.

68. Upon information and belief, Defendants have comingled their funds.

69. Upon information and belief, Equinox does not have any separate mind, will, or existence of its own, other than as a mere tool or instrumentality of Dreskin.

70. Upon information and belief, Dreskin exercises complete domination and control over Equinox, and has absolute discretion to make decisions on its behalf.

71. Dreskin's control of Equinox is demonstrated by Equinox's failure to manifest any interest of its own separate from Dreskin's interests. Equinox functions solely to achieve the goals of Dreskin.

72. Dreskin's total domination of Equinox has resulted in inequitable consequences, including Equinox's breach of the lease accompanied by fraud. Dreskin's conduct, through his control of Equinox, has therefore resulted in injustice. Dreskin seeks to shield himself through the corporate form.

73. Permitting Dreskin to retain his purported separateness would promote wrong and injustice by permitting Dreskin to direct and control Equinox, causing it to breach its duties and promises to Plaintiffs, without consequence.

74. As a result, Equinox is a mere alter ego of Dreskin.

75. As the alter ego of Equinox, Dreskin is jointly and severally liable for all of the acts and omissions of Equinox, including its breaches of contract, nuisance, negligence, and breach of warranty of habitability.

SECOND CAUSE OF ACTION
(Breach of Contract – Defendant Dreskin)

76. Plaintiffs repeat and re-allege the foregoing paragraphs as if fully set forth herein.

77. The Lease and Lease Modification (collectively, the “Agreements”) are valid contracts between Equinox and Mrs. Epps, and Equinox and the Epps, respectively.

78. Pursuant to S.C. Code Ann. § 27-40-110, as leases of residential property in South Carolina, the Agreements are subject to, and regulated by, the rights and obligations of the Residential Landlord and Tenant Act, Title 27, Chapter 40 of the South Carolina Code of Laws.

79. Pursuant to S.C. Code Ann. § 27-40-440(a)(1) and (2), a landlord of leased residential premises shall, among other requirements, “comply with the requirements of applicable building and housing codes materially affecting health and safety;” and “make all repairs and do whatever is reasonably necessary to put and keep the premises in a fit and habitable condition[.]”

80. Violation of an applicable building or housing code affecting health and safety and a failure to maintain the premises in a habitable condition – i.e. a violation of S.C. Code Ann. § 27-40-440(a) – constitutes a material breach of a residential lease agreement, including the Agreements.

81. Pursuant to S.C. Code Ann. § 27-40-610(a), material noncompliance by the landlord with either the lease or § 27-40-440 permits the tenant to deliver written notice to the landlord of the acts or omissions constituting breach, and that the rental agreement will terminate on a date not less than fourteen (14) days after receipt of that notice if the breach is not remedied.

82. The Agreements were executed for good and valuable consideration.

83. The Epps fulfilled their material obligations under the Agreements by paying rent in accordance with the oral agreement between the parties.

84. Equinox materially breached the Agreements as explained in greater detail in the paragraphs above, by failing to keep the premises in a fit and habitable condition.

85. Equinox further materially breached the Agreements by failing to comply with the applicable building and house codes materially affecting health and safety, which resulted in the House ultimately being condemned by the City of Greer.

86. Equinox further materially breached the Agreements when he refused to recognize the termination of the Agreements fourteen (14) days after receipt of the notice of breach sent by the Epps in October 2017, and continued to charge the Epps rent under the Modification Agreement.

87. Equinox’s breaches of the Agreements are material, and directly and proximately damaged Plaintiffs in an amount to be proven at trial, plus interest from the date of breach, plus attorneys’ fees.

88. As the alter ego of Equinox, Dreskin is jointly and severally liable with Equinox for its numerous material breaches of the Agreements.

THIRD CAUSE OF ACTION

(Breach of Contract Accompanied by Fraudulent Act – All Defendants)

89. Plaintiffs repeat and re-allege the foregoing paragraphs as if fully set forth herein.

90. As alleged more fully above, Equinox breached contractual obligations to the Epps under the Agreements.

91. In breaching its contractual obligations, Equinox acted fraudulently and with fraudulent intent to deceive the Epps by concealing from them the known water intrusion and mold problems at the House before executing the Lease and Lease Modification, as well as throughout the Lease term.

92. Equinox's breach of contractual obligations accompanied by fraud directly and proximately caused Plaintiffs to suffer personal injuries and property damages as set forth above, in an amount to be proven at trial, plus interest from the date of breach.

93. As the alter ego of Equinox, Dreskin is jointly and severally liable with Equinox for its breach of contract accompanied by fraudulent act.

FOURTH CAUSE OF ACTION

**(Violation of the SC Residential Landlord and Tenant Act,
S.C. Code Ann. § 27-40-10, *et seq.* – All Defendants)**

94. Plaintiffs repeat and re-allege the foregoing paragraphs as if fully set forth herein.

95. As alleged more fully above, Equinox violated the South Carolina Residential Landlord and Tenant Act, S.C. Code Ann. § 27-40-10, *et seq.*, by, among other things, failing and refusing to repair the House after receiving notice from Plaintiffs of defects.

96. Specifically, after Plaintiffs notified Equinox of the First Leak and the presence of water and mold (and after having prior knowledge of previous water intrusion), Equinox, through Dreskin, failed and refused to take any action to repair and correct the issue, failed to maintain the House in a fit and habitable condition, and failed to comply with applicable building and housing codes.

97. Equinox's violation of S.C. Code Ann. § 27-40-10, *et seq.*, directly and proximately caused Plaintiffs to suffer personal injuries and property damages as set forth above, in an amount to be proven at trial, plus interest from the date of breach.

98. As the alter ego of Equinox, Dreskin is jointly and severally liable with Equinox for its violation of S.C. Code Ann. § 27-40-10, *et seq.*

FIFTH CAUSE OF ACTION

(Violation of South Carolina Unfair Trade Practices Act – All Defendants)

S.C. Code Ann. § 39-5-10, *et seq.*

99. Plaintiffs repeat and re-allege the foregoing paragraphs as if fully set forth herein.

100. Defendants' actions as described above were in the course of trade and commerce, are capable of repetition, and have harmed the public, as residential leases are things of value which directly affect the citizens of South Carolina.

101. Defendants' actions as described above, in knowingly leasing a property with an unresolved water intrusion and mold problem, despite receiving comments and concerns from prior tenants regarding the same issues and intentionally failing to resolve or repair the issue, failing to inform the Epps of prior mold and moisture issues with the House, and insistence that the mold and moisture were falsely caused by the Epps, constitute unfair and deceptive trade practices in violation of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10, *et seq.*

102. As a direct and proximate result of Defendants' unfair and deceptive practices and acts, Plaintiffs have been damaged in an amount to be proven at trial. As a result of Dreskin's willful and knowing violation of the South Carolina Unfair Trade Practices Act, Plaintiffs are also entitled to recover treble damages pursuant to S.C. Code Ann. § 39-5-140(a).

103. In addition to his direct violations of the South Carolina Unfair Trade Practices Act, Dreskin is also jointly and severally liable as the alter ego of Equinox for Equinox's unfair and deceptive trade practices.

SIXTH CAUSE OF ACTION

(Conversion – All Defendants)

104. Plaintiffs repeat and re-allege the foregoing paragraphs as if fully set forth herein.

105. Dreskin, for himself and/or on behalf of Equinox, intended to and did convert the Epps' personal property when he refused to return the personal property inside the House, and ultimately sold that personal property and retained the proceeds.

106. Dreskin, for himself and/or on behalf of Equinox, converted the Epps' personal property wrongfully and without their consent.

107. The Epps demanded that Dreskin and Equinox return their personal property but they were repeatedly denied access to their personal property.

108. As a direct and proximate cause of Dreskin's and/or Equinox's conversion, the Epps have been damaged in an amount to be determined at trial.

109. To the extent the conversion of the Epps' personal property was carried out by Equinox, Dreskin, as the alter ego of Equinox, is jointly and severally liable with Equinox for

that conversion.

SEVENTH CAUSE OF ACTION
(Attorney's Fees – All Defendants)
S.C. Code Ann. § 27-40-610.

110. Plaintiffs repeat and re-allege the foregoing paragraphs as if fully set forth herein.

111. As explained in greater detail in the above paragraphs, the South Carolina Residential Landlord and Tenant Act (“RLTA”), S.C. Code Ann. § 27-40-440, imposes statutory obligations on a landlord.

112. Failure by a landlord, after notice from the tenant, to do what is reasonably necessary to keep the premises in habitable condition is a breach of the duty imposed by the RLTA.

113. Pursuant to S.C. Code Ann. § 27-40-610, if the landlord’s noncompliance with the lease or § 27-40-440 is willful, the tenant may recover reasonable attorney’s fees.

114. The Epps repeatedly gave notice to the Defendant of water intrusion into the House, mold in the House, and continuous, unresolved moisture in the House.

115. The water intrusion, mold, and continuous moisture rendered the House unfit and uninhabitable.

116. The Violation Notice issued by the City of Greer and declaring the House uninhabitable pending mold remediation further illustrates the unfit and uninhabitable condition of the House.

117. Further, upon information and belief, Equinox and Dreskin were aware of the water intrusion, mold, and moisture issues inside the House based on notice from prior tenants, and intentionally concealed those issues from the Epps, attempted to blame the Epps for the issues, refused to remediate the mold, failed to identify, or attempt to identify, the source of the issues, and willfully failed to comply with S.C. Code Ann. § 27-40-440.

118. Pursuant to S.C. Code Ann. § 27-40-440 and S.C. Code Ann. § 27-40-610, as a result of Equinox’s willful noncompliance, Plaintiffs are entitled to actual damages, plus costs and reasonable attorneys’ fees.

119. As the alter ego of Equinox, Dreskin is jointly and severally liable for Equinox’s willful noncompliance and violation of S.C. Code Ann. § 27-40-440 and for payment of Plaintiffs’ reasonable attorneys’ fees pursuant to § 27-40-610.

PUNITIVE DAMAGES – Defendant Dreskin

120. Plaintiffs repeat and re-allege the foregoing paragraphs as if fully set forth herein.

121. Dreskin’s acts and/or omissions, as stated above, were willful, wanton, grossly

negligent, negligent per se, and/or in reckless disregard for the safety, health, mental wellbeing, life and intellectual and financial future of the Epps.

122. Dreskin's conduct, as set forth above, justifies an award of punitive damages to the Epps for each and every claim against Dreskin.

123. Further, as the alter ego of Equinox, Dreskin is jointly and severally liable for Equinox's willful, wanton, grossly negligent, and reckless conduct and punitive damages.

WHEREFORE, Plaintiffs pray for the following:

1. Entry of a judgment in Plaintiffs' favor and against Defendants, jointly and severally, on all claims, in an amount to be determined at trial;
2. An award of punitive damages on all claims;
3. An award of their reasonable attorney's fees to the fullest extent permitted by applicable law;
4. That the costs of this suit be taxed against Defendant;
5. For a jury trial on all issues so triable; and
6. For such other relief as the Court may deem just and proper.

JAMES, McELROY & DIEHL, P.A.

/s/ Jennifer M. Houti

Jennifer M. Houti

S.C. Bar No. 102055

525 N. Tryon Street, Suite 700

Charlotte, NC 28202

Telephone: (704) 372-9870

Facsimile: (704) 333-5508

Email: jhouti@jmdlaw.com

Attorneys for Plaintiff

Dated: April 16, 2020
Charlotte, North Carolina

EXHIBIT A



10/26/2017

EQUINOX LLC
214 OAK MEADOW DR
SIMPSONVILLE, SC
29681

VIOLATION NOTICE

RE: Lot At – 618 GARDEN ROSE CT :
Case: V17-025751
VIOLATION: Other Violations-Mold
remediation Required

Dear Owner and/or Occupant,

You are hereby advised that the conditions described below have been found to constitute a violation as defined in the International Property Maintenance Code adopted and amended by the City of Greer. You have **ten (10) days** from the date of this letter to correct these violations.

•

RIGHT TO APPEAL

You may appeal this notice with the City Board of Adjustments and Appeals within **twenty (20) days** of the date of this notice. **The appeal must be in writing and provide the following – Sent to 301 E. Poinsett Street, Greer, SC 29651 Attn: Code Enforcement.**

1. The identity of the building and/or property by street address or legal description.
2. Your legal interest.
3. The specific order or section being appealed.
4. The issues on which you wish to be heard.
5. Your signature, mailing address, and a separate submission of a one hundred dollar (\$100.00) filing fee with the appeal.

YOUR FAILURE TO APPEAL IN THE TIME SPECIFIED WILL CONSTITUTE A WAIVER OF ALL RIGHTS TO AN ADMINISTRATIVE HEARING.

FAILURE TO COMPLY

Your failure to comply with this letter shall result in the City of Greer taking lawful measures to compel your compliance, including, but not limited to criminal prosecution. Each day of a continuing violation shall be deemed a separate offense, each punishable upon conviction by a fine of up to **one thousand eighty-seven dollars and fifty cents (\$1,087.50) and/or imprisonment of up to thirty (30) days.**

Should you have any questions please contact the Code Enforcement office at (864) 801-2041.

Sincerely,

Tor Ellstrom

Tor Ellstrom
Code Enforcement Officer

ELECTRONICALLY FILED - 2020 Apr 16 11:35 AM - SPARTANBURG - COMMON PLEAS - CASE#2020CP4201301
ELECTRONICALLY FILED - 2020 May 19 12:05 PM - SPARTANBURG - COMMON PLEAS - CASE#2017CP4204476

EXHIBIT B

ELECTRONICALLY FILED - 2020 Apr 16 11:35 AM - SPARTANBURG - COMMON PLEAS - CASE#2020CP4201301
ELECTRONICALLY FILED - 2020 May 19 12:05 PM - SPARTANBURG - COMMON PLEAS - CASE#2017CP4204476

STATE OF SOUTH CAROLINA)

COUNTY OF Greenville)

Equinox, LLC)

214 Oak Meadow Dr)

STREET ADDRESS)

Simpsonville, SC 29681)

CITY, STATE ZIP)

864-458-8521)

TELEPHONE)

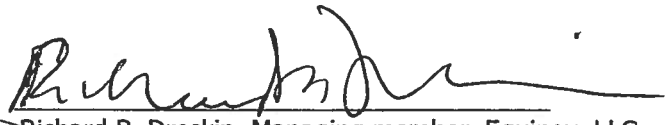
AFFIDAVIT

I, Richard B. Dreskin, Managing Member, Equinox, LLC, being of legal age and being duly sworn, attest the following:

Regarding the house located 618 Garden Rose Court, Greer, SC: Under no conditions will I allow the property to be leased, sold or otherwise occupied until all mold abatement requirements of the City of Greer's Codes Enforcement are satisfied.

SWORN TO BEFORE ME, THIS 26th
DAY OF October, 20 17




Richard B. Dreskin, Managing member, Equinox, LLC

NOTARY PUBLIC FOR
SOUTH CAROLINA

MY COMMISSION EXPIRES: 5/17/2026

**HELEN BOURDIER
NOTARY PUBLIC
SOUTH CAROLINA
MY COMMISSION EXPIRES 5-17-2026**

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	C. A. No. 2020-CP-42-01301
Courtney Epps And Brandon Epps,	)	
individually and as next of friends of Alexis	)	
Marion Hucks, Adrienne Belle Hucks, Wells	)	NOTICE OF MOTION AND MOTION
Skipper Hucks, Sawyer Lane Epps, Cooper	)	TO DISMISS
Wade Epps, and Lilli Madelyn Epps,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
Richard B. Dreskin, M.D., and Equinox,	)	
LLC,	)	
	)	
Defendants.	)	

TO: PLAINTIFFS COURTNEY EPPS AND BRANDON EPPS AND THEIR ATTORNEY, JENNIFER M. HOUTI

YOU WILL PLEASE TAKE NOTICE, that the defendants, Richard B. Dreskin, M.D., and Equinox, LLC, will move at a date and time to be set by the Court, pursuant to Rule 12 of the *South Carolina Rules of Civil Procedure*, for an order dismissing the complaint with prejudice. This motion is based upon the following grounds:

1. This matter should be dismissed as there is another pending action between the same parties for the same claims under Rule 12(b)(8), SCRCP.

2. In the lawsuit captioned, “*Equinox, LLC v. Brandon Epps and Courtney Epps*, C.A. No. 2017-CP-42-04476” (the “Underlying Action”), Equinox, LLC filed a complaint on December 7, 2017 against Brandon Epps and Courtney Epps alleging claims of breach of contract, unjust enrichment, conversion, and termination of lease and ejectment relating to a lease agreement (the “Lease”) between the parties for the premises located at 618 Garden Rose Ct., Greer, SC 29651 (the “Premises”).

3. On January 15, 2018, Courtney Epps and Brandon Epps (the “Eppses”) filed their answer and counterclaims against Equinox, LLC in the Underlying Action alleging claims of breach of contract, breach of warranty of habitability, nuisance, and negligence based upon their allegations of “physical injuries caused by the conditions” of “water accumulating in the basement of the Property, resulting in mold infestation in floors, walls, insulation, and HVAC ductwork” relating to the time they occupied the Premises pursuant to the Lease. Later that year, on December 3, 2018, Alexis Marion Hucks, Adrienne Belle Bucks, Wells Skipper Hucks, Sawyer Lane Epps, Copper Wade Epps, and Lilli Madelyn Epps (the “Minors”) were added as third-party plaintiffs.

4. On December 6, 2019, Defendants Brandon Epps and Courtney Epps and the third-party plaintiffs filed a motion for leave to amend their amended answer and amended counterclaims in the Underlying Action to name Richard Dreskin as a new party to the Underlying Action and to assert counterclaims and third-party claims against him. Paragraph 12 of the motion describes these contemplated claims against Dreskin as “arguably compulsory counterclaims which must be brought in the present action.”

5. Before the motion to amend was heard by the Court, the parties to the Underlying Action filed a consent order pursuant to Rule 40(j), SCRCP, striking the case from the docket by consent on January 23, 2020.

6. On April 3, 2020, Defendants Brandon Epps and Courtney Epps and the third-party plaintiffs filed a motion in the Underlying Action to restore the case to the active trial roster, and this motion remains pending.

7. With the exception of their previous negligence claim, both the instant complaint and the Eppses and Minors’ proposed amended counterclaims in the Underlying Action allege the

same seven causes of action against Equinox, LLC and Richard Dreskin for (i) breach of warranty of habitability, (ii) nuisance / violation of the S.C. Landlord Tenant Act, (iii) negligence, breach of contract accompanied by fraudulent act, (iv) violation of the S.C. Unfair Trade Practices Act, (v) conversion, and (vi) alter ego liability.

8. The facts alleged and the parties are virtually identical between the two documents, relating to the same Lease for the Premises and the alleged personal injuries of the Eppses and Minors due to mold and other deficiencies.

9. As they admitted in their motion to file amended counterclaims, the Eppses and Minors are required to seek permission from the Court in the Underlying Action before amending their pleadings to include new claims and joining a new party, Richard Dreskin. *Stanley v. Kirkpatrick*, 357 S.C. 169, 174, 592 S.E.2d 296, 298 (2003). Instead of obtaining permission from the Court to amend their pleadings in the Underlying Action, the Eppses and Minors instead filed this duplicative litigation.

10. Therefore, this complaint should be dismissed with prejudice under Rule 12(b)(8), SCRCF. *See Corbett v. City of Myrtle Beach*, 336 S.C. 601, 610, 521 S.E.2d 276, 281 (Ct. App. 1999) (action between same parties and based on the same facts and circumstances was properly dismissed).

This motion is based upon the pleadings filed in this action, upon any future memorandum of law submitted by the movant(s), and upon applicable common and statutory law.

Signature page follows

Respectfully submitted,

s/Adam C. Bach

Adam C. Bach (S.C. Bar #74885)
R. Hudson Smith (S.C. Bar #101369)
ELLER TONNSEN BACH, LLC
1306 South Church Street
Greenville, SC 29605
Telephone: (864) 236-5013
Facsimile: (864) 312-4191
abach@etblawfirm.com
hsmith@etblawfirm.com

Attorneys for Defendants Richard B.
Dreskin, M.D., and Equinox, LLC

May 19, 2020

Greenville, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
CIVIL CASE NO.: 2017-CP-04476

EQUINOX, LLC,)
)
Plaintiff/Counterclaim)
Defendant,)

vs.)

BRANDON EPPS & COURTNEY EPPS,)
)
Defendants/Counterclaim,)
Plaintiffs/Third-Party)
Plaintiffs,)

**DEFENDANTS' AND
THIRD-PARTY PLAINTIFFS'
SECOND AMENDED ANSWER
AND COUNTERCLAIMS
AND THIRD-PARTY CLAIMS**

BRANDON EPPS AND COURTNEY)
EPPS, as Next of Friends of ALEXIS)
MARION HUCKS, ADRIANNE BELLE)
HUCKS, WELLS SKIPPER HUCKS,)
SAWYER LANE EPPS, COOPER WADE)
EPPS, and LILI MADELYN EPPS,)

Third-Party Plaintiffs,)

vs.)

RICHARD B. DRESKIN,)
)
Third-Party Defendant.)
_____)

Pursuant to the Order entered on October 9, 2020, and with leave of Court pursuant to Rule 15 of the South Carolina Rules of Civil Procedure, Defendants and Third-Party Plaintiffs Brandon Epps, Courtney Epps, individually and as Next of Friends of Alexis Marion Hucks, Adrienne Belle Hucks, Wells Skipper Hucks, Sawyer Lane Epps, Cooper Wade Epps, and Lili

Madelyn Epps (collectively “Defendants”), hereby submit their Second Amended Answer and Counterclaims and Third-Party Claims, and show this Honorable Court the following:

ANSWER

1.

Defendants respectfully acknowledge the claims of Plaintiff concerning Equinox, LLC.

2.

Defendants respectfully deny the assertion as to the county of residency of Brandon Epps, as Mr. Epps is and was residing in Greenville County at the time of the filing of this action. With the anticipated consolidation of the Magistrate Court actions into this action, Brandon Epps waives jurisdictional argument.

3.

Defendants respectfully deny the assertions in Paragraph 3 of Plaintiff’s Complaint, as Defendant Courtney Epps is and was a resident of Greenville County, South Carolina at the time of the filing of this action. With the anticipated consolidation of the Magistrate Court actions into this action, Courtney Epps waives jurisdictional argument.

4.

Defendants respectfully admit that the Court has personal jurisdiction over the parties and subject matter jurisdiction over the causes of action.

5.

Defendant Courtney Epps respectfully acknowledges the lease agreement for 618 Garden Rose Ct, Greer, SC 29651.

6.

Defendant Courtney Epps respectfully acknowledges the initial lease term was for approximately one (1) year and that she agreed to pay monthly rent.

7.

Defendants respectfully acknowledge the lease terms.

8.

Defendants respectfully disagree with the summary Section 8 by Plaintiff.

9.

Defendants respectfully responds that the lease speaks for itself.

10.

Defendants respectfully acknowledge the execution of the Lease Extension.

11.

Defendants respectfully acknowledge the terms of the Lease Extension.

12.

Defendants respectfully acknowledge the Lease Extension provides for monthly rent payment.

13.

Defendants respectfully deny the assertions contained in Paragraph 13 of Plaintiff's Amended Complaint.

14.

Defendants respectfully deny the assertions contained in Paragraph 14 of Plaintiff's Amended Complaint.

15.

Defendants respectfully deny the assertions contained in Paragraph 15 of Plaintiff's Amended Complaint and assert that they notified Landlord they were having to leave because of the uninhabitability of the home. Further, Defendants were foreclosed from taking items out of the home due to the mold contamination.

16.

Defendants respectfully deny the assertions in Paragraph 16 of Plaintiff's Amended Complaint and assert that the correspondence referenced actually happened in reverse.

17.

Defendants respectfully acknowledge the filing for ejectment and complaint on or about October 17, 2017 in Spartanburg County Magistrate Court.

18.

Defendants respectfully deny the assertions contained in Paragraph 18 of Plaintiff's Amended Complaint.

19.

Defendants respectfully admit the assertions contained in Paragraph 19 of Plaintiff's Amended Complaint.

20.

Defendants respectfully deny the assertions contained in Paragraph 20 of Plaintiff's Amended Complaint.

21.

Defendant Courtney Epps respectfully denies the assertions contained in Paragraph 21 of Plaintiff's Amended Complaint. Defendant Courtney Epps further asserts that the addition of this charge in Plaintiff's Amended Complaint constitutes a violation of her Constitution Right to Free Speech. Defendant further asserts that in these postings, Plaintiff was referred to only as "Landlord" and that the addition of the defamation claim constitutes frivolous litigation on the part of Plaintiff.

22.

Defendants respectfully acknowledge and deny parts of the assertions in Paragraph 22 of Plaintiff's Amended Complaint. Defendants respectfully deny that the Magistrate Court dismissed the Landlord's application for ejectment.

23.

Defendants respectfully deny the assertions in Paragraph 23 of the Plaintiff's Amended Complaint.

24.

Defendants respectfully deny the assertions in Paragraph 24 of the Plaintiff's Amended

Complaint.

25.

Defendants respectfully deny the assertions in Paragraph 25 of the Plaintiff's Amended Complaint.

26.

Defendants respectfully are without sufficient knowledge to respond to the assertions contained in Paragraph 26 of Plaintiff's Amended Complaint.

27.

Defendants respectfully admits that they received notice that the property had been condemned and the reason stated but are without sufficient knowledge to address the balance of Paragraph 27 of the Plaintiff's Amended Complaint.

28.

Defendants respectfully deny the assertions in Paragraph 28 of the Plaintiff's Amended Complaint.

29.

Defendants respectfully deny the assertions in Paragraph 29 of the Plaintiff's Amended Complaint.

30.

Defendants respectfully acknowledge that Plaintiff restates foregoing assertions.

31.

Defendants respectfully deny the assertions in Paragraph 31 of the Plaintiff's Amended Complaint.

32.

Defendants respectfully deny the assertions in Paragraph 32 of the Plaintiff's Amended Complaint.

33.

Defendants respectfully deny the assertions in Paragraph 33 of the Plaintiff's Amended Complaint.

34.

Defendants respectfully acknowledge that Plaintiff restates foregoing assertions.

35.

Defendants respectfully deny the assertions in Paragraph 35 of the Plaintiff's Amended Complaint.

36.

Defendants respectfully deny the assertions in Paragraph 36 of the Plaintiff's Amended Complaint.

37.

Defendants respectfully deny the assertions in Paragraph 37 of the Plaintiff's Amended Complaint.

38.

Defendants respectfully deny the assertions in Paragraph 38 of the Plaintiff's Amended Complaint.

39.

Defendants respectfully acknowledge that Plaintiff restates foregoing assertions.

40.

Defendants respectfully deny the assertions in Paragraph 40 of the Plaintiff's Amended Complaint.

41.

Defendants respectfully deny the assertions in Paragraph 41 of the Plaintiff's Amended Complaint.

42.

Defendants respectfully acknowledge that Plaintiff restates foregoing assertions.

43.

Defendant Courtney Epps respectfully denies the assertions contained in Paragraph 43.

44.

Defendant Courtney Epps respectfully denies the assertions contained in Paragraph 44.

45.

Defendant Courtney Epps respectfully denies the assertions contained in Paragraph 45.

46.

Defendant Courtney Epps respectfully denies the assertions contained in Paragraph 46.

47.

Defendants respectfully acknowledge that Plaintiff restates foregoing assertions.

48.

Defendants respectfully acknowledge the recitation of a sentence in the Lease Contract in Paragraph 48 of the Plaintiff's Amended Complaint.

49.

Defendants respectfully deny the assertions in Paragraph 49 of the Plaintiff's Amended Complaint.

**SECOND AMENDED COUNTERCLAIMS AND
THIRD-PARTY CLAIMS FOR DAMAGES**

50.

Defendants are subject to the jurisdiction of this Court by virtue of the Complaint filed. Additionally, the subject matter real property is located with the jurisdiction of this Court.

51.

Defendants and their six (6) minor children were tenants of the residential property located at 618

Garden Rose Court, Greer, South Carolina 29651 (hereinafter "The Property"). Defendants co-signed a Lease Extension and Modification on or about October 1, 2017, which provision did not mention money owed to Plaintiff and which Extension was executed by Courtney Epps and substituted Brandon Epps for the original co-lessee. Defendants will add additional parties by motion as the Court directs.

52.

On information and belief, Equinox LLC is a limited liability company having a business address of 214 Oak Meadow Drive, Simpsonville, South Carolina 29681 and on information and belief, this Plaintiff has at all material times owned, managed and controlled The Property.

53.

The true names and/or capacities, whether individual, corporate, associate or otherwise, of Plaintiffs and Does 1 through 5, inclusive, are unknown to Defendants at this time, and who therefore Defendants sue by such fictitious names. Defendants are informed and believe and thereupon allege that each of the Plaintiffs to be fictitiously named by motion as a DOEs are legally responsible, negligently or in some other actionable manner, for the events and happenings hereinafter referred to, and thereby proximately and legally caused the injuries and damage to Defendants as hereinafter alleged. Defendants will ask leave of court to amend this action under the Motion previously filed or as directed by the Court to insert the true names and/or capacities of such fictitiously named Plaintiffs when the same have been ascertained.¹

54.

Upon information and believe at all times mentioned herein, Plaintiff and DOEs were the agent, employee and representative of each other, and in doing the things hereinafter alleged, was acting within the course and scope of such agency, service and representation, and

¹ At the time of filing the Amended Answer and Counterclaims in this case, Defendants had not identified Does 1 through 5. At the time of filing this Second Amended Answer and Counterclaims, Defendants have identified Richard B. Dreskin as among the previously unnamed Does legally responsible, negligently or in some other actionable manner for the harms incurred. Equinox, LLC and Dreskin are sometimes collectively referred to herein as "Plaintiffs."

directed, aided and abetted, authorized or ratified each and every act and conduct hereinafter alleged.

55.

Upon information and belief, at all times mentioned herein, Plaintiff was the co-tortfeasor of each of the other Plaintiffs in doing the things hereinafter alleged.

56.

The Property has been subject to at least one inspection by the City of Greer and found to be in violation of the International Property Maintenance Code adopted by the City of Greer that has resulted in a citation for violation of code, the property's uninhabitability acknowledged by the sworn signature of the lessor, Richard Dreskin, Managing Member of Equinox LLC on October 26th, 2017. Further, the subject property has now been condemned.

57.

Notwithstanding Plaintiffs' sworn assertion that he would not allow the subject property to be occupied, Plaintiffs failed to notify the tenant that the premise was found to be in violation of code and failed to notify the Defendants that the City of Greer had required that he certify it would be unoccupied and that he did so certify.

58.

The habitability violations addressed the interior of the Property including, but not limited to, an improperly waterproofed foundation known to Plaintiffs prior to the lease that resulted in water accumulating in the basement of the Property, resulting in mold infestation in floors, walls, insulation and HVAC ductwork. Further, the plumbing in the home was sub-standard and defective. Upon information and belief, prior tenants who leased The Property before the Epps endured the same or similar experiences with water intrusion and mold, and reported these issues to Richard B. Dreskin.

59.

During all relevant dates herein, Defendants lived at the Property and as a consequence of the

conditions, Defendants have sustained injuries and health problems caused or exacerbated by the conditions. As a consequence of the conditions and the physical injuries caused by the conditions, Defendants have also sustained severe mental suffering, frustration and anxiety.

60.

Defendants resided as tenants of The Property during the period in which Plaintiffs owned, managed, or repaired the premises. During Plaintiff's tenancy, Plaintiff was exposed to the following substandard conditions:

- a) leaking plumbing;
- b) accumulation of water in the basement resulting from a bathroom leak through the floor above the basement;
- c) mold throughout the residence from the defective repair of foundational moisture.

61.

Defendants notified the Plaintiffs and its agents about the habitability violations, but Plaintiffs failed to correct the habitability conditions. Upon information and belief the Plaintiffs and each of the Plaintiffs are experienced property owners or contractors and are aware that, absent appropriate maintenance and repair, serious habitability violations would develop that would seriously and materially affect Defendants' tenancy. In response, Plaintiff threatened to have Defendants evicted and sued for monies he claimed Defendants owed him.

62.

Defendants were forced to terminate the lease for cause and did so in writing due to not only the uninhabitable condition, but the negligent manner in which Plaintiffs futilely attempted to remedy the situation that exposed them to greater danger.

63.

Notwithstanding the valid termination, Plaintiff Equinox still maintains that the lease is

continuing and is charging Defendants in its Complaint rent for the time period following Plaintiff Equinox's signature that it would not allow the property to be inhabited.

64.

Despite fully knowing that the contents could not be safely removed until the home was tented and treated for mold and refusing to do so in order that Defendants be able to retrieve their property, Plaintiffs sold all of Defendants' belongings to unwitting buyers.

**FIRST CAUSE OF ACTION
(Breach of Contract -- Equinox, LLC)**

65. Defendants re-allege and incorporate by reference every allegation contained in the preceding paragraphs of this Complaint as though set forth herein.

66. The Lease agreement, like all agreements in South Carolina, carries with it a duty of good faith and fair dealing for both parties.

67. Defendants and their children suffered actual and consequential damages as a result of the above-mentioned breach and are entitled to relief for the same.

68. If there is noncompliance by the landlord with a rental agreement or noncompliance with Section 27-40-440 materially affecting health and safety or the physical condition of the property, the tenant may deliver a written notice to the landlord specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than fourteen days after receipt of the notice if the breach is not remedied within fourteen days as stated in Section 27-40-610. Defendants delivered a written notice to the Plaintiff specifying the acts and omissions constituting the breach in May 2017 with no adequate remedy by Plaintiff. After many attempts by Defendants, Defendants terminated the rental agreement by letter in October, with termination stated as effective November 18, 2017.

69. As a direct and proximate result of the foregoing, Defendants are entitled to reasonable attorney's fees and costs pursuant to Section 27-40-330 of the South Carolina Residential Landlord Tenant Act.

70. As a direct and proximate result of Plaintiffs' breach of contract, Defendants

have sustained personal injury, special, general and property damage in amounts to be determined at trial.

71. As stated in Article 7 of the South Carolina Residential Landlord Tenant Act, “if the landlord (“the plaintiff”) fails to deliver possession of the dwelling unit to the tenant as provided in Section 27-40-410, rent abates until possession is delivered and the tenant (“defendants”) may:

(1) terminate the rental agreement upon at least five days’ written notice to the landlord and upon termination the landlord shall return all prepaid rent and security”.

**SECOND CAUSE OF ACTION
(Breach of Warranty of Habitability -- Equinox, LLC)**

72. Defendants re-allege and incorporate by reference every allegation contained in the preceding paragraphs of this Complaint as though set forth herein.

73. The defective conditions of the rental unit constitute a violation of local housing laws, which posed severe health and safety hazards and breach the implied warranty of habitability in accordance to the International Code Council Section 108, subsection 108.1.5 number 9, which states “a building or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, damage, faulty construction or arrangement, inadequate light, ventilation, mechanical or plumbing system, or otherwise, is determined by the code official to be unsanitary, unfit for human habitation or in such a condition that is likely to cause sickness or disease”.

74. Plaintiffs had actual and constructive notice of the defective conditions alleged herein, but despite such notice, failed to adequately repair and abate the conditions at The Property.

75. Defendants did not cause, create or contribute to the existence of the defective conditions alleged herein.

76. On or about October 26, 2017 the Plaintiff was notified in writing by a public code enforcement agency that the Plaintiff was required to correct some or all of the defective

conditions at The Property within ten (10) days from the date of the letter. The Plaintiff signed an affidavit stating that not under any conditions was The Property to be leased, sold or otherwise occupied until all mold abatement requirements of the City of Greer's Codes Enforcement are satisfied.

77. Plaintiffs knew or should have known that permitting said defective conditions to exist at the outset of the lease threatened the physical and emotional health and well-being of Defendants or any renter, and posed a serious threat and danger to their health and safety.

78. By failing to correct or properly correct said defective conditions, Plaintiffs have breached the warranty of habitability implied in all rental contracts under the local International Code Council. Further, Plaintiffs have breached the warranty of habitability implied in all rental contracts by not abiding by the South Carolina Landlord Tenant Act, Article 3, Section 27-40-440, by knowingly renting an uninhabitable home at the outset and by failing to make all repairs and doing whatever is reasonably necessary to put and keep the premises in a fit and habitable condition after tenants discovered the defect hidden by Plaintiffs.

79. Because Plaintiffs' breach of the implied warranty of habitability, it has been necessary for Defendants to incur expenses and other special damages in an amount to be proven at trial.

80. As a direct and proximate result of Plaintiffs' breach of the warranty of habitability, Defendants have sustained personal injury, special, general and property damage in amounts to be determined at trial.

THIRD CAUSE OF ACTION (Nuisance -- Equinox, LLC)

81. Defendant re-alleges, and incorporates by reference every allegation contained in the preceding paragraphs of this Complaint as though set forth herein.

82. The Defendants allege that the Plaintiff interfered with the Defendants right to privacy by not providing an announcement of their intent when entering the property to perform services at The Property.

83. As stated in the Landlord Tenant Act of South Carolina in Section 27-40-530, “a landlord shall not abuse the right of access or use it to harass the tenant. The code requires the landlord to announce his entry even for purposes of repair as state in (b). Nonetheless, the Plaintiff did not so announce.

84. As a direct and proximate result of Plaintiffs’ nuisance, Defendants have sustained special and general damage in amounts to be determined at trial.

**FOURTH CAUSE OF ACTION
(Negligence -- Equinox, LLC)**

85. Defendants re-allege and incorporate by reference every allegation contained in the preceding paragraphs of this Complaint as though set forth herein.

86. As owners, operators and managers of The Property, the Defendants owed Plaintiff the duty to exercise reasonable care in the ownership, management, repair and control of The Property, including the safekeeping of Defendants’ belongings.

87. These duties owed by Plaintiff to Defendants to exercise reasonable care include, but are not limited to: the duty to refrain from interfering with Defendants full use of and quiet enjoyment of their rented premises; the duty to comply with all applicable state and local laws governing Defendant’s rights as tenant; the duty to present and maintain Defendant’s premises in a safe, healthy and habitable condition for the entire term of Defendant’s tenancy and the duty to not obstruct Defendant’s full use and occupancy of their rented residences and the duty to preserve the Defendants’ possessions until they could safely be removed.

88. Plaintiffs, by the conduct alleged above, so negligently and carelessly maintained, operated, repaired and managed The Property as to breach the duties that they owed to Defendants. Further, Plaintiffs negligently attempted to repair and correct the mold problems of the property and inappropriately sold property belonging to the Defendants in violation of the South Carolina Landlord and Tenant Act.

89. Plaintiffs’ actions, at all times prior to, at the time of, during the lease, and after the proper termination of the lease with respect to mold at the Property were in reckless

disregard of the foreseeable consequences to Defendants.

90. Because of Plaintiffs' negligence, it has been necessary for Plaintiffs to incur expenses and other special damages in an amount to be proven at trial.

91. As a direct and proximate result of these breaches of duty by the Plaintiffs, Defendants have sustained general, special and property damage in amounts to be determined at trial.

**FIFTH CAUSE OF ACTION
(Breach of Contract Accompanied by Fraudulent Act – Equinox, LLC and Dreskin)**

92. Defendants repeat and re-allege the foregoing paragraphs as if fully set forth herein.

93. As alleged more fully above, Plaintiff breached its contractual obligations to Defendants.

94. In breaching its contractual obligations, Plaintiff acted fraudulently and with fraudulent intent to deceive Defendants by concealing the known water intrusion problem at the House prior to the execution of the lease and modification, as well as throughout the lease term.

95. Plaintiff's breach of its contractual obligations accompanied by fraud has directly and proximately caused damages to Defendants in an amount believed to exceed \$25,000, plus interest from the date of breach.

96. Defendants are entitled to a judgment against Plaintiff for all damages proximately caused by its breach, as well as punitive damages.

**SIXTH CAUSE OF ACTION
(Violation of South Carolina Unfair Trade Practices Act – Equinox, LLC and Dreskin)
S.C. Code Ann. § 39-5-10, et seq.**

97. Defendants repeat and re-allege the foregoing paragraphs as if fully set forth herein.

98. Plaintiff's actions as described above were in the course of trade and commerce, are capable of repetition, and have harmed the public, as residential leases are things of value which directly affect the citizens of South Carolina.

99. Plaintiff's action as described above, knowingly leasing a property with an unresolved water intrusion and mold problem, despite receiving comments and concerns from prior tenants regarding the same issues and intentionally failing to resolve or repair the issue, constitutes unfair and deceptive trade practices in violation of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10, et seq.

100. As a direct and proximate result of Plaintiff's unfair and deceptive practices and acts, Defendants have been damaged in an amount to be proven at trial, but which is believed to exceed \$25,000. As a result of Plaintiff willful and knowing violation of the South Carolina Unfair Trade Practices Act, Defendants are also entitled to recover treble damages pursuant to S.C. Code Ann. § 39-5-140(a).

**SEVENTH CAUSE OF ACTION
(Conversion – Equinox, LLC and Dreskin)**

101. Defendants repeat and re-allege the foregoing paragraphs as if fully set forth herein.

102. Plaintiff intended to and did convert Defendants' personal property, refused to return the personal property to Defendants, and ultimately sold that personal property and retained the proceeds.

103. Plaintiff converted Defendants' personal property wrongfully and without Defendants' consent.

104. Defendants demanded that Plaintiff return their personal property but they were repeatedly denied access to the personal property.

105. As a direct and proximate cause of Plaintiff's conversion, Defendants have been damaged in an amount to be determined at trial, but believed to exceed \$25,000.

**EIGHTH CAUSE OF ACTION
(Alter Ego – Equinox, LLC and Dreskin)**

106. Defendants repeat and re-allege the foregoing paragraphs as if fully set forth herein.

107. Defendant Richard B. Dreskin ("Dreskin") maintains total domination and control

of Equinox, LLC (“Equinox”), as illustrated by: his, and only his, communications with his tenants as landlord; upon information and belief receipt of payment as his personal residence, which is legally owned by Equinox; and his unilateral decision-making authority.

108. Upon information and belief, Equinox does not have any separate mind, will, or existence of its own, other than as a mere tool or instrumentality of Dreskin.

109. Upon information and belief, Dreskin exercises complete domination and control over Equinox, and has discretion to make decisions on its behalf.

110. Dreskin’s control of Equinox is demonstrated by Equinox’s failure to manifest any interest of its own separate from Dreskin’s interests. Equinox functions solely to achieve the goals of Dreskin.

111. Dreskin’s total domination of Equinox has resulted in inequitable consequences, including Equinox’s breach of the lease accompanied by fraud and breach of the warranty of habitability. Dreskin’s conduct, through his control of Equinox, has therefore resulted in injustice. Dreskin seeks to shield himself through the corporate form.

112. Permitting Dreskin to retain his purported separateness would promote wrong and injustice by permitting Dreskin to direct and control Equinox, causing it to breach its duties and promises to Defendants, without consequence.

113. As a result, Equinox is a mere alter ego of Dreskin.

114. As the alter ego of Equinox, Dreskin is jointly and severally liable, along with Equinox, for all damages in this action.

PUNITIVE DAMAGES – Equinox, LLC and Dreskin

115. Defendants re-allege and incorporate by reference every allegation contained in the preceding paragraphs of this Complaint as though set forth herein.

116. The acts and/or omissions of the Plaintiffs, as stated above, were willful, wanton, grossly negligent, negligence per se, and/or in reckless disregard for the safety, health, mental wellbeing, life and intellectual and financial future tenants.

117. The conduct of the Plaintiffs as set forth above and including the retaliatory threats and lawsuits in violation of law justifies an award of punitive damages as to the Plaintiffs for each and every claim of the Defendants.

WHEREFORE, Defendants pray for the following damages and relief:

1. For offset monies in an amount to be determined at trial;
2. That Plaintiffs' actions (as consolidated) as to Brandon Epps for monies due be dismissed as improperly pled;
3. For personal injury, general, special and property damage and loss in an amount to be determined at trial;
4. For Punitive Damages;
5. Reasonable attorney fees and attorney fees for the defense of the frivolous claim of defamation;
6. Costs of suit;
7. For such other relief as the Court may deem just and proper.

This 12th day of October, 2020.

JAMES, MCELROY AND DIEHL, P.A.

By: s/ Richard B. Fennell

Richard B. Fennell

Jennifer M. Houti

Jon P. Carroll (*pro hac vice*)

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Charlotte, NC 28202

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jhouti@jmdlaw.com;

jcarroll@jmdlaw.com

Attorneys for Defendants and Third-Party Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Defendants' Second Amended Answer and Counterclaims was served by Electronic Court Filing on all counsel of record, as follows:

Adam C. Bach
R. Hudson Smith
Eller Tonnsen Bach, LLC
1306 South Church Street
Greenville, SC 29605
Tel 864.236.5013
Fax 864.312.4191
Attorneys for Plaintiff

JAMES, MCELROY AND DIEHL, P.A.

By: s/ Richard B. Fennell
Richard B. Fennell
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Attorneys for Defendants and Third-Party Plaintiffs

Dated: October 12, 2020
Charlotte, North Carolina

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
CIVIL CASE NO.: 2017-CP-04476

EQUINOX, LLC,)
)
Plaintiff/Counterclaim)
Defendant,)

vs.)

SUMMONS

BRANDON EPPS & COURTNEY EPPS,)
)
)
Defendants/Counterclaim,)
Plaintiffs/Third-Party)
Plaintiffs,)

BRANDON EPPS AND COURTNEY)
EPPS, as Next of Friends of ALEXIS)
MARION HUCKS, ADRIANNE BELLE)
HUCKS, WELLS SKIPPER HUCKS,)
SAWYER LANE EPPS, COOPER WADE)
EPPS, and LILI MADELYN EPPS,)
)
Third-Party Plaintiffs,)

vs.)

RICHARD B. DRESKIN,)
)
)
Third-Party Defendant.)

TO: Richard Dreskin
214 Oak Meadow Drive
Simpsonville, SC 29681

You have previously been served with a summons in the action Courtney Epps, et al. v. Dreskin and Equinox, LLC, 2020-CP-42-01301. Those claims have been consolidated into this action. To the extent deemed necessary, you are additionally hereby summoned and required to

answer Defendants' and Third-Party Plaintiffs' Second Amended Answer and Counterclaims and Third-Party Claims, herewith served upon you, and to serve a copy of your answer to same upon the subscriber at 525 N. Tryon Street, Suite 700, Charlotte, NC 28202, within thirty (30) days after the service hereof, exclusive of the day of such service. If you fail to answer within that time, you will be considered to be in default and the Plaintiffs will move before the Court for the relief demanded in Defendants' and Third-Party Plaintiffs' Second Amended Answer and Counterclaims and Third-Party Claims.

Charlotte, North Carolina
Dated: October 19, 2020

/s/ Richard B. Fennell
Richard B. Fennell (S.C. Bar #10467)
JAMES, McELROY & DIEHL, P.A.
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Email: rfennell@jmdlaw.com
*Attorneys for Defendants/Counterclaim
Plaintiffs/Third-Party Plaintiffs*

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT
2020-CP-42-01301

COURTNEY EPPS AND BRANDON
EPPS, individually, and as Next of Friends of
ALEXIS MARION HUCKS, ADRIANNE
BELLE HUCKS, WELLS SKIPPER
HUCKS, SAWYER LANE EPPS, COOPER
WADE EPPS, and LILLI MADELYN EPPS,

Plaintiff,

vs.

RICHARD B. DRESKIN, M.D. and
EQUINOX, LLC,

Defendant.

**JOINT STIPULATION OF DISMISSAL,
WITHOUT PREJUDICE**

Pursuant to the Order entered on October 9, 2020, and Rule 41 of the South Carolina Rules of Civil Procedure, Plaintiffs Courtney Epps and Brandon Epps, individually and as Next of Friends of Alexis Marion Hucks, Adrienne Belle Hucks, Wells Skipper Hucks, Sawyer Lane Epps, Cooper Wade Epps, and Lili Madelyn Epps, and Defendants Richard B. Dreskin, M.D. and Equinox, LLC, by and through their undersigned counsel, hereby stipulate to the dismissal, *without prejudice*, of all claims in this action. This stipulation shall fully resolve this action in its entirety. Each party shall be responsible for their own costs and attorney's fees.

IT IS SO STIPULATED this 19th day of October, 2020.

JAMES, MCELROY AND DIEHL, P.A.

ELLER TONNSEN BACH, LLC

By: s/ Richard B. Fennell
Richard B. Fennell
Jennifer M. Houti
Jon P. Carroll (*pro hac vice*)
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jhouti@jmdlaw.com;
jcarroll@jmdlaw.com
Attorneys for Plaintiffs

By: s/ Adam C. Bach
Adam C. Bach
R. Hudson Smith
Eller Tonnsen Bach, LLC
1306 South Church Street
Greenville, SC 29605
Attorneys for Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date a copy of the foregoing **Joint Stipulation of Dismissal, Without Prejudice** was filed with the Court using the electronic filing system, which will transmit notification of such filing, constituting service thereof, to Defendants' counsel of record as follows:

Adam C. Bach
R. Hudson Smith
Eller Tonnsen Bach, LLC
1306 South Church Street
Greenville, SC 29605
Tel 864.236.5013
Fax 864.312.4191
Attorneys for Defendants

This the 19th day of October, 2020.

JAMES, MCELROY AND DIEHL, P.A.

By: s/ Richard B. Fennell
Richard B. Fennell
Jennifer M. Houti
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jhouti@jmdlaw.com;
jcarroll@jmdlaw.com
Attorneys for Plaintiffs

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Equinox, LLC,

Plaintiff,

vs.

Brandon Epps and Courtney Epps,

Defendants.

 Brandon Epps and Courtney Epps, as next of
 friends of Alexis Marion Hucks, Adrienne
 Belle Hucks, Wells Skipper Hucks, Sawyer
 Lane Epps, Cooper Wade Epps, and Lili
 Madelyn Epps,

Third-Party Plaintiffs,

vs.

Richard B. Dreskin,

Third-Party Defendant.

IN THE COURT OF COMMON PLEAS

SEVENTH JUDICIAL CIRCUIT

C.A. No. 2017-CP-42-04476

**PLAINTIFF EQUINOX, LLC'S REPLY
 AND ANSWER TO SECOND
 AMENDED ANSWER,
 COUNTERCLAIMS AND THIRD-
 PARTY CLAIMS**

(Jury Trial Demanded)

The plaintiff, Equinox, LLC ("Equinox"), replying and answering the "Defendants' and Third-Party Plaintiffs' Second Amended Answer and Counterclaims and Third-Party Claims" filed on October 12, 2020 by Defendants/Third-Party Plaintiffs Brandon Epps and Courtney Epps, as next of friends of Alexis Marion Hucks, Adrienne Belle Hucks, Wells Skipper Hucks, Sawyer Lane Epps, Cooper Wade Epps, and Lili Madelyn Epps (the "Counterclaims"), would respectfully allege and show unto the Court as follows:

FOR A FIRST DEFENSE

1. The paragraphs numbered 1 to 49 of the Counterclaims are not directed at Equinox, therefore no response is required. To the extent a response is required, the allegations are denied.

2. In response to the allegations of paragraph 50, Equinox admits that it is subject to the Court's jurisdiction and that the real property formerly leased to the defendants with the address of 618 Garden Rose Ct. Greer, SC 29651 (the "Premises") is located Spartanburg County. The remaining allegations are denied.

3. In response to the allegations of paragraph 51, Equinox admits that Defendant Courtney Epps, non-party Kathy Owens, and Equinox entered into a lease agreement dated February 1, 2016 for the Premises (the "Lease") and that Equinox and Defendants Courtney Epps and Brandon Epps entered into the Lease Extension and Modification Agreement (the "Amendment") around October 1, 2017. Equinox further admits that defendants and their minor children were tenants at the Premises subject to these agreements. Equinox denies all remaining allegations.

4. In response to the allegations of paragraph 52, Equinox admits that it is a limited liability company with a business address of 214 Oak Meadow Drive, Simpsonville, SC 29681 and that it owned the Property at all times relevant to the Counterclaims.

5. In response to the allegations of paragraph 53, Equinox specifically denies that it committed any act or omission that caused damages to defendants and/or third-party plaintiffs. Equinox denies all remaining allegations.

6. In response to the allegations of paragraph 54, Equinox admits that Richard Dreskin and/or other individuals performed various actions within the course and scope of their employment with Equinox. Equinox denies all remaining allegations.

7. Equinox denies the allegations of paragraph 55.

8. In response to the allegations of paragraph 56, Equinox admits that the City of Greer served two notices to Equinox on or about October 26, 2017 and December 27, 2017, refers to the subject notices, and denies all allegations inconsistent therewith. Equinox denies the remaining allegations.

9. In response to the allegation of paragraph 57, Equinox admits that it did not provide notice to the defendants because they had already vacated the Premises and terminated the Lease. Equinox denies all remaining allegations.

10. Equinox denies the allegations of paragraph 58.

11. Equinox denies the allegations of paragraph 59.

12. In response to the allegations of paragraph 60, Equinox admits that the defendants resided at the Premises during times relevant to the Counterclaims pursuant to the Lease. Equinox denies all remaining allegations.

13. In response to the allegations of paragraph 61, Equinox admits that the defendants notified Equinox about an alleged leak at the Premises in May 2017 and that, although they spent multiple weeks searching for it, Equinox's contractors never located an active leak. Equinox denies all remaining allegations.

14. In response to the allegations of paragraph 62, Equinox admits that the defendants attempted to terminate the Lease effective November 18, 2017 and denies all remaining allegations.

15. Equinox denies the allegations of paragraph 63.

16. Equinox denies the allegations of paragraph 64.

17. In response to the allegations of paragraph 65, Equinox repeats and realleges the defenses stated in the previous paragraphs as if fully restated herein.

18. The allegations of paragraph 66 constitute a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

19. Equinox denies the allegations of paragraph 67.

20. In response to the allegations of paragraph 68, Equinox admits that the defendants notified Equinox about an alleged leak at the Premises in May 2017 and that, although they spent multiple weeks searching for it, Equinox's contractors never located an active leak. The remaining allegations constitute a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

21. Equinox denies the allegations of paragraph 69.

22. Equinox denies the allegations of paragraph 70.

23. The allegations of paragraph 71 constitute a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

24. In response to the allegations of paragraph 72, Equinox repeats and realleges the defenses stated in the previous paragraphs as if fully restated herein.

25. Equinox denies the allegations of paragraph 73.

26. Equinox denies the allegations of paragraph 74.

27. Equinox denies the allegations of paragraph 75.

28. In response to the allegations of paragraph 76, Equinox admits that the City of Greer served a violation to Equinox on or about October 26, 2017, refers to the subject notice, and denies all allegations inconsistent therewith. Equinox further admits that Richard B. Dreskin signed an affidavit on or about October 26, 2017, refers to the subject affidavit, and denies all allegations inconsistent therewith. Equinox denies all remaining allegations of paragraph 76.

29. Equinox denies the allegations of paragraph 77.

30. Equinox denies the allegations of paragraph 78.

31. Equinox denies the allegations of paragraph 79.

32. Equinox denies the allegations of paragraph 80.

33. In response to the allegations of paragraph 81, Equinox repeats and realleges the defenses stated in the previous paragraphs as if fully restated herein.

34. Equinox denies the allegations of paragraph 82.

35. In response to the allegations of paragraph 83, Equinox denies that it entered the Premises without appropriate notice where required. The remaining allegations constitute a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

36. Equinox denies the allegations of paragraph 84.

37. In response to the allegations of paragraph 85, Equinox repeats and realleges the defenses stated in the previous paragraphs as if fully restated herein.

38. Equinox denies the allegations of paragraph 86.

39. Equinox denies the allegations of paragraph 87.

40. Equinox denies the allegations of paragraph 88.

41. Equinox denies the allegations of paragraph 89.

42. Equinox denies the allegations of paragraph 90.

43. Equinox denies the allegations of paragraph 91.

44. In response to the allegations of paragraph 92, Equinox repeats and realleges the defenses stated in the previous paragraphs as if fully restated herein.

45. Equinox denies the allegations of paragraph 93.

46. Equinox denies the allegations of paragraph 93.

47. Equinox denies the allegations of paragraph 94.

48. Equinox denies the allegations of paragraph 95.

49. Equinox denies the allegations of paragraph 96.

50. In response to the allegations of paragraph 97, Equinox repeats and realleges the defenses stated in the previous paragraphs as if fully restated herein.

51. Equinox denies the allegations of paragraph 98.

52. Equinox denies the allegations of paragraph 99.

53. Equinox denies the allegations of paragraph 100.

54. In response to the allegations of paragraph 101, Equinox repeats and realleges the defenses stated in the previous paragraphs as if fully restated herein.

55. Equinox denies the allegations of paragraph 102.

56. Equinox denies the allegations of paragraph 103.

57. Equinox denies the allegations of paragraph 104.

58. Equinox denies the allegations of paragraph 105.

59. In response to the allegations of paragraph 106, Equinox repeats and realleges the defenses stated in the previous paragraphs as if fully restated herein.

60. Equinox denies the allegations of paragraph 107.

61. Equinox denies the allegations of paragraph 108.

62. Equinox denies the allegations of paragraph 109.

63. Equinox denies the allegations of paragraph 110.

64. Equinox denies the allegations of paragraph 111.

65. Equinox denies the allegations of paragraph 112.

66. Equinox denies the allegations of paragraph 113.

67. Equinox denies the allegations of paragraph 114.

68. In response to the allegations of paragraph 115, Equinox repeats and realleges the defenses stated in the previous paragraphs as if fully restated herein.

69. Equinox denies the allegations of paragraph 116.

70. Equinox denies the allegations of paragraph 117.

71. Equinox denies each and every allegation of the Counterclaims not admitted, modified, or explained hereinabove.

FOR A SECOND DEFENSE

72. Equinox adopts and realleges the allegations of its previous defenses as if fully repeated herein.

73. Defendants/Third-Party Plaintiffs have failed to state facts sufficient to constitute a cause of action, and their claims should be dismissed.

FOR A THIRD DEFENSE

74. Equinox adopts and realleges the allegations of its previous defenses as if fully repeated herein.

75. Defendants/Third-Party Plaintiffs' claims for relief are barred, in whole or in part, by the equitable doctrines of unclean hands, estoppel, and laches.

FOR A FOURTH DEFENSE

76. Equinox adopts and realleges the allegations of its previous defenses as if fully repeated herein.

77. Defendants/Third-Party Plaintiffs have voluntarily and intentionally waived known rights against Equinox, and therefore their claims should be dismissed.

FOR A FIFTH DEFENSE

78. Equinox adopts and realleges the allegations of its previous defenses as if fully repeated herein.

79. Defendants/Third-Party Plaintiffs failed to mitigate their damages as required by law.

FOR A SIXTH DEFENSE

80. Equinox adopts and realleges the allegations of its previous defenses as if fully repeated herein.

81. Equinox alleges that even assuming it was negligent, careless, grossly negligent, willful, wanton, or reckless in any respect, and that any such conduct on its part operated as a proximate cause of Defendants/Third-Party Plaintiffs' damages, if any, all of which is expressly denied and admitted solely for the purpose of this defense and no other, that Defendants/Third-Party Plaintiffs' negligent, grossly negligent, reckless, willful, and wanton conduct contributed more than fifty percent to the cause of any breach of the standard of care and Defendants/Third-Party Plaintiffs' resulting injuries and damages, if any. For that reason, Equinox is not liable to Defendants/Third-Party Plaintiffs in any sum whatsoever.

FOR A SEVENTH DEFENSE

82. Equinox adopts and realleges the allegations of its previous defenses as if fully repeated herein.

83. Equinox alleges that even if it was negligent, careless, grossly negligent, reckless, willful, or wanton in any respect whatsoever, which is expressly denied and admitted solely for the purpose of this defense and no other, and even if any such conduct on its part operated as a greater than fifty percent cause of Defendants/Third-Party Plaintiffs' resulting damages, if any, which is also expressly denied and admitted solely for the purpose of this defense and no other,

Equinox is entitled to a determination as to the percentage that Defendants/Third-Party Plaintiffs' negligent, grossly negligent, reckless, willful, and wanton conduct contributed to their damages and to a reduction of any amount awarded to Defendants/Third-Party Plaintiffs in an amount equal to that percentage of Defendants/Third-Party Plaintiffs own negligent, grossly negligent, reckless, willful, and wanton conduct.

FOR AN EIGHTH DEFENSE

84. Equinox adopts and realleges the allegations of its previous defenses as if fully repeated herein.

85. Equinox alleges that the damages alleged by Defendants/Third-Party Plaintiffs, if any, resulted from intervening and superseding acts of persons or entities for whom Equinox is not liable or responsible.

FOR A NINTH DEFENSE

86. Equinox adopts and realleges the allegations of its previous defenses as if fully repeated herein.

87. Equinox is entitled to an offset against any damages that it may owe to Defendants/Third-Party Plaintiffs, if any, in the amounts to be determined by the trier of fact.

FOR A TENTH DEFENSE

88. Equinox adopts and realleges the allegations of its previous defenses as if fully repeated herein.

89. The lease agreement between Equinox and Defendants/Third-Party Plaintiffs was materially breached by Defendants/Third-Party Plaintiffs' failure to perform. Therefore, Defendants/Third-Party Plaintiffs' claims should be dismissed.

FOR A ELEVENTH DEFENSE

90. Equinox adopts and realleges the allegations of its previous defenses as if fully repeated herein.

91. Some or all of Defendants/Third-Party Plaintiffs' claims may be barred because Equinox's conduct was at all times undertaken in good faith.

FOR A TWELFTH DEFENSE

92. Equinox adopts and realleges the allegations of its previous defenses as if fully repeated herein.

93. To the extent that the Counterclaims seek punitive and exemplary damages, such claims violate the rights of Equinox to procedural and/or substantive due process under the Fourteenth Amendment of the United States Constitution and the Constitution of the State of South Carolina, and therefore the Counterclaims fail to state a cause of action upon which either exemplary or punitive damages can be awarded.

FOR A THIRTEENTH DEFENSE

94. Equinox adopts and realleges the allegations of its previous defenses as if fully repeated herein.

95. Defendants/Third-Party Plaintiffs' claims, in whole or in part, are barred due to the doctrine of assumption of risk.

FOR A FOURTEENTH DEFENSE

96. Equinox adopts and realleges the allegations of its previous defenses as if fully repeated herein.

97. Defendants/Third-Party Plaintiffs' claims, in whole or in part, are barred by the doctrine of accord and satisfaction.

FOR A FIFTEENTH DEFENSE

98. Equinox adopts and realleges the allegations of its previous defenses as if fully repeated herein.

99. Defendants/Third-Party Plaintiffs have failed to bring one or more claims pursuant to the applicable statute of limitations, therefore said claims should be dismissed.

FOR A SIXTEENTH DEFENSE

100. Equinox adopts and realleges the allegations of its previous defenses as if fully repeated herein.

101. Equinox pleads the limitations on punitive damage awards found in S.C. Code Ann. §§ 15-32-510 to -530, and requests bifurcation in accordance with these code sections

FOR A SEVENTEENTH DEFENSE

102. Equinox adopts and realleges the allegations of its previous defenses as if fully repeated herein.

103. Defendants/Third-Party Plaintiffs have failed to plead the elements of fraud with sufficient particularity pursuant to Rule 9(b), SCRPC, and, therefore, their claims for fraud must be dismissed.

WHEREFORE, having fully replied to Defendants/Third-Party Plaintiffs' Second Amended Answer and Counterclaims and Third-Party Claims herein, Plaintiff Equinox, LLC prays that same be dismissed with costs and for such other and further relief as the Court deems just and proper.

[SIGNATURE PAGE FOLLOWS.]

Respectfully submitted,

s/Adam C. Bach

Adam C. Bach (#74885)
R. Hudson Smith (#101369)
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Greenville, SC 29605
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hsmith@etblawfirm.com

Attorneys for Plaintiff Equinox, LLC and
Richard B. Dreskin

October 27, 2020

Greenville, South Carolina

Plaintiff Equinox, LLC hereby demands a trial by jury of all issues triable by a jury.

s/Adam C. Bach

Adam C. Bach

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Equinox, LLC,

Plaintiff,

vs.

Brandon Epps and Courtney Epps,

Defendants.

 Brandon Epps and Courtney Epps, as next
 of friends of Alexis Marion Hucks,
 Adrienne Belle Hucks, Wells Skipper
 Hucks, Sawyer Lane Epps, Cooper Wade
 Epps, and Lili Madelyn Epps,

Third-Party Plaintiffs

vs.

Richard B. Dreskin,

Third-Party Defendant.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

C.A. No. 2017-CP-42-04476

**NOTICE OF MOTION AND MOTION
FOR JUDGMENT ON THE
PLEADINGS OF THIRD-PARTY
DEFENDANT RICHARD B. DRESKIN**

TO: DEFENDANTS/THIRD-PARTY PLAINTIFFS BRANDON EPPS AND COURTNEY EPPS, INDIVIDUALLY AND AS NEXT OF FRIENDS OF ALEXIS MARION HUCKS, ADRIANNE BELLE HUCKS, WELLS SKIPPER HUCKS, SAWYER LANE EPPS, COOPER WADE EPPS, AND LILI MADELYN EPPS, AND THEIR ATTORNEYS RICHARD B. FENNEL JENNIFER M. HOUTI JON P. CARROLL

YOU WILL PLEASE TAKE NOTICE, that the third-party defendant, Richard B. Dreskin, will move at a date and time to be set by the Court, pursuant to Rule 12(c) of the *South Carolina Rules of Civil Procedure*, for an order dismissing all claims asserted against him in the second amended counterclaims and third-party claims as a matter of law. This motion is based upon the following grounds:

1. For the first time since this litigation began on October 17, 2017, Third-Party Defendant Richard B. Dreskin (“Dreskin”) was added as a party by Defendants/Third-Party Plaintiffs Brandon Epps and Courtney Epps, as next of friends of Alexis Marion Hucks, Adrienne Belle Hucks, Wells Skipper Hucks, Sawyer Lane Epps, Cooper Wade Epps, and Lili Madelyn Epps (collectively the “Defendants”).

2. According to the pleadings filed in this case:

- a. On February 1, 2016, Plaintiff Equinox, LLC (“Equinox”) and Defendant Courtney Epps entered into a lease agreement (the “Lease”) for the subject premises (the “Premises”); *see* Pltf. Amd. Compl., filed Feb. 14, 2018, ¶ 5, Ex. A;
- b. In either late May 2017 or early June 2017, the Defendants first notified Plaintiff Equinox, LLC (the “Equinox”) of suspected mold at the leased premises (the “Premises”), *see* Pltf. Amd. Compl., filed Feb. 14, 2018, ¶ 13; *see also* Defs. Sec Amd. Ans., filed Oct. 12, 2020, ¶ 68;
- c. On October 1, 2017, Equinox, Defendant Courtney Epps, and Defendant Brandon Epps entered into the Lease Extension and Modification which amended certain terms and conditions of the Lease; *see* Defs. Sec. Amd. Ans., filed Oct. 12, 2020, ¶ 51; and
- d. During October 2017, the Defendants abandoned the Premises; *see* Pltf. Amd. Compl., filed Feb. 14, 2018, ¶ 15; *see also* Defs. Sec Amd. Ans., filed Oct. 12, 2020, ¶ 68.

3. As to the Tenants’ Fifth Cause of Action against Dreskin and Equinox for Breach of Contract Accompanied by Fraudulent Act:

- a. The Defendants failed to allege that they entered into any contract with Dreskin;
- b. The Defendants failed to allege that Dreskin breached any contract with the Defendants;
- c. The Defendants failed to bring this claim against Dreskin within the applicable statute of limitations.

4. As to the Defendants’ Sixth Cause of Action against Dreskin and Equinox for Violation of South Carolina Unfair Trade Practices Act:

- a. The Defendants failed to allege any “unfair” or “deceptive” actions performed by Dreskin;
- b. The Defendants failed to allege any act by Dreskin in the conduct of “trade” or “commerce”;
- c. The Defendants failed to allege any act by Dreskin that has an impact on the public interest; and
- d. The Defendants failed to bring this claim against Dreskin within the applicable statute of limitations

5. As to the Defendants’ Seventh Cause of Action against Dreskin and Equinox for conversion:

- a. The Defendants failed to allege that Dreskin assumed control or possession over any property of the Defendants; and
- b. The Defendants failed to bring this claim against Dreskin within the applicable statute of limitations

6. As to the Defendants’ Eighth Cause of Action against Dreskin and Equinox for alter ego liability:

- a. The Defendants failed to allege facts sufficient to establish whether Dreskin totally dominated and controlled Equinox;
- b. The Defendants failed to allege facts sufficient to establish any inequitable consequences caused by Dreskin’s alleged domination of Equinox.
- c. The Defendants failed to allege facts sufficient to establish that (1) whether Equinox was grossly undercapitalized; (2) whether Dreskin failed to observe corporate formalities; (3) whether Equinox failed to pay dividends; (4) whether Equinox was insolvent; (5) whether Dreskin siphoned any funds of Equinox; (6) whether Equinox has any other participating officers or directors other than Dreskin; (7) whether Equinox has any corporate records; and (8) whether Equinox was merely a façade for the operations of Dreskin;
- d. The Defendants failed to allege facts sufficient that would establish that disregarding the corporate form of Equinox would prove an injustice or fundamental unfairness; and
- e. The Defendants failed to bring this claim against Dreskin within the applicable statute of limitations

7. The Defendants failed to state facts sufficient to constitute a cause of action against Dreskin under Rule 12(b)(6) and/or 12(c), SCRCP.

8. Third-Party Defendant Richard B. Dreskin is entitled to an order dismissing the third-party complaint against him as a matter of law.

This motion is based upon the pleadings filed in this action, upon any future memorandum of law submitted by the movant, and upon applicable common and statutory law.

Respectfully submitted,

s/Adam C. Bach

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November 11, 2020

Greenville, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
2017-CP-42-04476

EQUINOX, LLC,

Plaintiff,

vs.

BRANDON EPPS & COURTNEY EPPS,

Defendants.

BRANDON EPPS AND COURTNEY EPPS, as
Next of Friends of ALEXIS MARION HUCKS,
ADRIANNE BELLE HUCKS, WELLS SKIPPER
HUCKS, SAWYER LANE EPPS, COOPER WADE
EPPS, and LILI MADELYN EPPS,

Third-Party Plaintiffs,

vs.

RICHARD B. DRESKIN,

Third-Party Defendant.

**DEFENDANTS' MOTION
FOR PARTIAL SUMMARY
JUDGMENT**

Pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, Defendants Brandon Epps and Courtney Epps ("Defendants"), respectfully move the Court for entry of partial summary judgment in their favor on Plaintiff Equinox, LLC's claims for breach of contract, unjust enrichment, conversion, and attorneys' fees. Plaintiffs show the Court that there are no genuine issues of material fact and Defendants are entitled to judgment as a matter of law as: (1) the Property had been declared uninhabitable by the City of Greer during the period for which Plaintiff seeks to recover rent payments; (2) the Property was condemned by the City of Greer during the period for which Plaintiff seeks to recover rent payments; (3) Plaintiff constructively evicted

Defendants from the property; (4) Plaintiff seeks to recover rent payments after the Lease was terminated; (5) recovery for unjust enrichment is foreclosed by the existence of a contract between the parties; (6) Plaintiff alleges that Defendants exercised dominion and control over real property, which does not give rise to a conversion claim as a matter of law, Hawkins v. City of Greenville, 358 S.C. 280, 297, 594 S.E.2d 557, 566 (S.C. Ct. App. 2004); (7) Defendants did not exercise any rights of ownership or otherwise convert any personal property of Plaintiff; and (8) to the extent Plaintiff was prevented from accessing any of its personal property, it was as the result of regulatory and code enforcement action by the City of Greer and not through Defendants' conduct.

In support of this Motion, Plaintiffs rely on the pleadings filed in this action, the Affidavit of Richard B. Fennell, the October 7, 2019 Affidavit of Brent C. Horton previously filed on October 16, 2019, the October 15, 2019 Affidavit of Courtney Epps previously filed on October 16, 2019, and the documentary exhibits attached thereto.

WHEREFORE, Plaintiffs Brandon Epps and Courtney Epps respectfully move the Court for entry of partial summary judgment in their favor on Plaintiff Equinox, LLC's claims.

This the 26th day of January, 2021.

JAMES, MCELROY AND DIEHL, P.A.

By: s/ Richard B. Fennell

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*Attorneys for Defendants and Third-Party
Plaintiffs*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date a copy of the foregoing **Defendants' Motion for Partial Summary Judgment** was filed with the Court using the electronic filing system, which will transmit notification of such filing, constituting service thereof, to Plaintiff's and Third-Party Defendant's counsel of record as follows:

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 Third-Party Defendant Richard B. Dreskin*

This the 26th day of January, 2021.

JAMES, MCELROY AND DIEHL, P.A.

By: s/ Richard B. Fennell

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 Plaintiffs*

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Equinox, LLC,

Plaintiff,

vs.

Brandon Epps & Courtney Epps,

Defendants.

 Brandon Epps and Courtney Epps, As Next
 of Friends of Alexis Marion Hucks, Adrienne
 Belle Hucks, Wells Skipper Hucks, Sawyer
 Lane Epps, Cooper Wade Epps, and Lili
 Madelyn Epps,

Third-Party Plaintiffs,

vs.

Richard B. Dreskin,

Third-Party Defendant.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

C.A. No. 2017-CP-42-04476

**THIRD-PARTY DEFENDANT
 RICHARD B. DRESKIN'S
 MEMORANDUM IN SUPPORT OF HIS
 MOTION FOR JUDGMENT ON THE
 PLEADINGS**

Third-Party Defendant Richard B. Dreskin, by and through his undersigned attorneys, hereby submits his memorandum in support of his Motion for Judgment on the Pleadings under Rule 12(c) of the *South Carolina Rules of Civil Procedure*.

I. FACTUAL BACKGROUND

A. Factual Allegations

On or about February 1, 2016, Plaintiff Equinox, LLC ("Equinox") entered into a lease agreement (the "Lease") with two tenants, Defendant Courtney Epps and Kathy Owens, for the premises located at 618 Garden Rose Ct, Greer, SC (the "Premises") beginning on February 1,

2016 and ending on January 31, 2017. *See* Plaintiff's Amended Complaint, filed Feb. 14, 2018 (the "Amended Complaint"), ¶¶ 5-6. On October 1, 2017, Equinox entered into the Lease Extension and Modification with Defendant Brandon Epps and Defendant Courtney Epps, which added Brandon Epps as a lessee, removed Kathy Owens as a lessee, and extended the lease term from October 1, 2017 to September 30, 2018. *See* Defendants' Second Amended Answer, Counterclaims, and Third-Party Claims, filed Oct. 12, 2020 (the "Second Amended Answer"), ¶ 51; *see also* Amended Complaint, ¶ 11. Third-Party Defendant Richard B. Dreskin is not a party to either the Lease or any subsequent modification. Amended Complaint, Ex. A, Ex. B.

Beginning in May 2017, Defendants notified Equinox for the first time that they believed mold was present at the Premises. Amended Complaint, ¶ 13; Second Amended Answer, ¶ 68. Although Equinox spent multiple weeks attempting to locate a leak, including drywall removal and replacing an undamaged toilet seal, it did not locate any evidence of an active leak or visible mold. Amended Complaint, ¶¶ 13-14. Rather, Equinox located discolored floorboards in the guest bathroom where it appeared the toilet had overflowed due to a blockage caused by Defendants, causing damage to the surrounding flooring. *Id.*

On October 9, 2017, Equinox notified Defendants they were months behind on rent and that eviction would begin in ten days if not cured. *Id.* ¶ 16. Around that same time, Defendants abandoned the Premises, notified Equinox of their termination of the Lease, and claimed various health ailments due to mold. *See id.*, ¶ 15; *see also* Second Amended Answer, ¶ 62, 68.

B. Procedural History

On or about October 17, 2017, Plaintiff Equinox, LLC filed an ejectment action against Defendants Brandon Epps and Courtney Epps in the Spartanburg County Magistrate Court captioned "*Equinox, LLC v. Brandon & Courtney Epps*, C.A. No. 2017CV4210108684." After an ejectment hearing on November 17, 2017, Magistrate Court ruled that it lacked subject matter

jurisdiction over the ejectment because the Defendants intended to file a future counterclaim in excess of \$7,500.00. *See* Amended Complaint, ¶ 22. Equinox filed the instant lawsuit against Defendants on December 7, 2017 alleging five causes of action. *See* Complaint, filed Dec. 7, 2017. Defendants filed an answer and counterclaims against Equinox. Answer, filed Jan. 15, 2018.

On February 14, 2018, the Amended Complaint was filed alleging claims of breach of contract, unjust enrichment, conversion, defamation, and attorney's fees. *See* Amended Complaint. Defendants filed an amended answer and counterclaim on March 9, 2018 alleging claims of breach of contract, breach of warranty, nuisance, and negligence against Equinox. *See* Amended Answer, filed Mar. 9, 2018. After extensive written discovery, Equinox took the depositions of Defendant Courtney Epps on October 10, 2018 and Defendant Brandon Epps on November 15, 2018. Richard B. Dreskin, then a non-party, was deposed on July 26, 2018.

Although Defendants filed a joint motion to add necessary parties on November 21, 2018, the Defendants did not file amended pleadings before their attorney sought to withdraw as counsel on March 6, 2019. *See* Joint Motion to Add Necessary Parties, filed Nov. 21, 2018; *see also* Motion for Withdrawal, filed Mar. 6, 2019. On March 11, 2019, the Court granted the withdrawal request and stayed the case for 14 days. *See* Order, Mar. 11, 2019. After multiple months elapsed with no counsel representing Defendants and with trial set for October 18, 2019, Equinox worked to complete discovery, including taking additional depositions, and to prepare the case for trial. After Equinox filed a motion for summary judgment on August 22, 2019, the still *pro se* Defendants requested additional time to obtain counsel at the hearing on September 5, 2019. *See* Motion for Summary Judgment, filed Aug. 22, 2019; Order, filed Sept. 10, 2019. On October 16,

2019, Defendants' current counsel filed a notice of appearance, and Equinox withdrew its pending summary judgment motion.

On December 6, 2019, Defendants filed a Motion for Leave to Amend Answer in order to assert new claims against Richard B. Dreskin, which was opposed by Equinox. Motion for Leave to Amend, filed Dec. 6, 2019. Days before Defendants' motion was to be heard by the Court, this litigation was dismissed pursuant to Rule 40(j), SCRCPP on January 23, 2020. Consent Order, filed Jan. 23, 2020. On April 3, 2020, Defendants filed a motion to restore the case, which was ultimately granted on May 12, 2020. Motion to Restore, filed April 3, 2020; Order, filed May 12, 2020. Without obtaining permission from the Court to amend their pleadings in this action to add Richard B. Dreskin as a party, Defendants instead filed a second, duplicative lawsuit (the "2020 Action") against Dreskin and Equinox on April 16, 2020 under Case No. 2020-CP-42-01301 and moved to consolidate the cases on May 19, 2020. Motion to Consolidate, filed May 19, 2020.

On October 9, 2020, the Court issued an order allowing Defendants to file amended pleadings in this lawsuit and requiring Defendants to dismiss the 2020 Action. Order, filed Oct. 9, 2020. On October 12, 2020, Defendants filed the Second Amended Answer, Counterclaims, and Third-Party Claims adding Richard B. Dreskin as a party for the first time after three years of litigation. On November 12, 2020, Dreskin filed the instant motion for judgment on the pleadings.

II. STANDARD OF REVIEW

Parties are permitted to make a motion for judgment on the pleadings under Rule 12(c) of the South Carolina Rules of Civil Procedure "[a]fter the pleadings are closed—but early enough not to delay trial..." Rule 12(c), SCRCPP. A motion to dismiss under Rule 12(c) is designed to "dispos[e] of cases in which there is no substantive dispute that warrants the litigants and the court proceeding further..." 5 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure*, § 1368 (3d ed. 2010).

A Rule 12(c) motion admits the well pleaded facts in the complaint; it does not admit the inferences drawn by the plaintiff from such facts, nor does it admit conclusions of law. *Russell v. City of Columbia*, 390 S.E.2d 463, 464 (S.C. App. 1989), rev'd, 406 S.E.2d 338 (S.C. 1991). “The court must take well pleaded factual allegations as true. However, allegations which are conclusory rather than factual should be disregarded.” *Id.* (citing *Myrtle Apartments, Inc. v. Lumbermen's Mutual Casualty Co.*, 258 N.C. 49, 127 S.E.2d 759 (1962)).

III. ARGUMENT

A. The Statute of Limitations Bars All Claims Asserted Against Richard B. Dreskin

As the parties agree, the statute of limitations on the claims asserted by Third-Party Plaintiffs against Richard B. Dreskin began to accrue in May 2017. The parties disagree whether these same claims, which were not brought against Dreskin until over three years later on October 12, 2020, were filed within the applicable statute of limitations.

A statute of limitations reduces the interval between the accrual and commencement of a right of action to a fixed period, thereby putting to rest claims after the passage of time. *See* 51 Am.Jur.2d Limitations on Actions § 15 (1970); *Nowlin v. General Tel. Co.*, 310 S.C. 183, 186, 426 S.E.2d 114, 116 (Ct. App. 1992), aff'd, 314 S.C. 352, 444 S.E.2d 508 (1994). Unless an action is commenced before expiration of the limitations period, the plaintiff's claim is normally barred. *See McLain v. Ingram*, 314 S.C. 359, 444 S.E.2d 512 (1994). “[S]tatutes are designed to promote justice by forcing parties to pursue a case in a timely manner. Parties should act before memories dim, evidence grows stale or becomes nonexistent, or other people act in reliance on what they believe is a settled state of public affairs.” *State ex rel. Condon v. City of Columbia*, 339 S.C. 8, 19, 528 S.E.2d 408, 413–14 (2000).

1. The Parties Agree that a 3-Year Statute of Limitations Applies to Claims Asserted Against Richard Dreskin

In their Second Amended Answer, Third-Party Plaintiffs assert four third-party claims against Third-Party Defendant Richard Dreskin: breach of contract accompanied by fraudulent act, violation of the S.C. Unfair Trade Practices Act (“SCUPTA”), conversion, and alter ego liability. Except for alter ego liability, each of these claims is subject to a three-year statute of limitations. *See* S.C. Code Ann. § 15-3-530(1), -530(2), -530(5). South Carolina law does not recognize alter ego liability as an independent cause of action, rather it is merely theory of imposing liability on an underlying claim, often in post-judgment proceedings. *Drury Dev. Corp. v. Found. Ins. Co.*, 380 S.C. 97, 668 S.E.2d 798, 801 (2008) (“[A]n attempt to pierce the corporate veil is not itself a cause of action but rather a means of imposing liability on an underlying cause of action.”)

Third-Party Plaintiffs plead various causes of action against Dreskin personally all of which stem from the same event – the discovery of water damage and mold in a residence they were renting. Third-Party Plaintiffs plead they discovered this issue with their residence in “May 2017” and, in fact, delivered written notice “specifying the acts and omissions constituting the breach” in **May 2017**. *See* Second Amended Complaint, ¶ 68. Therefore, Third-Party Plaintiffs had until at least **May 30, 2020** to “commence” an action against Richard Dreskin each applicable statute of limitations. Third-Party Plaintiffs concede that if the applicable statute of limitations is applied to their claims for breach of contract accompanied by a fraudulent act and violations of SCUPTA, their claims are time-barred. *See* Memo. in Opp. at 5-8.

Here, it is uncontested that the first pleading asserting any claims against Third-Party Defendant Richard Dreskin was not filed until October 12, 2020. *See* Second Amended Ans, filed Oct. 12, 2020. Therefore, this pleading was filed 5 months after the expiration of the statute of limitations in May 2020. To save their claims against Dreskin, Third-Party Plaintiffs argue that the applicable statutes of limitations should be tolled because they filed a motion to amend to assert

these within the time period to commence these actions, point to North Carolina law in support of their position, and claim that no South Carolina court has considered whether a motion to amend tolls the applicable statute of limitations. Third-Party Plaintiffs' position is incorrect.

2. No Action was "Commenced" or Equitably Tolloed Against Richard Dreskin under South Carolina Law Until After the Statute of Limitations Had Expired

In South Carolina, an action is barred unless it is "commenced" within the period set forth in statute. S.C. Code Ann. § 15-3-510. In order to commence a civil action, the action must be filed and served within the applicable statute of limitations, or within 120 days after the statute of limitations expires. Rule 3, SCRPC; *see also* S.C. Code Ann. § 15-3-20. No provision is made for "commencement" of a civil action upon the filing of a motion to amend or any relation back to the date of the motion to amend. *Id.*

"Statutes of limitations are not simply technicalities. On the contrary, they have long been respected as fundamental to a well-ordered judicial system." *City of N. Myrtle Beach v. Lewis-Davis*, 360 S.C. 225, 231–32, 599 S.E.2d 462, 465 (Ct. App. 2004) (quoting 54 C.J.S. *Limitations of Actions* § 2, at 16–17 (1989)). "Statutes of limitations embody important public policy considerations in that they activity, punish negligence, and promote repose by giving security and stability to human affairs. *Id.*

"South Carolina has rarely applied the doctrine of equitable tolling to halt the running of the statute of limitations. Equitable tolling is reserved for extraordinary circumstances." *Am. Legion Post 15 v. Horry Cty.*, 381 S.C. 576, 582, 674 S.E.2d 181, 184 (Ct. App. 2009); *Pelzer v. State*, 378 S.C. 516, 520, 662 S.E.2d 618, 620 (Ct. App. 2008) ("Equitable tolling is a doctrine rarely applied in South Carolina to stop the running of statutes of limitations."). "Equitable tolling...is typically available only if the claimant was prevented in some extraordinary way from exercising his or her rights, or, in other words, if the

relevant facts present sufficiently rare and exceptional circumstances that would warrant application of the doctrine.” *Am. Legion Post 15.*, 381 S.C. at 583.

South Carolina has specifically rejected equitable tolling because of errors or deficiencies in pleadings:

A pleading error by Respondents does not serve as a justification for tolling the statute of limitations. Respondents bear the burden of protecting their claim from procedural bars and may not use tolling to save their claim. No rule or statute exists which tolls statute of limitations periods based on improper pleadings

City of N. Myrtle Beach, 360 S.C. at 234. Similarly, “when an action is dismissed without prejudice, the statute of limitations will bar another suit if the statute has run in the interim.” *Id.*

Third-Party Plaintiffs point to no law, decision, or circumstance that would justify the “extraordinary circumstances” required for equitable tolling to apply. This case has been pending for more than three years, and no discovery was done prior to the motion to amend that revealed facts previously unknown to Third-Party Plaintiffs. Instead, Third-Party Plaintiffs have known all of the facts relevant to their third-party complaint against Dreskin since 2017 yet chose to wait until 2020 to file a motion to amend. Nothing “extraordinary” prevented Third-Party Plaintiffs from exercising their right to move to amend within the statute of limitations.

3. Multiple Jurisdictions Outside South Carolina Agree that Third-Party Plaintiffs Failed to Commence an Action against Richard Dreskin During the Statute of Limitations

South Carolina’s appellate courts have not decided whether the mere filing of a motion to amend is the equivalent of a “commencing” a claim within the statute of limitations under South Carolina law. *See* Memorandum in Opp., p. 5. While Third-Party Plaintiffs urge the Court to follow a single holding by the North Carolina Court of Appeals, they ignore the numerous courts which have expressly held otherwise.

Multiple jurisdictions outside South Carolina have rejected the argument that merely filing a motion to amend within the statute of limitations satisfied a party's obligation to timely commence a claim. For example, the Supreme Court of Mississippi adopted the bright line rule that an amended complaint must be filed within the statute of limitations against newly named parties to be timely regardless of the timing of a motion to amend. *Wilner v. White*, 929 So. 2d 315, 319 (Miss. 2006) (“[I]f an amended complaint is filed after the statute of limitations has run—regardless of when the motion to amend was made—the statute of limitations bars suits against newly named defendants.”). A similar result was reached in Georgia. In construing Georgia's civil action commencement statute, which is similar in form to S.C. Code Ann. § 15-3-20, the Court of Appeals of Georgia observed that statute is clearly premised on the filing of a summons and complaint, not a motion to amend the complaint. *Exel Transp. Services, Inc. v. Sigma Vita, Inc.*, 288 Ga.App. 527, 530, 654 S.E.2d 665, 669 (Ga. App. 2007) (observing that the appellant “cited no authority for the proposition that the mere filing of a motion for a permissive counterclaim is the equivalent of bringing a claim.”).

Even the cases cited by Third-Party Plaintiffs cut against their argument. Where courts have been willing to suspend the statute of limitations due to a pending motion amend, these courts have required that both the motion to amend and the proposed pleading must be served on the new parties within the statute of limitations. Citing the same case relied upon by Third-Party Plaintiffs, a Colorado appeals court noted that, “[I]f a plaintiff files a motion to amend the complaint, accompanied by an amended complaint, and serves both upon the defendant before the expiration of the statute of limitations, the statute is tolled until the trial court rules on the motion.” *Moore v. Grossman*, 824 P.2d 7, 9 (Colo. App. 1991) (emphasis added). The Court of Appeals of Indiana

made the same observation that the motion to amend and proposed pleading must be served on the newly named parties within the statute of limitations for the tolling period to occur:

We find no Indiana case that holds that the filing of a motion to amend a complaint for the purpose of adding a new defendant tolls the running of the statute of limitations until the court rules on the motion...Even if we were inclined to adopt the rule in Indiana, the record does not reflect that the Freets met the requirements for tolling. That is, although the Freets filed both a motion to amend the complaint and the amended complaint before the expiration of the limitations period, there is no indication that the motion and amended complaint were served upon A.J.'s before the limitations period expired.

A.J.'s Automotive Sales, Inc. v. Freet, 725 N.E.2d 955, 966 (Ind. App. 2000).

Here, Mr. Dreskin was not served with an amended complaint or a motion to amend the complaint until well after the statute of limitations expired. As the filings with this Court indicate, Third-Party Plaintiffs filed a motion for leave to amend their answer on December 6, 2019. *See* Motion, filed Dec. 6, 2019. As the Notice of Electronic Filing clearly indicates, only Plaintiff Equinox, LLC was served electronically with Third-Party Plaintiff's motion. *See* Notice of Electronic Filing, Dec. 6, 2019. Instead of opting to serve the motion or proposed pleading upon Mr. Dreskin, the Third-Party Plaintiffs opted to dismiss this action pursuant to Rule 40(j), SCRCp, on January 23, 2020, effectively severing their motion to amend from the docket. *See* Order, filed Jan. 23, 2020. Rule 40(j) terminates the pendency of motions filed but not decided. Said differently, a motion does not remain "pending" after a case is dismissed pursuant to Rule 40(j). Therefore, to the extent that the Court could impute any "tolling" to the pendency of the motion to amend filed December 6, 2019, any such tolling was effectively terminated on January 23, 2020 as neither the motion nor this litigation was "pending" after January 23, 2020.

B. Third-Party Defendant Richard Dreskin Cannot Be Held Liable By Virtue of his Membership in Plaintiff Equinox, LLC

Under the law of South Carolina, corporate shareholders or members of a limited liability company are not jointly and severally liable for alleged tortious activity of a corporate entity.

“Generally, the reason for the creation of a corporation is to limit liability. While there are instances in which directors and/or trustees and officers may be personally liable, an officer or a director of a corporation is not, merely as a result of his standing as such, personally liable for torts of corporate employees.” *Hunt v. Rabon*, 275 S.C. 475, 476, 272 S.E.2d 643, 644 (1980). “A director or officer of a corporation does not incur personal liability for its torts merely by reason of his official character; he is not liable for torts committed by or for the corporation unless he has participated in the wrong.” *Id.* (citing 19 Am.Jur.2d Corporations, 4). “[T]he debts, obligations, and liabilities of a limited liability company, whether arising in contract, tort, or otherwise, are solely the debts, obligations, and liabilities of the company. A member or manager is not personally liable for a debt, obligation, or liability of the company solely by reason of being or acting as a member or manager.” S.C. Code Ann. § 33-44-303(a).

Here, the Second Amended Answer erroneously premises Third-Party Defendant’s liability solely upon his membership of Plaintiff Equinox, LLC. Third-Party Plaintiffs admit that only Equinox, LLC is a party to the lease agreement and its modification, Second Amended Complaint, pp. 2-3, ¶¶ 5, 10, and it alleges that Equinox, LLC solely “owned, managed, and controlled” the leased premises “at all material times.” *Id.*, p. 8, ¶ 52. Other than the Eighth Cause of Action, the third-party defendant is mentioned by name only twice in the pleading – in paragraph 56 alluding to his status as the “Managing Member of Equinox, LLC” and in paragraph 58 where it is alleged upon information and belief that prior tenants reported mold and water intrusion issues to Richard Dreskin. *See Id.*, p. 9, ¶¶ 56, 58. Otherwise, the rest of the Second Amended Answer specifically alleges numerous tortious acts imputed only to the singular “Plaintiff,” which is Equinox, LLC. *See id.*, ¶ 93 (“Plaintiff acted fraudulently and with fraudulent intent to deceive Defendants by concealing the known water intrusion problem at the House...”); ¶ 99 (“Plaintiff’s action as

described above, knowingly leasing a property with an unresolved water intrusion and mold problem, despite receiving comments and concerns from prior tenants regarding the same issues and intentionally failing to resolve or repair the issue, constitutes unfair and deceptive trade practices.”); ¶ 103 (“Plaintiff converted Defendants’ personal property wrongfully and without Defendants’ consent.”).

This sort of derivative liability is exactly the type of liability that the South Carolina Uniform Limited Liability Company Act is intended to prevent. While Third-Party Defendant Richard Dreskin could be held liable for torts that he personally committed, the Second Amended Answer does not describe any tort individually committed by Dreskin. Rather, it describes tortious activity that is only imputed to the singular “Plaintiff,” which is Equinox, LLC. Therefore, all claims against Third-Party Defendant Richard Dreskin should be dismissed as he is not vicariously liable for the torts of Equinox, LLC.

C. Third-Party Plaintiffs Failed to Allege a Claim for Breach of Contract Accompanied by Fraudulent Act Against Third-Party Defendant Richard Dreskin

In addition to Third-Party Plaintiffs’ failure to bring their claim for Breach of Contract Accompanied by Fraudulent Act within the statute of limitations, they have failed to sufficiently allege such a claim against Third-Party Defendant Richard Dreskin pursuant to Rule 12(b)(6), SCRCF. To allege a claim of breach of contract accompanied by fraudulent act, a plaintiff must identify: “(1) a breach of contract; (2) fraudulent intent relating to the breaching of the contract and not merely to its making; and (3) a fraudulent act accompanying the breach.” *Armstrong v. Collins*, 366 S.C. 204, 223, 621 S.E.2d 368, 377 (Ct. App. 2005).

1. Third-Party Plaintiffs Failed To Plead The Existence of Any Contract Between Third-Party Defendant Richard Dreskin and Any Third-Party Plaintiff

First, Third-Party Plaintiffs have failed to allege the existence of any contract between Third-Party Defendant Richard Dreskin and any of the Third-Party Plaintiffs. “Having a contract is a prerequisite to proving breach of contract accompanied by a fraudulent act.” *Armstrong*, 366 S.C. at 223. In Plaintiff’s Amended Complaint filed February 14, 2018, Plaintiff Equinox, LLC alleged that (i) the three parties to the original lease dated February 1, 2016 were Equinox, Defendant Courtney Epps, and Kathy Owens; and (ii) the three parties to the Lease Extension and Modification Agreement dated October 2017 were Equinox, Defendant Brandon Epps, and Defendant Courtney Epps. *See id.*, p. 2, ¶¶ 5, 10. Third-Party Plaintiffs admitted both of these allegations in their Second Amended Answer. *See Second Amended Ans.*, filed Oct. 12, 2020, ¶¶ pp. 2-3, ¶¶ 5, 10. No part of the Second Amended Answer contends that Richard Dreskin signed the initial lease, the lease extension and modification agreement, or any other document with any other party. Similarly, Third-Party Plaintiffs’ memorandum does not identify any contract between Dreskin or any of the third-party plaintiffs. *See Memo. In Opp.*, pp. 11-12. In the absence of a contract signed by Richard Dreskin, he cannot be held personally liable for Breach of Contract Accompanied by Fraudulent Act.

2. Third-Party Plaintiffs Failed To Plead A Breach of Any Contract by Third-Party Defendant Richard Dreskin

Despite admitting that Richard Dreskin was not a party to the lease agreement and its modification, Third-Party Plaintiffs claim that Dreskin breached those agreement failing to disclose or correct mold and water intrusion issues. *See Memo. In Opp.*, p. 12. However, the allegations identified by Third-Party Plaintiffs are found in the first and second causes of action, which are plead *only* against Plaintiff Equinox, LLC. *See id.*; *see also* Second Amended Answer, pp. 11-12. As noted above, the Fifth Cause of Action refers only to the singular “Plaintiff,” which is Equinox, LLC. *See id.*, p. 15. The claim does not mention Third-Party Defendant Richard

Dreskin at all, and it does not mention any breach of a contract by Dreskin. As such, the only specific allegations of a breach pertain to Plaintiff Equinox, LLC. *See* Second Amended Answer, ¶ 68 (“Defendants delivered a written notice to the Plaintiff specifying the acts and omissions constituting the breach in May 2017.”); ¶ 76 (“On or about October 26, 2017 the Plaintiff was notified in writing by a public code enforcement agency that the Plaintiff was required to correct some or all of the defective.”) (emphasis added).

3. Third-Party Plaintiffs Failed To Plead Any Fraudulent Act Committed by Third-Party Defendant Richard Dreskin

Similar to the lack of a breach committed by Third-Party Defendant Richard Dreskin, the Fifth Cause of Action also fails to identify any fraudulent act performed by Dreskin. As noted above, this cause of action only refers to the singular “Plaintiff,” which is Equinox, LLC.

Moreover, the alleged fraudulent act and breach are not connected. “The fraudulent act may be prior to, contemporaneous with, or subsequent to the breach of contract, but it must be connected with the breach itself and cannot be too remote in either time or character.” *Floyd v. Country Squire Mobile Homes, Inc.*, 287 S.C. 51, 336 S.E.2nd 502 (Ct. App. 1985). Here, the alleged fraudulent act is unconnected to the alleged breach. As the Fifth Cause of Action makes clear, the alleged fraudulent act of Equinox, LLC’s failure to disclose previous mold issues occurred “prior to the execution of the lease” which the third-party plaintiffs admit was signed February 1, 2016. *See* Second Amended Answer, p. 2, ¶ 5. However, the alleged breach by Equinox, LLC did not occur until over a year later, “Defendants delivered a written notice to the Plaintiff specifying the acts and omissions constituting the breach in May 2017.” *See id.*, p. 11, ¶ 68. These two events are not sufficiently connected and are too remote in time and character, and neither of these events have any relation to Third-Party Defendant Richard Dreskin. Therefore,

Third-Party Plaintiffs' claims for breach of contract accompanied by fraudulent act must be dismissed as a matter of law.

D. Third-Party Plaintiffs Failed to Allege a Claim for Violation of the South Carolina Unfair Trade Practices Act against Third-Party Defendant Richard Dreskin

Third-Party Plaintiffs' claim for violation of South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10 *et seq.*, (hereinafter, "SCUTPA") against Third-Party Defendant Richard Dreskin is deficient as a matter of law. To recover under SCUTPA the claimant must show that: (1) the defendant engaged in unfair and deceptive acts in the conduct of trade or commerce; (2) the unfair or deceptive act affected the public interest; and (3) they suffered ascertainable monetary or property loss as a result of the defendant's unfair or deceptive acts. *Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 691 S.E.2d 135, 149 (2010). "An act is 'unfair' when it is offensive to public policy or when it is immoral, unethical, or oppressive." *Gentry v. Yonce*, 337 S.C. 1, 12, 522 S.E.2d 137, 143 (1999). "An act is 'deceptive' when it has a tendency to deceive." *Id.*

1. Third-Party Defendant Richard Dreskin Is Not Individually Liable under SCUTPA For Actions Committed by Plaintiff Equinox, LLC

First, Third-Party Defendant Richard Dreskin is not individually liable under SCUTPA by virtue of his membership in Plaintiff Equinox, LLC. In *Plowman v. Bagnal*, 316 S.C. 283, 286, 450 S.E.2d 36, 38 (1994), the Supreme Court of South Carolina rejected the idea that corporate officers or shareholders, as a matter of law, are jointly and severally liable in a private action for corporate violation of SCUTPA:

It is well settled that corporate officers and directors are not liable for the tortious conduct of the corporation unless they commit, participate in, direct, or authorize the commission of a tort...In accordance with this settled principle, we hold that in private actions under the UTPA, directors and officers are not liable for the corporation's unfair trade practices unless they personally commit, participate in, direct, or authorize the commission of a violation of the UTPA...Accordingly, we

reject the homeowners' claim that controlling persons are, as a matter of law, always jointly and severally liable in a private action for corporate violations of the UTPA.

Id.

Here, the *Plowman* principle mandates that Third-Party Defendant Richard Dreskin is not personally liable for the violations of SCUTPA alleged against Plaintiff Equinox, LLC. Notably, Third-Party Plaintiffs' Sixth Cause of Action does not mention the Third-Party Defendant or his name, Richard Dreskin. *See* Second Amended Complaint, pp. 15-16. Rather, it refers only to the singular "Plaintiff," which is Equinox, LLC. *Id.* This is further illustrated by Third-Party Plaintiffs' admissions that only Equinox, LLC is a party to the lease agreement and its modification, *see id.*, pp. 2-3, ¶¶ 5, 10, and that Equinox, LLC is the sole entity that owned, managed, and controlled the leased premises. *See id.*, p. 8, ¶ 52. Instead, the only times Third-Party Defendant Richard Dreskin is mentioned by name relates to his status as "Managing Member of Equinox, LLC," p. 9, ¶ 56, and the possibility that prior tenants reported mold and water issues to Dreskin. *Id.*, ¶ 58. Under *Plowman*, Third-Party Plaintiffs are required to plead violations of SCUTPA *personally committed* by Richard Dreskin apart from his membership of Plaintiff Equinox, LLC. Third-Party Plaintiffs' failure to plead any unfair or deceptive acts separately attributable to Richard Dreskin merits dismissal under Rule 12.

2. Third-Party Plaintiffs Failed To Plead Any "Unfair" or "Deceptive" Act Committed by Third-Party Defendant Richard Dreskin in the Conduct of "Trade" or "Commerce"

Next, Third-Party Plaintiffs' SCUTPA claim fails because they have failed to plead any "unfair" or "deceptive" act committed by Third-Party Defendant Richard Dreskin in the conduct of a "trade" or "commerce." Section 10(b) of SCUTPA defines "trade" and "commerce" to include "advertising, offering for sale, sale or distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity or thing of value."

Whether a particular act or practice is unfair or deceptive within the meaning of SCUTPA depends upon the facts surrounding the transaction and its impact on the marketplace. *Young v. Century Lincoln-Mercury, Inc.*, 302 S.C. 320, 396 S.E.2d 105 (Ct. App. 1989).

Here, the Second Amended Answer lacks any of the required allegations against Third-Party Richard Dreskin. The Sixth Cause of Action does not refer to Third-Party Defendant Richard Dreskin at all, rather it refers only to the singular “Plaintiff,” which is Equinox, LLC. As Third-Party Plaintiffs have admitted in their pleadings, Richard Dreskin is not a party to either the lease agreement or its modification. *See* Second Amended Answer, pp. 2-3, ¶¶ 5, 11. Third-Party Plaintiffs admit that Plaintiff Equinox, LLC solely owned, managed, and controlled the real estate they leased from the LLC. *See id.*, p. 8, ¶ 52. Rather, the only allegation specific to Third-Party Defendant Richard Dreskin is that he is the managing member of Equinox, LLC and that previous tenants may have reported similar issues to Dreskin. *See id.*, p. 9, ¶¶ 56, 58. Therefore, Third-Party Plaintiffs have failed to plead any specific actions attributable to Richard Dreskin apart from his membership in Equinox, LLC, and any “unfair” or “deceptive” acts by the LLC cannot be automatically imputed to Dreskin under *Plowman*.

3. Third-Party Plaintiffs Failed To Plead Any Impact on the Public Interest by Third-Party Defendant Richard Dreskin

Finally, Third-Party Plaintiffs have failed to allege an impact on the public interest by their contact with Third-Party Defendant. “In an action brought under the [Act], a material issue to be proved is that the unfair trade practice or act affects persons other than the parties to the transaction.” *Burbach v. Investors Management Corp. Intern.*, 326 S.C. 492, 497-98, S.E.2d 119, 121 (Ct. App. 1997). “[A] mere breach of a contract does not constitute a violation of the UTPA.” *Key Co., Inc. v. Fameco Distributors, Inc.*, 292 S.C. 524, 526 (Ct. App. 1987).

Here, Third-Party Plaintiffs identify nothing establishing any impact on the public interest in this case. As stated above, the pleadings state only that only entity with whom Third-Party Plaintiffs formed a contractual relationship was Plaintiff Equinox, LLC. *See* Second Amended Answer, pp. 2-3, ¶¶ 5, 10. Dreskin did not enter into any agreement with them, and he did not own or manage the real estate at issue. *See id.*, p. 8, ¶ 52. Instead, his only involvement in this case is by virtue of his membership in Equinox, LLC and prior possible interactions with previous tenants. *See id.*, p. 9, ¶¶ 56, 58. It is unclear how an individual LLC member's knowledge of previous tenants' issues impacts the public at large when he is not a party to any lease agreement and did not make any false statements to induce anyone to enter the lease agreement. As noted above, joint and several liability of a corporate member is not permitted under *Plowman*, and Third-Party Plaintiffs' claims against Third-Party Defendant under SCUTPA must be dismissed.

E. Third-Party Plaintiffs Failed to Allege a Claim for Conversion Against Third-Party Defendant Richard Dreskin

“Conversion is the unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the alteration of the condition or the exclusion of the owner's rights.” *Regions Bank v. Schmauch*, 354 S.C. 648, 665 (Ct. App. 2003). “To establish the tort of conversion, it is essential that the plaintiff establish either title to or right to the possession of the personal property.”

Here, the Seventh Cause of Action fails to allege any unauthorized assumption or exercise over goods owned by Third-Party Plaintiffs. As with previous causes of action, the Seventh Cause of Action does not mention the Third-Party Defendant, rather it mentions only the singular “Plaintiff,” which is Equinox, LLC. *See* Second Amended Answer, p. 16. The only other allegation which mentions the alleged property is paragraph 64, which again does not describe any action by Third-Party Defendant Richard Dreskin. *See id.*, p. 11. As noted above in this

memorandum, Richard Dreskin is not jointly and severally liable by virtue of his membership in an LLC. Rather, he can only be held liable for his direct, individual participation in tortious activity, and the Second Amended Answer fails to describe any individual conduct by Dreskin other than his LLC membership.

F. South Carolina Law Does Not Recognize an Independent Cause of Action for Alter Ego Liability, Therefore the Eighth Cause of Action Must Be Dismissed

Finally, the Eighth Cause of Action for Alter Ego Liability should be dismissed as it is not a cause of action recognized by South Carolina law. In *Drury Dev. Corp. v. Found. Ins. Co.*, 380 S.C. 97, 668 S.E.2d 798 (2008), the South Carolina Supreme Court explored the nature of alter ego liability not as a separate cause of action but rather a theory of procedural relief and ultimately held that a creditor need not obtain a judgment against an insolvent corporation before suing individual shareholders. The Court first noted that alter ego relief is an issue that is often considered post-judgment. *Id.*, 380 S.C. at 102 (“[I]t is undoubtedly true that the corporate veil is often pierced post-judgment.”). The *Drury* court noted that the defendant shareholders had erroneously “conflated the concept of a claim with that of a judgment” noting that “an attempt to pierce the corporate veil is not itself a cause of action but rather a means of imposing liability on an underlying cause of action.” *Id.*, at 103 (citing 1 William Meade Fletcher Et Al., *Fletcher Cyclopedia Of The Law Of Private Corporations*, § 41.10 (per. ed., rev. vol. 2006)). The Supreme Court concluded with its finding that “South Carolina law is clear that plaintiffs attempting to pierce the corporate veil must state a claim against the corporate entity in order to proceed on a veil piercing theory.” *Id.*

In other words, alter ego liability is not a recognized cause of action in South Carolina. Much like the concept of respondeat superior, the corporate shareholder’s liability depends on whether the corporation is found liable on an underlying claim, such as negligence or breach of

contract. If the causes of action fail against the corporation, they fail against the shareholder. Similarly, the Eighth Cause of Action is not an independent cause of action – it could not stand alone if the other seven causes of action were dismissed by the Court. Therefore, under *Drury*, the Eighth Cause of Action must be dismissed because it is not a cause of action under South Carolina law.

IV. CONCLUSION

Third-Party Defendant Richard B. Dreskin respectfully requests an Order granting Judgment on the Pleadings pursuant to Rule 12(c), SCRPC.

Respectfully submitted,

s/Adam C. Bach

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March 23, 2021

Greenville, South Carolina

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

2017-CP-04476

EQUINOX, LLC,

Plaintiff,

vs.

BRANDON EPPS & COURTNEY EPPS,

Defendants.

BRANDON EPPS AND COURTNEY EPPS, as
Next of Friends of ALEXIS MARION HUCKS,
ADRIANNE BELLE HUCKS, WELLS SKIPPER
HUCKS, SAWYER LANE EPPS, COOPER
WADE EPPS, and LILI MADELYN EPPS,

Third-Party Plaintiffs,

vs.

RICHARD B. DRESKIN,

Third-Party Defendant.

**MEMORANDUM OF LAW
IN OPPOSITION TO
THIRD-PARTY DEFENDANT
RICHARD D. DRESKIN'S
MOTION FOR JUDGMENT
ON THE PLEADINGS**

Defendants and Third-Party Plaintiffs Brandon Epps and Courtney Epps, individually and as Next of Friends of Alexis Marion Hucks, Adrienne Belle Hucks, Wells Skipper Hucks, Sawyer Lane Epps, Cooper Wade Epps, and Lili Madelyn Epps (collectively, “the Epps”), respectfully submit this memorandum of law in opposition to Third-Party Defendant Richard B. Dreskin’s Motion for Judgment on the Pleadings.

FACTUAL AND PROCEDURAL BACKGROUND

The Epps were tenants in a home located at 618 Garden Rose Court, Greer, SC 29651 (the “Property”). Second Amended Answer (“SAA”), ¶ 51. Plaintiff Equinox, LLC (“Equinox”) is the

owner of the Property, and Third-Party Defendant Richard B. Dreskin (“Dreskin;” collectively with Equinox, the “Plaintiffs”) is the managing member of Equinox. SAA, ¶¶ 52, 56. Unbeknownst to the Epps, the Property suffered from problems with water intrusion and mold at the time they moved in, and prior tenants had notified Plaintiffs of those issues. SAA, ¶¶ 58, 94. Equinox and Dreskin failed to remedy or disclose the defective condition of the Property to the Epps despite knowing the dangers by these defects. SAA, ¶¶ 61, 68, 73-74, 78, 94.

The Epps first discovered the water and mold problems in May 2017, and notified Plaintiffs. SAA, ¶ 68. Plaintiffs refused to fix the problem, and by October 2017, the Epps were forced to move out and terminate the lease. Id. Also in October 2017, the City of Greer declared the Property to be in violation of the International Property Maintenance Code and uninhabitable. Dreskin executed a sworn document acknowledging as much. SAA, ¶ 56. The Property was subsequently condemned. Id. Plaintiffs failed to notify the Epps of the City’s finding of a code violation, however, or that Dreskin had acknowledged, on behalf of Equinox, that the Property was uninhabitable. SAA, ¶¶ 57.

Exposure to the mold at the Property has caused the Epps to sustain injuries and exacerbated preexisting conditions. SAA, ¶ 59. In addition, they were unable to remove their personal property due to the untreated mold in the home. Subsequent demands to retrieve their belongings were refused. SAA, ¶¶ 64, 86-88. Ultimately, Equinox and Dreskin sold the Epps’ belongings without consent, and kept the proceeds. SAA, ¶ 102.

Equinox has continued to demand rent from the Epps despite the mold issue and the condemnation of the property. Equinox ultimately commenced this action to recover what it contends are past due rent payments. SAA, ¶ 63. Equinox filed an amended complaint. The Epps answered and filed counterclaims against Equinox for breach of contract, breach of warranty of

habitability, nuisance, negligence, and punitive damages. On December 6, 2019, the Epps filed a Motion for Leave to Amend Answer seeking to add additional counterclaims against Equinox, and third-party claims against Dreskin, for breach of contract accompanied by fraudulent act, violation of the South Carolina Unfair Trade Practices Act (“SCUTPA”), conversion, and alter ego liability. This Court entered an order allowing the amendment on October 9, 2020, and the operative Second Amended Answer was filed on October 12, 2020.

Dreskin now moves to dismiss only those third-party claims against him in the Second Amended Answer. Dreskin’s motion to dismiss should be denied in its entirety.

LEGAL ARGUMENT

I. Judgment on the Pleadings Under Either Rule 12(c) or Rule 12(b)(6) Is Improper.

It is unclear from the motion whether this motion is pursuant to Rule 12(b)(6) or 12(c) of the South Carolina Rules of Civil Procedure. It should be denied under either standard.

“In evaluating a Rule 12(c) motion, the court must consider that ‘a complaint is sufficient if it states any cause of action or it appears that the plaintiff is entitled to any relief whatsoever.’” Pope v. Wilson, 427 S.C. 377, 384, 831 S.E.2d 442, 445-446 (S.C. Ct. App. 2019). Judgement on the pleadings pursuant to Rule 12(c), SCRCPP, is “‘a drastic procedure’” that should “‘be granted ‘where there is no issue of fact raised by the complaint that would entitle the plaintiff to judgment if resolved in plaintiff’s favor.’” Home Builders Ass’n of S.C. v. Sch. Dist. No. 2, 405 S.C. 458, 460, 748 S.E.2d 230, 231 (S.C. 2013) (internal citations omitted). “‘When considering such motion, the court must regard all properly pleaded factual allegations as admitted,’” and “‘may not consider matters outside the pleadings.’” Pope, 427 S.C. at 384, 831 S.E.2d at 445-446.

However, Rule 12(c), SCRCPP, provides that only “[a]fter the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings.”

(emphasis added). The pleadings in this case have not closed. Though Equinox has filed a reply to the counterclaims against it, Dreskin has yet to file an answer to the third-party complaint, despite the fact that Rule 8(a), SCRCF, dictates that “there shall be a third-party answer, if a third-party complaint is served.” Regardless, this motion should be denied. The pleadings properly set forth the claims for relief, and there is no defense to those claims established by what has been pled.

II. Rule 12(b)(6) Standard.

While his motion appears to be made solely pursuant to Rule 12(c), Dreskin does go on to contend that the Epps have “failed to state facts sufficient to constitute a cause of action against Dreskin under Rule 12(b)(6) and/or Rule 12(c), SCRCF.” Motion, ¶ 7. Out of an abundance of caution, and to the extent the Court chooses to consider Dreskin’s Motion as being brought pursuant to Rule 12(b)(6), the Epps respectfully submit this memorandum of law regarding the substance of their allegations.

“Rule 12(b)(6) permits the trial court to address the sufficiency of a pleading stating a claim; it is not a vehicle for addressing the underlying merits of the claim.” Skydive Myrtle Beach v. Horry Cty., 426 S.C. 175, 180, 826 S.E.2d 585, 587-588 (S.C. 2019); see also Bell Atl. Corp. v. Twombly, 550 U.S. 544, 556 (2007) (“[A] well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of those facts is improbable, and that a recovery is very remote and unlikely.”) On a Rule 12(b)(6) motion, “the trial court must base its ruling solely upon allegations set forth on the face of the complaint. The 12(b)(6) motion may not be sustained if the facts alleged and inferences therefrom would entitle the plaintiff to any relief on any theory.” Baird v. Charleston County, 333 S.C. 519, 527, 511 S.E.2d 69, 73 (S.C. 1999) (citations omitted).

The Epps have sufficiently stated causes of action in this case for breach of contract accompanied by fraud, violation of the SCUTPA, and conversion.

III. The Epps Brought Their Claims Against Dreskin Within the Statute of Limitations.

Dreskin contends that the third-party complaint should be dismissed because each of the claims against him were brought after the expiration of the statute of limitations. This is not correct.

No South Carolina decision has addressed the pertinent date for statute of limitations purposes where a motion for leave to amend is filed prior to the expiration of the statute, but the motion is granted after the statute has run. North Carolina has confirmed that “[t]he relevant date for measuring the statute of limitations where an amendment to a pleading is concerned, however, is the date of the *filing of the motion*, not the date the court rules on that motion.” Simpson v. Hatteras Island Gallery Restaurant, Inc., 109 N.C. App. 314, 325, 427 S.E.2d 131, 138 (N.C. Ct. App. 1993) (emphasis in original). Other courts around the country concur. Mayes v. AT & T Information Systems, Inc., 867 F.2d 1172, 1173 (8th Cir. 1989) (“A number of courts have addressed the situation where the petition for leave to amend the complaint has been filed prior to expiration of the statute of limitations, while the entry of the court order and the filing of the amended complaint have occurred after the limitations period has expired. In such cases, the amended complaint is deemed filed within the limitations period.”). Considering that an amended pleading cannot be filed without permission from the court (and given the difficulties in scheduling hearings and during the Covid-19 pandemic in particular) South Carolina appellate courts almost certainly would follow their sister courts around the country in holding that the pertinent date in such a situation is the filing of the motion for leave to amend, and not the filing of the amended pleading itself. Because the Epps filed their motion for leave to amend their answer to add

counterclaims and third-party claims on December 6, 2019, that is the relevant date for statute of limitations purposes.

The statute of limitations for claims for breach of contract accompanied by fraud, and for claims of conversion, is three years. S.C. Code Ann. §§ 15-3-350(1), (5) and (7). Similarly, the statute of limitations for violation of the South Carolina Unfair Trade Practices Act is three years. S.C. Code Ann. § 39-5-150. “Under ‘the discovery rule, the statute of limitations begins to run when a cause of action reasonably ought to have been discovered.’” CoastalStates Bank v. Hanover Homes of S.C., LLC, 408 S.C. 510, 517, 759 S.E.2d 152, 156 (S.C. Ct. App. 2014). The discovery rule applies to breach of contract actions, conversion, and unfair and deceptive trade practice claims. Rumpf v. Mass. Mut. Life Ins. Co., 357 S.C. 386, 394, 593 S.E.2d 183, 187 (S.C. Ct. App. 2004) (“In determining when a cause of action arose under section 15-30-530, we apply the ‘discovery rule.’”); State ex rel. Wilson v. Ortho-Mcneil-Janssen Pharms., 414 S.C. 33, 76, 777 S.E.2d 176, 198 (S.C. 2015) (applying discovery rule to claim for violation of SCUTPA). Finally, no South Carolina court appears to have addressed the issue of the statute of limitations for an alter ego claim. However, because “piercing the corporate veil, in general, is ‘a method of imposing liability on an underlying cause of action,’” several “other states have determined that the statute of limitations for such a claim is the same as the statute of limitations for the original suit.” Strawbridge v. Sugar Mt. Resort, Inc., 243 F. Supp. 2d 472, 479, (W.D.N.C. 2003) (collecting cases).

Here, the Epps allege that they notified Equinox “of the acts and omissions constituting the breach” of the lease agreement in May 2017, when they “discovered the defect hidden by Plaintiffs.” SAA, ¶ 68, 78. Having “failed to adequately repair and abate the conditions at The Property,” on October 26, 2017 Equinox and Dreskin were subsequently notified by the City of

Greer that the Property was in defective condition and could not be “occupied until all mold abatement requirements of the City of Greer’s Codes Enforcement are satisfied.” SAA, ¶¶ 56-58, 74-76. Neither informed the Epps of the Property’s uninhabitable condition, or that the City of Greer forbade the Property be occupied in its defective condition. SAA, ¶ 57. The Epps have further alleged that Equinox, and Dreskin, fraudulently “conceal[ed] the known water intrusion problem at the House prior to the execution of the lease and modification, as well as throughout the lease term,” such that they did not discover any of the hidden defects until they notified Equinox of the same in May of 2017. SAA, ¶¶ 78, 94. The Epps’ Motion for Leave to Amend Answer to add claims and assert third-party claims against Dreskin was filed on December 6, 2019, well within any applicable statute of limitations.

Their claim for violation of the SCUTPA is likewise timely. The Epps alleged that “Plaintiff’s action as described above, knowingly leasing a property with an unresolved water intrusion and mold problem . . . and intentionally failing to resolve or repair the issue, constitutes unfair and deceptive trade practices” SAA, ¶ 99. Again, the Epps allege that these defects remained hidden from them until May 2017, when they first discovered the water and mold issues and notified Equinox. SAA, ¶¶ 68, 78, 94. Because their claim for violation of the SCUTPA did not begin to accrue until May 2017, this claim was also filed within the statute of limitations.

As for the conversion of the Epps property, the Epps allege that when Plaintiffs knew that the Property’s contents “could not be safely removed until the home was tented and treated for mold and refusing to do so in order that Defendants be able to retrieve their property, Plaintiffs sold all of Defendants’ belongings to unwitting buyers.” SAA, ¶ 64. The Epps allege further that they terminated the lease agreement “by letter in October, with termination stated as effective November 18, 2017.” SAA, ¶ 68. Plainly there was no need for them to retrieve their personal

property from the house while they still lived in it. Equinox and Dreskin are alleged to have prevented the Epps from retrieving their property and to have sold it at some point after the lease was terminated effective November 18, 2017. The Second Amended Answer and Counterclaims and Third-Party Complaint, asserting claims against Dreskin, was filed on October 12, 2020. It is within the three-year statute of limitations for conversion even without taking into consideration the date the motion for leave to amend the Epps' answer was filed.

The statute of limitations poses no bar to the Epps' claims against Dreskin.¹

IV. The Epps Have Stated a Claim for Alter Ego Liability.

Each of the Epps' claims against Dreskin are premised upon the fact Equinox is merely his alter ego, such that he is jointly and severally liable with Equinox for all of Equinox's tortious conduct as set forth in the Epps' Second Amended Answer.

“‘[T]he alter ego doctrine is merely a means of piercing the corporate veil.’” Jones v. Enter. Leasing Company-Southeast, 383 S.C. 259, 267, 678 S.E.2d 819, 823 (S.C. Ct. App. 2009). In other words, “[w]hen a company is an alter ego of its sole member, the alter ego and the member are effectively the same entity.” Sky Cable, LLC v. DIRECTV, Inc., 886 F.3d 375, 391–92 (4th Cir. 2018). “An alter-ego theory requires a showing of total domination and control of one entity by

¹ It should be noted that the Epps filed a separate action in April 2020 to assert these same claims and ensure there was no question as to their timeliness, Case No. 2020-CP-42-01301 (the “2020 Action”). The Epps then filed a motion seeking to consolidate the 2020 Action with this action. On May 19, 2020, Equinox and Dreskin filed a motion to dismiss the 2020 Action as duplicative of the proposed amended claims and existing claims in this action (and without mention of the statute of limitations). As the October 9, 2020 Order in this action states, at the hearing on these motions, “the parties agreed it is in the interests of judicial economy for all of the claims at issue in the 2017 Action and the 2020 Action to proceed under one civil action number.” Pursuant to the October 9, 2020 Order, the Epps' Second Amended Answer was filed in this action on October 12, 2020 and the 2020 Action was dismissed without prejudice on October 19, 2020. Thus these claims against Dreskin were timely filed prior to the expiration of any statute of limitations and remained alive at all times.

another and inequitable consequences caused thereby.” Colleton County Taxpayers Ass’n v. Sch. Dist., 371 S.C. 224, 237, 638 S.E.2d 685, 692 (S.C. 2006). “Control may be shown where the subservient entity manifests no separate interest of its own and functions solely to achieve the goals of the dominant entity,” but there must also be “fraud or misuse of control by the dominant entity which results in some injustice.” Id.² “[F]undamental unfairness can exist in the absence of fraud, and may be proved by a lesser showing than reckless disregard.” Dumas v. InfoSafe Corp., 320 S.C. 188, 193, 463 S.E.2d 641, 644 (S.C. Ct. App. 1995).

Because Dreskin has used his complete control and domination of Equinox to fraudulently lease an uninhabitable property to the Epps and refuse to correct the defects on that property, all while continuing to demand rent, the corporate form must be disregarded and Equinox declared the mere alter ego of Dreskin.

A. Dreskin Dominated and Controlled Equinox.

The Epps have sufficiently alleged Dreskin’s domination and control of Equinox. Specifically, the Epps alleged that Dreskin “maintains total domination and control of Equinox, LLC” such that “Equinox does not have any separate mind, will, or existence of its own, other than as a mere tool or instrumentality of Dreskin.” SAA, ¶¶ 107-108. This is “illustrated by: his, and only his, communications with his tenants as landlord; upon information and belief receipt of payment at his personal residence, which is legally owned by Equinox; and his unilateral decision-making authority.” SAA, ¶ 107.

² Dreskin incorrectly contends that the Epps are required to allege facts sufficient to demonstrate eight factors utilized in the two-prong analysis South Carolina courts utilize for other avenues of corporate veil piercing, such as undercapitalization and an absence of corporate formalities. But these factors are not required when the corporate veil is pierced through the alter ego doctrine, rather, the Epps must only allege: “(1) total domination and control of one entity by another and (2) inequitable consequences caused thereby.” Oskin v. Johnson, 400 S.C. 390, 400, 735 S.E.2d 459, 465 (S.C. 2012).

As the Epps allege, Dreskin “directed, aided and abetted, authorized or ratified each and every act and conduct” by Equinox. SAA, ¶ 54. It was Dreskin who executed the lease and lease amendment between Equinox and the Epps. See Am. Compl., Exhibit B. It was also Dreskin who signed an affidavit as Managing Member of Equinox LLC acknowledging to the City of Greer that the Property was uninhabitable in light of the code violation for mold, but who failed to notify the Epps of that code violation or that the City of Greer required the Property be unoccupied. SAA, ¶¶ 56-57. Indeed, a report concerning the presence of mold in November 2017 is addressed to “Rick Dreskin” individually, with no reference to Equinox at all. See Am. Compl., Exhibit C. The Epps allege that both they and, upon information and belief, prior tenants notified Dreskin personally of the presence of water intrusion and mold on the Property, to no avail. SAA, ¶¶ 58, 61.

Plainly, the Epps have alleged that Equinox has no interest separate from Dreskin’s, but rather is completely subservient to his will, and simply an alter ego of Dreskin.

B. Dreskin’s Domination of Equinox Lead to Inequitable Consequences.

Through Dreskin’s control of Equinox, he committed fraud and injustice against the Epps by leasing the Property to them while concealing and refusing to correct the mold and water intrusion which rendered the Property uninhabitable. Specifically, though they had “actual and constructive notice of the defective conditions” at the Property, Dreskin and Equinox “failed to adequately repair and abate the conditions at The Property.” SAA, ¶ 74. This, despite knowing “that permitting said defective conditions at the outset of the lease threatened the physical and emotional health and well-being of Defendants or any renter, and posed a serious threat and danger to their health and safety.” SAA, ¶ 77. Most troubling, Dreskin caused Equinox to fail to inform the Epps of the presence of mold and water intrusion prior to the execution of the lease, and later

failed to notify the Epps that the City of Greer had declared the Property to be in violation of the building code and uninhabitable. SAA, ¶¶ 56-57, 94, 99. Thus, through Dreskin’s control and domination, he caused Equinox to fraudulently breach the lease and violate the South Carolina Landlord Tenant Act. SAA, ¶¶ 72-80. Moreover, Dreskin caused Equinox to continue to demand rent, “threatened to have Defendants evicted and sued for monies he claimed Defendants owed him” – even after the Property was declared uninhabitable. SAA, ¶¶ 61, 63.

Having used Equinox to lease an uninhabitable house to an unsuspecting tenant, and then to refuse to correct the problem while continuing to demand rent payments, Dreskin cannot now hide behind his company to avoid liability for his misconduct. To maintain the corporate form here would promote unfairness by aiding and effectuating Dreskin’s misconduct and perpetuating his fraud upon the Epps. See, e.g., Dumas, 320 S.C. at 193, 463 S.E.2d at 644 (piercing corporate veil where principal of company did not commit fraud but knew of unpaid wages claim but unfairly acted in “self-serving manner” and “in disregard” of that claim); Multimedia Publ. v. Mullins, 314 S.C. 551, 556, 431 S.E.2d 569, 573 (S.C. 1993) (piercing corporate veil where sole shareholder should have known of creditor’s claim against company when he transferred assets to his other companies); Milliken & Co. v. Weiner, 2015 U.S. Dist. LEXIS 124054, *8 (D.S.C. Sept. 17, 2015) (refusing to dismiss alter ego claim where complaint alleged principal of company caused the company to wrongfully solicit Milliken employees and induce them to provide stolen Milliken trade secrets).

V. The Epps Have Stated a Claim for Breach of Contract Accompanied by Fraud.

The Epps have adequately stated a claim for breach of contract accompanied by fraud. To plead breach of contract accompanied by fraud, the plaintiff must establish: “(1) a breach of contract; (2) fraudulent intent relating to the breaching of the contract and not merely to its making;

and (3) a fraudulent act accompanying the breach.” Harper v. Ethridge, 290 S.C. 112, 119, 348 S.E.2d 374, 378 (S.C. Ct. App. 1986). “It is not necessary to allege the elements of common law fraud and deceit.” Id. The fraud accompanying the breach can be “any act characterized by dishonesty in fact, unfair dealing, or the unlawful appropriation of another's property by design.” Id.

As alleged, Equinox violated the lease by failing to disclose and then failing to correct the mold conditions and water intrusion that rendered the Property uninhabitable. SAA, ¶¶ 68, 73-78. The Epps have further alleged that Equinox, and Dreskin, fraudulently “conceal[ed] the known water intrusion problem at the House prior to the execution of the lease and modification, as well as throughout the lease term,” such that they did not discover any of the hidden defects until they notified Equinox of the same in May of 2017. SAA, ¶¶ 78, 94. Such dishonest, unfair conduct in connection with the breach of the lease agreement is plainly sufficient to state a cause of action for breach of contract accompanied by fraud.

VI. The Epps Have Stated a Claim for Violation of the South Carolina Unfair Trade Practices Act.

The Epps have also stated a claim for violation of the SCUPTA. To allege a claim for unfair and deceptive trade practices, a plaintiff must show: “(1) the defendant engaged in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or deceptive act affected [the] public interest; and (3) the plaintiff suffered monetary or property loss as a result of the defendant's unfair or deceptive act(s).” RFT Mgmt. Co., L.L.C. v. Tinsley & Adams L.L.P., 399 S.C. 322, 337, 732 S.E.2d 166, 174 (S.C. 2012). “An unfair trade practice has been defined as a practice which is offensive to public policy or which is immoral, unethical, or oppressive.” Ben. Fin. I, Inc. v. Windham, 431 S.C. 256, 268, 847 S.E.2d 793, 800 (S.C. Ct. App. 2020).

The SCUTPA defines “trade” and “commerce” to “include the advertising, offering for sale, sale or distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity or thing of value wherever situate, and shall include any trade or commerce directly or indirectly affecting the people of this State.” S.C. Code Ann. § 39-5-10(b). “[B]y its very definition, ‘trade or commerce’ involves ‘[e]very business occupation carried on for subsistence or profit and involving the elements of bargain and sale, barter, exchange, or traffic.’” Health Promotion Specialists, LLC v. S.C. Bd. of Dentistry, 403 S.C. 623, 639, 743 S.E.2d 808, 816 (S.C. 2013). “Residential leases are things of value which directly affect the citizens of this state.” Burbach v. Investors Mgmt. Corp. Int’l, 326 S.C. 492, 497, 484 S.E.2d 119, 121 (S.C. 1997) (holding that the SCUTPA applies to residential leases)

Lastly, an unfair and deceptive practice “has an impact upon the public interest if it has the potential for repetition.” Haley Nursery Co. v. Forrest, 298 S.C. 520, 524, 381 S.E.2d 906, 908 (S.C. 1989) (holding that a “breach of warranty impacts on the public interest because of the potential for repetition by publication of these misrepresentations to other consumers”). “[T]he conduct of the landlords is capable of repetition,” and such repetition can be show by “prior tenants’ similar experiences” Burbach, 326 S.C. at 497-498, 484 S.E.2d at 121 (landlord withheld multiple tenants’ security deposits).

As alleged in the Second Amended Answer, the parties executed a lease agreement and subsequent extension and modification for the rental of the residential Property. SAA, ¶ 51. “Plaintiff acted fraudulently and with fraudulent intent to deceive Defendants by concealing the known water intrusion problem at the House prior to the execution of the lease and modification” SAA, ¶ 94. The Epps further allege that, “[u]pon information and belief, prior tenants who leased The Property before the Epps endured the same or similar experiences with water intrusion

and mold, and reported these issues to Richard B. Dreskin.” SAA, ¶ 58. Equinox and Dreskin’s actions in “knowingly leasing a property with an unresolved water intrusion and mold problem, despite receiving comments and concerns from prior tenants regarding the same issues and intentionally failing to resolve or repair the issue, constitutes unfair and deceptive trade practices in violation of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10, et seq.” SAA, ¶ 99. Having alleged the existence of a rental agreement which Equinox, and Dreskin, breached through the failure to disclose and correct water intrusion and mold problems, and that those same problems had been experienced by prior tenants, as well, the Epps have set forth a claim for violation of SCUTPA based on unfair and deceptive conduct that not only is capable of repetition and thus harm to the public interest, but which has actually been repeated.

VII. The Epps Have Stated a Claim for Conversion.

Conversion is “the unauthorized assumption in the exercise of the right of ownership over goods or personal chattels belonging to another to the exclusion of the owner’s rights.” SSI Medical Services, Inc. v. Cox, 301 S.C. 493, 498, 392 S.E.2d 789, 792 (S.C. 1990).

Dreskin contends that the Epps failed to allege that he or Equinox assumed control or possession of any property of theirs. But the Epps plainly allege that “[d]espite knowing that the contents could not be safely removed until the home was tented and treated for mold and refusing to do so in order that Defendants be able to retrieve their property, Plaintiffs sold all of Defendants’ belongings to unwitting buyers.” SAA, ¶ 64. They further allege that although Equinox and Dreskin owed them a duty of reasonable care in “the safekeeping of Defendants’ belongings” and “preserve the Defendants’ possessions until they could safely be removed,” Equinox and Dreskin “inappropriately sold property belonging to the Defendants” SAA, ¶¶ 86-88. More specifically, Equinox and Dreskin “intended to and did convert Defendants’ personal property,

refused to return the personal property to Defendants, and ultimately sold that personal property and retained the proceeds.” SAA, ¶ 102. Although the Epps “demanded that Plaintiff return their personal property . . . they were repeatedly denied access to the personal property,” and Equinox converted it “without Defendants’ consent.” SAA, ¶¶ 103-104.

The Epps have stated a claim for conversion, and Dreskin’s motion to dismiss should be denied.

CONCLUSION

For the foregoing reasons, Dreskin’s Motion should be denied in its entirety.

This the 24th day of February, 2021.

JAMES, MCELROY AND DIEHL, P.A.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date a copy of the foregoing **Memorandum of Law in Opposition to Third-Party Defendant Richard B. Dreskin's Motion for Judgment on the Pleadings** was served upon Plaintiff's and Third-Party Defendant's counsel of record by placing a copy in the United States Mail, first class, postage prepaid, addressed as follows, as well as electronic mail:

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This the 24th day of February, 2021.

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STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

EQUINOX, LLC,)
)
 PLAINTIFF,)
)
 -VS-)
)
 BRANDON EPPS AND)
 COURTNEY EPPS, et al,)
)
 DEFENDANTS.)
 _____)

2017-CP-42-04476

TRANSCRIPT OF RECORD

MARCH 24, 2021
SPARTANBURG, SOUTH CAROLINA
VIA WEBEX

B E F O R E:

THE HONORABLE J. MARK HAYES, II

A P P E A R A N C E S:

ATTORNEY FOR EQUINOX AND RICHARD DRESKIN:

ROBERT HUDSON SMITH, ESQ.

ATTORNEY FOR BRANDON AND COURTNEY EPPS:

RICHARD B. FENNELL, ESQ.

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

INDEXWITNESSPAGE NO.

CERTIFICATE OF REPORTER

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EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>

(No Exhibits Were Presented During This Hearing)

1 **THE COURT:** Okay. Thank y'all for waiting as I tried to
2 figure out this maze of parties that I've been presented as
3 part of this motion. I have very quickly read through Third-
4 Party Defendant's, Richard Dreskin's, document that we
5 received just a little bit ago.

6 So I've not digested them by any stretch of the
7 imagination, and probably me using the word read through is a
8 generalist description of my review of them. So don't assume
9 that I have any way taken in Third-Party Defendant's
10 information that was just given to me.

11 Anyway, I have that the next case is Equinox versus Epps,
12 et al. I've got that we are here to address two matters. One
13 is a motion for judgment on the pleadings filed by the Third-
14 Party Defendants. That was filed November of 2021. And we're
15 also here on a Defendant's motion for partial summary judgment
16 that was filed January the 26th, 2021.

17 Since we will -- since the Third-Party Defendant's motion
18 was filed first, what I typically do, unless y'all believe it
19 would make sense to do it otherwise, is that I will hear the
20 motion that was filed chronologically first first. And so --
21 unless y'all feel otherwise.

22 So that would mean that I will hear the Third-Party
23 Defendant's motion first. Now, with all that being said, who
24 wants to argue first?

25 **MR. SMITH:** I'll take it first since we filed the first

1 motion, Your Honor.

2 **MR. FENNELL:** I agree with that, Your Honor.

3 **THE COURT:** Okay. All right. Well, I'll be more than
4 happy to hear from you.

5 **MR. SMITH:** Yes, Your Honor. May it please the Court?
6 My name is Hudson Smith representing the Plaintiff, Equinox,
7 LLC and Third-Party Defendant, Richard B. Dreskin.

8 The motion before you today, Your Honor, is a motion to
9 dismiss under Rule 12(b)(6) and 12(c) filed on behalf of the
10 Third-Party Defendant, Richard Dreskin. And to aid the
11 Court's interpretation of these matters, I believe you may
12 have heard some motions last fall on this case.

13 But the Plaintiff is the landlord. It is an LLC. The
14 Defendants are the adult tenants of the premises. The Third-
15 Party Plaintiffs are the children of the adult tenants. And
16 the Third-Party Defendants is a member of the landlord LLC.
17 Hopefully that clears things up for the Court.

18 Just a brief history background, Your Honor, the case
19 begins in early 2016 when Equinox, LLC entered into a lease
20 agreement with Defendant, Courtney Epps and a non-party, whose
21 name is Kathy Owens, for the leased premises. And the Eppses
22 lived at the premises for approximately two years.

23 A second lease or an extension and modification of that
24 original lease agreement was signed on October 1st, 2017 by
25 both Defendants, Brandon Epps and Courtney Epps, husband and

1 wife. But really the case begins in May of 2017, so
2 approximately six months before litigation was filed and the
3 parties' disputes began.

4 In May of 2017 the Defendants claimed that they notified
5 Equinox they believed there was a leak at the property and
6 that mold had resulted. This can be found in paragraph 68 of
7 the second amended answer, which is the most recent pleading
8 filed by the Defendants. And then in response -- in Equinox's
9 original complaint Equinox says that it did not locate a leak
10 or mold, instead it found discolored floorboards in the guest
11 bathroom where it appeared the tenants had overflowed a
12 toilet.

13 In October of 2017 Equinox notified the Defendants that
14 they were behind on rent and that eviction would begin if that
15 -- the arrearage was not cured. Equinox did initiate
16 ejectment proceedings in October of 2017, Your Honor. And
17 this case has been pending since that date.

18 And then at some point between October 2017 and December
19 of 2017 the tenants may have left the premises and began
20 living in hotels. They sent multiple letters stating that
21 they terminated the lease, however, they continued to use the
22 property as well as exclude the landlord from the premises.

23 And I'm not sure if the Court would like to hear the
24 full, I guess, procedural history of the case, Your Honor.
25 But what's relevant here is that the operative pleading filed

1 by Equinox is an amended complaint filed in early 2018.

2 And, I guess, to back up, the ejectment proceeding
3 started in 2017. In November of 2017 the magistrate court
4 removed the case up to circuit court where we are now. A
5 complaint was filed in circuit court in December of 2017 and
6 then it was amended by Equinox in early 2018. That's the most
7 recent pleading filed by Equinox. And then the Defendants
8 responded with counterclaims, which they proceeded on for
9 roughly two and a half years in this litigation, Your Honor.

10 And then for the first time in this litigation in, I
11 believe it's December of 2019, the Defendants filed a motion
12 to amend in order to assert new claims against Mr. Dreskin,
13 who is a member of the LLC. This was the first time they
14 sought to have any claims against him, Your Honor.

15 A few months after that motion to amend -- and I should
16 note that that motion to amend was never filed or served on
17 Mr. Dreskin. Only Equinox received notice of that motion.

18 Shortly after that motion to amend was filed, the parties
19 dismissed the case pursuant to Rule 40(j) on January 23rd,
20 2020. And the case was dismissed for about five months. It
21 was restored on May 12th, 2020.

22 Finally a separate action was filed against Mr. Dreskin.
23 I believe Your Honor heard our motion to dismiss and granted
24 our motion to dismiss. However, the Court did allow the
25 Defendants to amend their second -- file their second amended

1 answer, counterclaims and Third-Party complaint in this action
2 naming Mr. Dreskin for the first time as a party on October
3 12th, 2020.

4 And so the operative dates here, Your Honor, is that the
5 claims accrued and arose under the Discovery Rule under
6 paragraph 68 of the second amended answer in May of 2017,
7 however, Mr. Dreskin was not added as a party until October of
8 2020. So that's about five years after -- about three years
9 and five months after, Your Honor.

10 Each of the claims asserted against Mr. Dreskin are
11 subject to a three year Statute of Limitations. They have
12 also -- and those claims specifically, Your Honor, are breach
13 of contract accompanied by fraudulent act, violation of the
14 Unfair Trade Practices Act, conversion, and alter ego
15 liability.

16 As I said, each of those are subject to a three year
17 Statute of Limitations, except for all three go to liability,
18 which is not an independent cause of action in South Carolina.
19 And as I said, paragraph 68 of the second amended answer as
20 you can see on page 11 clearly says that Defendants delivered
21 a written notice to the Plaintiff, who is Equinox, LLC
22 specifying the acts and omissions constituting the breach in
23 May 2017 with no adequate remedy by Plaintiff.

24 So under South Carolina law, Your Honor, both 15-3-510
25 and Rule 3 are clear that an action is commenced when it is

1 filed within -- when a summons and complaint is filed within
2 the applicable Statute of Limitations or if it's served within
3 120 days after Statute of Limitations expires. Simply in
4 neither the statute nor the rule mentions any sort of tolling
5 by a motion to amend or any sort of relation back that is
6 created by a motion to amend.

7 So the only way to get around that, Your Honor, is the
8 concept of equitable tolling in South Carolina. However, as
9 the Court of Appeals case American Legion Post 15 has stated,
10 South Carolina has rarely applied the doctrine of equitable
11 tolling to halt the running of the Statute of Limitations.

12 Equitable tolling is reserved for extraordinary
13 circumstances. Equitable tolling is typically available only
14 if the claimant was prevented in some extraordinary way from
15 exercising his or her rights. And equitable tolling will not
16 be invoked because of errors or deficiencies in pleading.

17 And so at this point in the litigation, Your Honor, the
18 Defendants have not -- Third-Party Plaintiffs have not pointed
19 out any extraordinary circumstances that would justify
20 equitable tolling. The case has been pending for more than
21 three years.

22 They haven't identified any discovery that led them to
23 conclude that they had claims against Mr. Dreskin
24 individually. They haven't identified any hardship they had
25 in filing a complaint against Mr. Dreskin, Your Honor. So

1 equitable tolling just does not apply in this case, Your
2 Honor.

3 In order to save their claims, Your Honor, the Defendants
4 point to a case in North Carolina that says that as long as a
5 party files a motion to amend within the Statute of
6 Limitations, then the court looks at the filing and the motion
7 to amend, not when the actual complaints have been filed.
8 Well, first and foremost, Your Honor, South Carolina has never
9 considered that issue. There's no reported case in South
10 Carolina on that point.

11 What's more, Your Honor, is that there are multiple other
12 jurisdictions that have found the opposite. Our memorandum
13 points out two cases to you where the Supreme Court of
14 Mississippi and the Court of Appeals of Georgia have both
15 considered that issue directly, and they have determined that
16 based on statutes and rules similar to South Carolina's that a
17 claim is commenced when a summons and complaint is filed, not
18 when a motion to amend is filed. So a motion to amend is
19 irrelevant as to a calculation of whether a claim is timely or
20 not, Your Honor.

21 And even these cases that the Defendants have cited cut
22 against their argument because they haven't complied with
23 them, Your Honor. They cite an Eighth Circuit case, however,
24 what that case says is that in order to toll via a motion to
25 amend what the Plaintiff has to do is serve the proposed

1 complaint and the motion to amend on the Defendant or whoever
2 they propose to add within the Statute of Limitations. And
3 the Court of Appeals of Indiana also made the same
4 observation, Your Honor.

5 What happened in this case is that in 2019 when the
6 motion to amend was filed it was electronically served as
7 usual on Equinox, LLC. Mr. Dreskin was not a party to this
8 case. He did not receive electronic notice. And he was not
9 personally served. So the Defendants have not even complied
10 with those cases.

11 And what's more, Your Honor, is that this case was
12 40(j)'d for five months in the interim. So whatever tolling a
13 timely motion to amend would have had was effectively
14 eliminated by the Rule 40(j). Motion to amend was no longer
15 pending. They had to bring it back on the docket, which you
16 heard last fall, Your Honor.

17 So in summary, Your Honor, no summons and complaint was
18 filed against Mr. Dreskin within the required Statute of
19 Limitations. South Carolina law is very clear, you have to
20 file your summons and complaint within the statute. And there
21 is not South Carolina authority to say that a motion to amend
22 somehow changes that calculation.

23 Aside from the Statute of Limitations, Your Honor, we
24 also have arguments as to the sufficiency of the pleadings.
25 Generally, Your Honor, the pleadings are premised solely upon

1 Mr. Dreskin's status as a member of the LLC. He is mentioned
2 outside of the last cause of action. He's only mentioned by
3 name twice in the Defendant's new pleadings.

4 And the only two times that he is mentioned is the fact
5 that he's a managing member and the fact that some prior
6 tenants may have discussed some issues of mold or water
7 intrusion. For the rest of the complaint and for the causes
8 of action we're seeking that you dismiss, Your Honor, they all
9 deal with mostly the Plaintiff, singular, who is Equinox, LLC.
10 It's not Mr. Dreskin.

11 South Carolina law, Your Honor, is very clear that -- and
12 I'm citing the Hunt versus Raven case, generally the reason
13 for the creation of a corporation is to limit liability.
14 While there are instances in which directors or trustees may
15 be personally liable, an officer is not merely as the result
16 of such personally liable for the torts of the corporation or
17 its employees.

18 The Limited Liability Act in South Carolina also says the
19 same. It says a member or manager is not personally liable
20 for a debt obligation or liability of the company solely by
21 reason of being a member or manager.

22 The Defendant's pleadings, Your Honor, are very clear
23 that only Equinox, LLC was a party to the lease agreement and
24 its modifications. That's found in paragraph 5 and 10 on
25 pages 2 and 3.

1 They further allege in paragraph 52 that Equinox, LLC was
2 the only entity that owned, managed, and controlled the leased
3 premises at all material times. I've already pointed out that
4 the only times Mr. Dreskin is mentioned is in status as the
5 managing member in his -- in one allegation that he heard some
6 issues from prior tenants, but, otherwise, only the singular
7 Plaintiff for the majority of these claims is alleged.

8 And we can visit each individual claim that's alleged
9 against Mr. Dreskin, Your Honor, but generally under South
10 Carolina's pleading standards the Defendants in this case are
11 required to allege facts as to Mr. Dreskin's personal
12 liability, not just the liability of the company. They have
13 to allege facts that Mr. Dreskin personally committed a tort
14 independent from the LLC. And we can see that they haven't
15 done that, Your Honor.

16 If you turn to page 15 of the second amended answer and
17 counterclaims, the fifth cause of action is the first cause of
18 action that is asserted against Mr. Dreskin. As you can see,
19 paragraphs 93 through 96 all refer to the Plaintiff in the
20 singular. The Plaintiff is Equinox, LLC. It doesn't refer to
21 Mr. Dreskin. There's nothing that says the Third-Party
22 Defendant. It just says Plaintiff has breached its
23 contractual obligations.

24 Furthermore, what is required to allege a breach of
25 contract accompanied by a fraudulent act, Your Honor, is that

1 the Defendant has to be a party to the contract that was
2 breached. Well, the Defendants have admitted above in
3 response to paragraphs 5 and 10 that only Equinox, LLC was the
4 party to the agreement. There's nothing in this pleading that
5 states that Mr. Dreskin was a part of any agreement with the
6 Defendants. And so the fifth cause of action fails simply
7 because Mr. Dreskin is not a party to any agreement with any
8 other party to this action.

9 And, secondly, Your Honor, aside from failing to allege
10 any personal action by Mr. Dreskin apart from Equinox, LLC,
11 the fifth cause of action does not identify how Mr. Dreskin
12 breached this contract that he was not a part of. And it
13 doesn't identify any fraudulent act that Mr. Dreskin did.

14 The breach and the fraudulent act must be created, but
15 the second amended answer leaves up to total speculation as to
16 what Mr. Dreskin did to either breach the contract or what he
17 did that was fraudulent because the only two allegations
18 specifically against Mr. Dreskin is that he was a member of
19 the LLC and he heard some prior tenants talking about mold
20 issues. We can scour this entire pleading, Your Honor, but
21 those are the only two specific tracks that are alleged
22 against Mr. Dreskin apart from Equinox, LLC.

23 And one that I would say is that the fraud that this
24 claim was premised on is contract negotiations whereas the
25 breach occurred over a year later when the tenants alleged

1 that the landlord didn't fix their issues, Your Honor. So
2 apart from failing to allege any contract, any breach, the
3 fraud and the breach of contract are simply too remote.

4 The next claim, the sixth cause of action, is a claim or
5 a violation of the Unfair Trade Practices Act both against
6 Equinox and Mr. Dreskin. And as with the fifth cause of
7 action, Your Honor, the Unfair Trade Practices claim only
8 mentions Plaintiff in the singular. It only mentions Equinox,
9 LLC in the singular sense.

10 As a threshold issue we've cited the Ploughman versus
11 Bagnell case, which says that a corporate officer or director
12 is not liable for the unfair trade practices of his
13 corporation. Essentially in accordance with South Carolina
14 general law about personal torts of a shareholder or member,
15 there has to be a separate action performed by the member of
16 the LLC apart from the LLC itself.

17 So Mr. Dreskin is simply not personally liable for an
18 Unfair Trade Practices Act violation simply because he is a
19 member of the LLC. The pleading has to allege separate acts,
20 separate unfair deceptive acts committed a trade or commerce
21 by Mr. Dreskin apart from Equinox.

22 And as the Court can see, the sixth cause of action
23 simply only mentions Equinox. And the rest of the complaint
24 makes clear that Equinox was the only owner of the property,
25 the only party on the lease. And the pleading doesn't

1 describe any negotiations between Mr. Dreskin and the
2 Defendants. It just says Equinox, Your Honor.

3 And then moving on to the more technical requirements,
4 you know, simply piggy-backing off of these, there's no unfair
5 or deceptive act identified by Mr. Dreskin that is required by
6 the statutes. All it says is that he's a member of the LLC
7 and he talked with some previous tenants. That's it.

8 And then another requirement of the Unfair Trade
9 Practices Act is that they have to allege an impact on the
10 public interest, Your Honor. What's alleged here is that
11 there is a lease agreement between a landlord and some
12 tenants. Mr. Dreskin was not part of that lease. He didn't
13 own the property himself. And he was simply a member of the
14 LLC.

15 And there's no other specific allegation as to what Mr.
16 Dreskin did that could impact the public at large. It's
17 unclear how Mr. Dreskin as an individual member of an LLC
18 somehow impacts the public at large when he's not a party to
19 any of these agreements that they allege was breached.

20 And, again, there's a similar deficiency with the seventh
21 cause of action, Your Honor. The specific allegations only
22 talk about the Plaintiff singularly. It doesn't mention Mr.
23 Dreskin at all. And there's no allegations in the complaint
24 that Third-Party Defendant or Mr. Dreskin converted any
25 property. It simply says the Plaintiffs.

1 And so as a result, Your Honor, as I've mentioned above,
2 Mr. Dreskin is not jointly and severally liable by virtue of
3 his membership in an LLC. And then finally to conclude, Your
4 Honor, South Carolina -- the final cause of action is for --
5 the eighth cause of action is for alter ego. And that's just
6 not a cause of action recognized by South Carolina law.

7 We've cited the Drury Development Corporation, 2008 South
8 Carolina Court opinion. But it noted that alter ego liability
9 is typically an issue that is considered post judgment. It
10 cited with approval that an attempt to pierce the corporate
11 veil is not itself a cause of action, rather a means of
12 imposing liability on an underlying cause of action. South
13 Carolina law is clear that plaintiffs attempting to pierce the
14 corporate veil must state a claim against the corporate entity
15 in order to proceed on a veil piercing theory.

16 So I would analogize this, Your Honor, to respondeat
17 superior. There has to be an underlying breach of contract or
18 tortious liability that the liability has to be based upon in
19 order for alter ego to apply. It's simply not an independent
20 means of imposing liability, it is a theory of relief.

21 So that cause of action should be dismissed in its
22 entirety because simply put, if the Court were to grant a
23 motion to dismiss against all parties as to the first seven
24 causes of action, the eighth cause of action could not stand
25 alone. It depends on underlying liability as to another

1 claim, Your Honor.

2 And so to sum it up, Your Honor, clearly the claims
3 against Mr. Dreskin were not filed within the Statute of
4 Limitations. They were filed five months late. And a motion
5 to amend does not say that under South Carolina law. And the
6 pleading itself is defective because there are simply not
7 specific allegations as to Mr. Dreskin's individual liability.
8 So with that, I would turn it over to the Defendants, Your
9 Honor.

10 **THE COURT:** Well, before we do that, let me ask you to
11 back up one second, Mr. Hudson [sic]. Back up to your seventh
12 cause of action. For some reason I didn't follow you.

13 **MR. SMITH:** Yes, Your Honor, ---

14 **THE COURT:** I followed it broadly, but not the
15 particulars.

16 **MR. SMITH:** Yes, Your Honor. And specific to conversion,
17 Your Honor, our arguments are that this cause of action,
18 although Mr. Dreskin is identified at the heading, paragraphs
19 102 through 105 only describe Equinox. And no other part of
20 the complaint describes Mr. Dreskin, or what belongings he
21 appropriated, or when he appropriated them, or -- there's just
22 no allegation that he took any belongings.

23 **THE COURT:** I missed the word conversion when you were
24 arguing the first time. So I missed the broad approach.
25 Okay. I think I got it.

1 **MR. SMITH:** My apologies, Your Honor.

2 **THE COURT:** No, no. Listen, that was great. Thank you
3 very much.

4 All right. At this time is the Plaintiff ready?

5 **MR. FENNELL:** Yes, Your Honor. Can you hear me?

6 **THE COURT:** Okay. I can. Mr. Smith, can you hear the
7 Plaintiff?

8 **MR. SMITH:** I am the Defendants, Your Honor.

9 **THE COURT:** The Defendants.

10 **MR. SMITH:** But I can hear him.

11 **MR. FENNELL:** All right. Thank you.

12 Judge, my name is Rich Fennell. I represent the Epps
13 family. And I'll try to respond, I think, an order of
14 substance is important.

15 First, with respect to what happened in the fall, I
16 wasn't involved in the hearing. I don't know if Mr. Smith
17 was. But the representation that you had dismissed the 2020
18 lawsuit is not true. The order that was entered says that
19 after hearing, the parties agreed it is in the interest of
20 judicial economy for all the claims at issue in the 2017
21 action and 2020 action to proceed under one civil action.

22 So what happened in that hearing was that the parties
23 reached an agreement regarding the most efficient way to deal
24 with the claims that were set out in the 2017 case and the
25 2020 case. The 2020 case included all of the allegations

1 which we substantively consolidated into the 2017 action for
2 convenience only.

3 There was no ruling by the court dismissing those claims.
4 There was an acknowledgment by the Court that the parties had
5 reached an agreement that made sense. So when -- again, that
6 representation, again, is just not accurate.

7 So what happened with respect to Mr. Dreskin's knowledge
8 of the claims that were pending against him, even beside the
9 fact that Mr. Dreskin is the only member of Equinox. So when
10 Equinox gets service, he's going to know about it, is that he
11 was actually served with a filed lawsuit, which includes all
12 of these claims which the parties agreed should be resolved in
13 the 2017 lawsuit instead of having two cases pending at the
14 same time.

15 So if there's any issue about when he was served or when
16 he received notice, he was served and he did receive notice
17 well within the Statute of Limitations on all three of these
18 claims. So I think that that's foundational, I believe, to
19 the Plaintiff's argument with respect to the Statute of
20 Limitations, and it's just wrong.

21 There is, as Mr. Smith says, there's a difference of
22 opinion in courts about whether or not a motion to amend
23 really matters when it comes to determining when a statute
24 runs. And we argued that in the brief that we submitted to
25 you last week. And I won't re-argue the points because Mr.

1 Smith's right, there are courts that say yes and there are
2 courts that say no.

3 In North Carolina we've made the determination that when
4 you file a motion to amend, that's good enough, and that it
5 will relate back because there's an acknowledgement that
6 sometimes people don't know they want to amend until you get
7 pretty close to the end of the statute. Some cases have said
8 that sounds okay, but it's not the law.

9 And the law as Mr. Smith says, the statute says you need
10 to file (technological interference) serve a summons, then you
11 need to do that. I don't know how South Carolina appellate
12 courts would rule. The eighth circuit case that we've cited,
13 I think, talks about how the courts have viewed it
14 differently. But I don't know that it matters.

15 What really matters in this case and what determines the
16 statute issue to me is that Mr. Dreskin was served with these
17 claims within the Statute of Limitations. He was just served
18 with those claims in the 2020 action, which the parties agreed
19 to resolve in the 2017 action. So with that I'll leave the
20 Statute of Limitations argument because that to me is the most
21 foundational substantive issue that's before you.

22 The second question, again, this is just kind of a
23 fundamental disagreement with what the papers say with respect
24 to how Mr. Dreskin is referred to in the pleadings. Now the
25 counterclaims that were filed, actually filed in this case in

1 October, October 12th of 2020, state at the beginning --
2 there's a footnote at the bottom, and it's footnote 1. And it
3 says at the time of filing the amended answer and
4 counterclaims in this case Defendants had not identified Does
5 one through five.

6 At the time of filing the second amended answer and
7 counterclaims Defendants have identified Richard B. Dreskin as
8 among the previously unnamed Does legally responsible
9 negligently or in some other actual manner for the harms
10 incurred. Equinox, LLC and Dreskin are sometimes collectively
11 referred to herein as Plaintiffs. And that happens
12 throughout.

13 When you go to -- well, I won't read all of the
14 paragraphs, but you go to paragraph 61, I think, is where the
15 substance of the actions that are forming the basis for all
16 the causes of action are set forth. And it says that
17 Defendants notified the Plaintiffs. And under that footnote
18 Plaintiffs include Dreskin and its agents about the
19 habitability violations, but Plaintiffs failed to correct the
20 habitability conditions. Again, Plaintiffs, plural.

21 Upon information believes the Plaintiffs and each of the
22 Plaintiffs are experienced property owners or contractors and
23 are aware that absent appropriate maintenance and repair,
24 serious habitability violations would develop that would
25 seriously and materially affect Defendants' tenancy.

1 In response, Plaintiff, which is Equinox, threatened to
2 have Defendants evicted and sued for monies he claimed
3 Defendants owed him. And Defendants were forced to terminate
4 -- 62. Defendants were forced to terminate the lease for
5 cause and did so in writing due to not only the uninhabitable
6 condition, but the negligent manner in which Plaintiffs
7 futilely attempted to remedy the situation that exposed them
8 to greater danger, Plaintiffs, plural.

9 63, notwithstanding the valid termination, Plaintiff
10 Equinox still maintains that the lease is continuing and is
11 charging Defendants in his complaint rent for the time period
12 following Plaintiff Equinox's signature that it would not
13 allow the property to be inhabited.

14 64, despite fully knowing that the contents could not be
15 safely removed until the home was tented and treated for mold
16 and refusing to do so in order that Defendants be able to
17 retrieve their property, Plaintiffs, plural, sold all of
18 Defendants' belongings to unwitting buyers.

19 Again, it's hard to understand the contention that Mr.
20 Dreskin doesn't know what he's being sued for. You know, it's
21 set out in the complaint.

22 Now I will tell you that it's not consistent. But there
23 are times when, generally speaking, Plaintiffs is right and
24 there are times when there's a mistake in the pleadings when
25 it says Plaintiff instead of Plaintiffs. And that's on us.

1 But that's just something this argument about whether the 's'
2 was there or not is something that I really didn't know about
3 until I got the brief late yesterday afternoon.

4 But the point that I'm trying to make to you is that this
5 idea that Dreskin's only mentioned twice is just not right,
6 that Dreskin is mentioned throughout, and it's clear
7 throughout. It's in the pleadings that Dreskin is the guy
8 that's doing the stuff for Equinox. Dreskin knows what he was
9 sued for. And the complaint tells him what he was sued for.

10 Now there may be summary judgment issues. I'm not sure
11 about that. But when you're just analyzing the pleadings, the
12 pleadings state clearly what he's being sued for.

13 Now with respect to the legal issues, I think the only
14 real fundamental question, the dispute that I have with Mr.
15 Smith is, you know, his interpretation of Drury. I think I
16 agree with what he said towards the end.

17 But, you know, the argument that Drury says that there's
18 no claim or that this -- there's no claim for alter ego in
19 South Carolina is not right. The case was -- the argument
20 that was before the court was basically that contention that
21 there is no -- there's no claim that you can bring for alter
22 ego. It's something that you get to after judgment.

23 And the federal court, Judge Anderson wanted to know is
24 that right? Because it seems like it might be under the
25 current status of South Carolina law. And the court in that

1 case said, no, it's not right. You can bring a claim, you
2 don't have to have a judgment, it's not pre -- it's not post
3 judgment collection activity. It is a claim, but it's a lot
4 like civil conspiracy is in North Carolina. It's not to the
5 same extent in South Carolina.

6 But in civil conspiracy up here we argue all the time
7 about whether you can sue somebody for civil conspiracy. And
8 the appellate court says it's not an independent claim, it's a
9 tag-along claim.

10 So when you said at the end that if you dismiss the first
11 seven causes of action, then there can't be an alter ego claim
12 left standing, that's right. But to the extent that there's
13 some indication that we can't bring a claim now, that's wrong.
14 You know, we're entitled to plead and prove foundational
15 claims. And if we can do it, then the alter ego claim goes as
16 well.

17 The alter ego claim is important because it helps deal
18 with the fact that we know what Mr. Smith is saying about we
19 don't know what the basis for our liability is. The legal
20 dispute that the two of us have is about whether you can sue a
21 member of an LLC for their torts.

22 And he kept saying there has to be some separate
23 activity. And to the extent that that is, you know, something
24 unrelated to what forms the basic claim against the LLC,
25 that's not true.

1 I mean, what the law is is that if there are members of
2 the LLC who are employees of the LLC who did something and you
3 sue the LLC based on that something, you can't go suing the
4 manager and say you must be responsible too because he's the
5 manager. If the manager participated in the wrong, then you
6 can sue him. But you can't sue him just because he's the
7 manager. That's what the law is.

8 So Mr. Dreskin in his case is the manager. He is also a
9 member. He's the LLC. So all of the wrongful conduct that
10 we've alleged in this case was all him. And we can sue for it
11 to the extent we can make out a legal claim all day long.
12 There's nothing about the LLC statute that says, you know,
13 even if you did it, but you did it on behalf of an LLC, then
14 somebody can't sue you. There's actually some law to that
15 effect in North Carolina. There's none that I know of in
16 South Carolina that says that that's true. So these claims
17 stand.

18 I don't know if you want to get into any of the
19 particulars of these causes of action, but I think all of the
20 arguments are the same. If there's some idea that the
21 complaint could be -- or that the Third-Party complaint could
22 be more clear in terms of being -- consistently saying
23 Plaintiffs instead of occasionally saying Plaintiff, I can fix
24 that if Your Honor would let me. But it is throughout. There
25 is no surprise. It is very clearly stated that the actions

1 that are being complained of were the actions of Mr. Dreskin.
2 And they form the basis for legal liability.

3 And, again, the final point, coming back to the first
4 one, I may be wrong, because again, I wasn't there in October,
5 and I know Your Honor was. But when I read that order, all
6 that happened in October is that the parties agreed to resolve
7 claims that were in that 2020 case in the 2017 case. And
8 Dreskin had them, he was served with them, he had the same
9 lawyers that he has now. And they ought to be allowed to
10 continue.

11 **THE COURT:** All right. Thank you for that. Okay.

12 Before I get the reply from Mr. Smith, let me tell you
13 what I've heard from -- heard from you both, and maybe Mr.
14 Smith in his reply can focus in on where I am. Okay.

15 This is a motion based on the Statute of Limitations as
16 well as the 12(b)(6) motion, failure to state cause -- failure
17 to state facts from which relief can be granted. I think I've
18 got a grasp over the Statute of Limitations argument.

19 I do not believe, Mr. Smith, that anything that I did
20 back in 2020 in regards to if you want to go by what Mr.
21 Fennell says consolidate or whether what you say dismiss, I
22 don't think any of that matters for purposes of our -- of what
23 we're doing today. I think we have to take a look exactly at
24 what has been -- exactly what's before me now. I don't think
25 anything that I did previously binds me based on the arguments

1 that I understand what the order did, okay?

2 I have broadly -- my understanding broadly, I have some
3 concerns over the fact that this Mr. Dreskin fellow was not
4 added until later. I think factually it is -- factually I
5 will look at it in the light that's most favorable to Mr.
6 Fennell and the Epps in that let's assume for purposes of this
7 argument that Mr. Dreskin was the actual one who did the bad
8 things. If he at all times were acting in his capacity as a
9 member of that LLC, there has to be some purpose to having the
10 LLC.

11 My understanding is that corporate liability provides
12 that shield from individual liability to members that act
13 within the scope of the course of their participation within
14 the corporation. So I think at some point there would have to
15 be that delineation between his acts and the LLC acts,
16 otherwise, we're going to throw it all out the window.
17 Otherwise, anybody that works for a corporation is going to be
18 held individually liable for things they do within the scope
19 and course of that corporate entity.

20 And if that is true, then my general understanding from
21 law school 101 Corporations is gone. Everything that John
22 Freeman taught me in corporations then gets unended as far as
23 the premise of how I view corporate liability or corporate
24 protection in South Carolina.

25 As far as the Statute of Limitations, its concern, it's

1 an interesting argument. I have heard recently a lot of
2 Statute of Limitations arguments and how it can be affected
3 through the application of 40(j) and whether or not you have
4 the tolling, how that can be extended.

5 So I would have to take a look at the Statute of
6 Limitations argument as it relates to Mr. Dreskin. You know,
7 I'll just have to take a look at it.

8 You know, dismissing a case at this stage based on a
9 Statute of Limitations argument is different than dismissing
10 causes of action based upon a review of how they are alleged.
11 There is no -- as far as the Statute of Limitations argument's
12 concerned, the underlying facts that form the basis of the
13 Statute of Limitation arguments are going to be non-contested.
14 They either happened or they did not.

15 Those facts are -- or if those facts are contested, then
16 the Statute of Limitation argument does not get granted until
17 we get further discovery of it. But when it comes to
18 interpretation of the allegations that are contained in a
19 complaint or in a third-party complaint, you know, I've got to
20 view all of those allegations as true. And I have to view
21 those allegations in the light that's most favorable to the
22 non-moving party.

23 And so if Mr. Fennell is -- in his assertion I have to --
24 I have to take what he says those paragraphs mean. And so I
25 would intend to do that in my review of that. And I only

1 mention that, Mr. Smith, because I'm scratching my head going
2 that's going to be a tough burden for you to get -- to get
3 over because I have to view them in the light that's most
4 favorable to him.

5 And he might be wrong as far as factual, and he might be
6 wrong as far as the application of the law, but I think when
7 it comes to the way he views those facts and the way he views
8 the law that's going to apply to those facts, he gets great
9 deference at this hearing. So with that being said, you want
10 to focus me back to what you want me to understand?

11 **MR. SMITH:** Yes, Your Honor. And ---

12 **THE COURT:** --- any questions at all?

13 **MR. SMITH:** I'm sorry, I didn't hear that last part, Your
14 Honor.

15 **THE COURT:** I was going to say you're free to ask me
16 questions as well as me ask you questions. I want this to be
17 productive.

18 **MR. SMITH:** And there were just a few points that I
19 wanted to raise in response to Mr. Fennell. And, again, I was
20 not present at the hearing last fall, Mr. Bach was.

21 But what -- to provide more, I guess, background facts to
22 that hearing, Your Honor, is that the sole reason for our
23 argument was that under Rule 15 you have to seek leave to file
24 an amended complaint. The Defendants recognized that Rule 15,
25 and they filed a new complaint anyway. So we moved to dismiss

1 in the 2020 action because another action was already pending.

2 So the way I ruled the 2020 order is that it doesn't
3 consolidate the cases or Equinox doesn't agree that somehow
4 the 2020 action saved the Statute of Limitations, Your Honor.
5 From our view, that summons and complaint was improperly filed
6 and it was dismissed. Therefore, it is a nullity as far as
7 the statute is concerned, Your Honor. And I guess that's the
8 -- that's the last I'll say on the Statute of Limitations,
9 Your Honor.

10 I guess our primary concern is that Mr. Dreskin, you
11 know, virtually all of the discovery had been done by the time
12 this motion to amend had been filed. The parties had been
13 deposed, numerous independent witnesses have been deposed.

14 And by the time we filed this motion to amend, which was,
15 you know, after years of litigation, Mr. -- to assert a new
16 claim, we were concerned that we would have to litigate the
17 case differently. And we didn't have that opportunity because
18 we had already deposed the parties. And so that -- I guess
19 that's the last part I will say, Your Honor, ---

20 **THE COURT:** Again, let me ask ---

21 **MR. SMITH:** --- as to that point.

22 **THE COURT:** I'm going to ask you to repeat that part
23 because it sounded to me like you just argued a prejudice
24 element.

25 **MR. SMITH:** Yes, Your Honor. And we do believe that

1 there is prejudice to Mr. Dreskin. At the time this complaint
2 was filed in October of 2020 we had already deposed the
3 tenants, we had already deposed -- Mr. Dreskin had already
4 been deposed, Mr. Dreskin's contractors had been deposed.

5 I can't remember which health care providers had been
6 deposed yet, but many of the, I guess, mold testing companies,
7 I believe some of the other independent witnesses had already
8 been deposed. And so I guess our concern is that we could not
9 go back and depose the parties to see what their allegations
10 against Mr. Dreskin were specifically.

11 And I guess to piggyback both the prejudice issue to the
12 pleading issue, Your Honor, is that our interpretation of
13 these claims is that -- what the Defendants are attempting to
14 do is they're conflating personal liability with corporate
15 liability. Our concern is that what the Defendants will do is
16 they will say, well, we don't even have to pierce the
17 corporate veil or look at those alter ego elements because
18 we've alleged separate torts against Mr. Dreskin specifically.

19 And so our concern is that they're just trying to bypass
20 the corporate veil piercing and all of the protections of the
21 LLC Act by simply, generally alleging Mr. Dreskin. Well,
22 that's not what their complaint says. They lump him in with
23 Equinox. And so the problem is we don't have any opportunity
24 to know what claims are against Mr. Dreskin individually
25 versus what claims are alleged against the LLC.

1 And I agree with Your Honor, that that would completely
2 upend the concept of corporate protection in South Carolina if
3 in order to just simply bypass all of the, you know, the
4 Sturkie Elements and whatnot, all you have to do is just
5 allege that the member did these things, and so the
6 corporation -- you don't even have to sue the corporation.

7 So, again, Your Honor, what I'll say about the Statute of
8 Limitations is, again, you know, we're -- this case started in
9 October of 2017. Here we are, you know, we're, you know, this
10 fall will be the fourth year of litigation, and Mr. Dreskin
11 has just been added to the action. And we have no idea what
12 new knowledge has come up, what has changed, why he wasn't
13 sued back in 2017.

14 So it is our contention, Your Honor, that these claims
15 simply at this late hour are too late, it prejudices our
16 prosecution of these claims, Your Honor, and the Statute of
17 Limitations clearly bars it whatsoever.

18 Oh, and I think one issue I wanted to address on the
19 Statute of Limitations, Your Honor, is the case was 40(j)'d,
20 however, Mr. Dreskin was not a party to the 40(j) case. So,
21 therefore, any tolling -- the Statute would not be tolled as
22 to him under Rule 40(j) because it has to be a party who
23 consented to the 40(j) tolling. And with that I'll conclude,
24 Your Honor.

25 **THE COURT:** And I mentioned the other cases that I've

1 been involved with with the application of 40(j) because that
2 was -- that was an issue that came up was the extent of the
3 tolling of that case.

4 All right. Mr. Fennell, anything to close, briefly, Mr.
5 Fennell?

6 **MR. FENNELL:** Yes, sir. I heard you when you said you
7 don't feel like you're bound by the order. The order says
8 what it says. And I believe the order says what I -- what I
9 -- how I represented it to Your Honor.

10 **THE COURT:** Well, I would take -- I don't want to mince
11 words with you, but I don't believe that if I said the words
12 I'm not bound by that order, that I did not -- that my intent
13 in saying that does not mean that I did not respect that
14 order.

15 **MR. FENNELL:** Yes, sir. And I think, again, the order
16 describes better than me and Mr. ---

17 **THE COURT:** Okay.

18 **MR. FENNELL:** --- Smith could ever describe what happened
19 that day.

20 **THE COURT:** Okay.

21 **MR. FENNELL:** The order sets out the agreement between
22 the parties about how to resolve the disputes.

23 **THE COURT:** Okay.

24 **MR. FENNELL:** With respect to corporate liability, I'm
25 not trying to set anything on its head. You know, what I'm

1 indicating to Your Honor and to Mr. Smith is that this is not
2 a case where the president of a company ---

3 (Technological interference)

4 **THE COURT:** Hang on one second.

5 **MR. FENNELL:** Yes, sir.

6 **THE COURT:** We had a technology glitch. You went blank
7 on me for one second. Let me get you back. Okay. Mr.
8 Fennell, I got as far as your saying that -- corporate
9 liability.

10 **MR. FENNELL:** I promise you I'm not trying to set
11 anything on its head.

12 **THE COURT:** Okay.

13 **MR. FENNELL:** This case is not a case where we have
14 alleged a claim against the president of a company or the
15 majority shareholder of the company simply because of their
16 status. What we have done is sued Mr. Dreskin because of his
17 wrongdoing. And we made that plain in the footnote. And we
18 made that plain by referring to Plaintiffs throughout.

19 And you cannot say that I'm immune from being sued from
20 my wrongdoing simply because I own an LLC. You know, ---

21 **THE COURT:** You can't?

22 **MR. FENNELL:** No, sir. You can shield yourself from
23 contractual liability, but you cannot shield yourself from
24 torts that you committed by saying that you did it on behalf
25 of an LLC.

1 If you're in an auto wreck, for example, and you're
2 delivering a product to somebody, you're still responsible for
3 the negligence that you were -- that caused the wreck even
4 though you were working for the LLC.

5 If you commit fraud against people, that -- as is alleged
6 here, if you hide things that you should have told them, you
7 can't say you can't hold me responsible for that because I did
8 it for my LLC. That would turn LLC law on its head and the
9 protections that are intended by the creation of LLCs and
10 corporations on its head because it wasn't designed to help
11 people out when they did something bad.

12 It was designed to help you understand what your
13 contractual liability was going to be when you went out into
14 the business world. It's not a shield to the extent that Mr.
15 Smith is describing it. And it's not automatic immunity from
16 saying that I get to commit fraud wherever I want because I've
17 formed an LLC in order to help me do that.

18 So that, I think, is all that I needed to say. I said
19 what I needed to say about ---

20 **THE COURT:** Okay. Well, let me -- let me just ask you a
21 question to see how far you want to go with that theory ---

22 **MR. FENNEL:** Yes, Your Honor.

23 **THE COURT:** --- that you're not protected from personal
24 liability due to acts that are committed within the scope and
25 course or within your work with an LLC or a corporation. Does

1 that also include negligent acts as opposed to fraudulent
2 acts?

3 **MR. FENNELL:** It gets harder. The cases that we have
4 here in North Carolina talk about what is actually within the
5 scope. And if you are out lying to people, committing fraud,
6 those sorts of things, that cannot be within the scope of your
7 activities as the manager of an LLC.

8 If ---

9 **THE COURT:** Okay. But ---

10 **MR. FENNELL:** --- you're trying to do something -- if
11 you're acting in good faith on behalf of the LLC and somebody
12 says that you were negligent in doing so, then you are within
13 the scope of your -- of your status as a member or manager,
14 and you cannot be sued for that. That's where I think the
15 cases come down in trying to figure out what the difference
16 is. As well ---

17 **THE COURT:** Is your difference -- is your difference the
18 element that you threw in good faith? Is that the difference?

19 **MR. FENNELL:** I don't know that the courts actually say
20 good faith, but it is -- it's really conduct that is just
21 wrong. It's ---

22 **THE COURT:** The conduct -- that's your benchmark for
23 avoiding the protections of corporate law and LLC law?

24 **MR. FENNELL:** Yes. No, I'm not going as far as what
25 you're indicating. What I'm saying is the example ---

1 **THE COURT:** Well, you're -- I'm sorry, but I have to
2 understand what you're -- what you're arguing to me.

3 **MR. FENNELL:** I understand.

4 **THE COURT:** Okay.

5 **MR. FENNELL:** And what I'm saying is I'm not going as far
6 as what you said. I don't mean to be. But what I'm saying is
7 that the best example is that if somebody engages in a fraud,
8 then says you can't sue me.

9 If I go out in the business world as Rich Fennell, LLC,
10 and I commit fraud against my customers, or against my
11 consumers, or against investors, I'm still responsible for
12 that even though I've formed Rich Fennell, LLC, and I come
13 into court and I say, Judge Hayes, you can't hold me
14 responsible for the fact that I lied to all those people
15 because I did it as a manager of an LLC.

16 That's not what the LLCs were created to do. And that's
17 how the corporate protection of LLCs and corporations has been
18 (technological interference) extended beyond the realm of what
19 anybody ever thought it would be.

20 **THE COURT:** Well, why would we not then, I mean, I'm
21 being sincere with my statement. I'm having a problem with
22 the way that you are wanting to advocate for LLC corporate
23 protection because you are presupposing that the litigation
24 process is going to ignore the fact that we have a series of
25 laws that actually establish protection from liability. And

1 it's regardless if it's fraud liability, negligent liability,
2 contractual liability.

3 We have in South Carolina a series of law, corporate law,
4 LLC law, partnership law that establishes a wall of protection
5 of certain conduct, okay? And that -- and it's my basic
6 understanding of it -- and I'm willing to be wrong. My basic
7 understanding of it is that you first establish liability in
8 order to be able to recover.

9 And that one of the protections that this fictions of law
10 that we have in South Carolina that establish corporate
11 entity, liability, LLCs, and partnerships is that we want
12 people to actually go out into the marketplace and to become
13 engaged and to try to stimulate the economy. We want people
14 to take risks in order to better society as a whole.

15 And that part of what this law does is gives you
16 protection legally to conduct that's committed within this
17 wall of protection of corporate liability, LLC liability,
18 partnership liability. People can make -- can do wrong. And
19 people can do wrong that are acting within the corporate
20 liability, LLC liability, partnership liability.

21 My understanding is that first you've got to establish
22 that a wrong has been done and you do it through suing,
23 through engaging the legal processes by suing the corporation,
24 or suing the LLC, or suing the partnership.

25 Once that liability is established, then you get the

1 ability to then look, wait a minute, we're not going to let
2 this wrong go without a remedy. And we're going to allow that
3 plaintiff, who was successful, then to pierce that corporate
4 veil and to say we're going to see if this person that did
5 this wrong thing, whether it be fraudulent, negligent, or
6 contractual, we're going to see if that person was using this
7 corporate entity simply as a veil, an alter ego, simply to
8 hide behind to avoid liability for that wrong conduct. Now
9 that's my understanding. That is broadly stated, but that is
10 my understanding.

11 And what I'm hearing you argue to me in this case is
12 that, no, Judge, let's leapfrog all of your basic
13 understanding of all of your basic understanding of corporate
14 law, LLC law, partnership law and let's say up-front because
15 we think and we're going to allege that somebody committed a
16 fraud, breached a contract, or was negligent, we're going to
17 say up-front, Judge, you now have to ignore all of this law of
18 corporations, LLC, and partnership and say you now are going
19 to be able to sue somebody in their individual capacity and
20 just ignore all of the corporate protections that is basic, I
21 don't know, law to me in South Carolina.

22 **MR. FENNELL:** No, Your Honor. I would never ask you to
23 ignore anything. What I'm asking you to consider is that
24 there is no automatic protection for bad conduct simply
25 because you say you did it on behalf of a company or you did

1 it on behalf of an LLC.

2 **THE COURT:** Okay.

3 **MR. FENNEL:** --- that's the law. And I think that's the
4 foundational difference that you and I are having in trying to
5 debate this. I don't ---

6 **THE COURT:** Okay.

7 **MR. FENNEL:** --- think it's automatic. You know, what I
8 think is that as long as you're performing within the course
9 and scope of what you're supposed to be doing as a member,
10 then that law applies.

11 And -- but the easiest case is when you're dealing with
12 contractual liability. (Technological interference) point
13 about how you want to encourage risks, et cetera. You want
14 people to go out and enter into contracts that may be risky.
15 And if you have personal liability for the contract, you never
16 do it. So that's where all this stuff started.

17 Where it got a little bit bastardized was trying to
18 figure out how does that extend to tort liability? And I know
19 I'm being repetitive, but do we have an automatic level of
20 protection for somebody who's committing fraud on the public
21 if they say simply it wasn't me as Rich Fennell, it was me as
22 Rich Fennell, LLC? And I don't think that's what the law is.

23 **THE COURT:** And maybe I am not being as articulate as I
24 need to be in trying to understand what your position is
25 because I am not saying there is an automatic protection. I'm

1 saying that the way that the law is set up, the way the system
2 works, the way that you give respect to what the legislature
3 has dictated that we as judges and lawyers must do is honor
4 what they've done.

5 And they've set up this corporate code that gives you
6 corporate liability, LLC liability, partnership liability, and
7 that first you've got to respect those entities, and that you
8 can establish wrong, and that this person that -- and let's
9 assume you are correct that a person has committed a fraud
10 while they're part of this LLC, corporation, partnership, then
11 you first establish liability. Then you see how you can
12 collect it. Because, Mr. Fennell, the way that it comes
13 important in this case may be with the application of the
14 Statute of Limitations.

15 **MR. FENNELL:** Yes, Your Honor.

16 **THE COURT:** Because with a Statute of Limitations
17 argument I don't think that an alter ego assertion by Mr.
18 Smith can succeed against individual liability when it has
19 been properly asserted through a corporation.

20 But if your position is that in order to get at Mr.
21 Smith's client, individual liability, is that you have to have
22 sued him individually, you might have a Statute of Limitation
23 problem.

24 **MR. FENNELL:** I don't think I have to have done it
25 because of the alter ego claims or the alter ego law that

1 you're discussing, but I think I have the right to. And
2 that's what I've done. For all ---

3 **THE COURT:** Okay.

4 **MR. FENNELL:** --- the reasons that I've ---

5 **THE COURT:** Okay. All right. But I just want to be sure
6 that I understand your argument because it has, in my opinion,
7 two sides to that blade.

8 **MR. FENNELL:** Absolutely.

9 **THE COURT:** Mr. Smith, are you able to defend my view of
10 corporate LLC and partnership law in the State of South
11 Carolina?

12 **MR. SMITH:** Yes, Your Honor. I think that you are
13 understanding of the South Carolina practices is unassailable
14 at this point. All I'll add in is that Drury, I think, backs
15 you up. And it says that's why these issues are typically
16 considered post judgment because the judge has already heard
17 the evidence and he can decide whether a fraud was committed
18 or not. Or it can be considered as part of a bifurcated
19 action.

20 But the problem is that, you know, what the pleading
21 currently asserts is that Mr. Dreskin is not entitled to any
22 protection whatsoever. He's just individually liable. They
23 don't have to follow the Sturkie Factors.

24 But I think that Your Honor is right that we do have to
25 at the pleading stage evaluate, we have to presume the

1 protections of the LLC because they have to prove that it was
2 somehow abused at trial either -- and we can argue post
3 judgment or bifurcation, whether they have met that evidence.
4 But as it stands, you can't just sue the LLC and the member to
5 bypass that protection.

6 **THE COURT:** But, Mr. Smith, by the same token that -- I'm
7 scratching my head going over Mr. Fennell's application of the
8 corporate partnership, LLC law, I'm scratching my head, with
9 this alter ego elimination that you want to do at this stage,
10 I'm wondering does it matter?

11 I mean, if Mr. Fennell is correct that the alter ego
12 theory is going to somehow lead him or lead his client to some
13 type of liability recovery ---

14 Okay. I'm sorry, I've got to stop. Mr. Epps, I
15 appreciate your being here. But, ma'am, your hand movements,
16 and waving around, and talking to somebody is distracting to
17 me. I appreciate very much your being here, but I would not
18 allow someone to do that in a court of law, sit in the court
19 and have a party to sit there and wave around and talk to
20 people. So I appreciate your being here, but I'm going to
21 have to terminate this hearing right now, okay? Lawyers, I'd
22 like to talk to y'all privately.

23 **MR. SMITH:** Yes, Your Honor.

24 **MR. FENNELL:** Yes, sir.

25 **MS. EPPS:** I'm sorry, sir. I thought I was able to

1 speak. So that's -- actually, I was holding my hand up to
2 speak. And then I sent a message in the chat to see if I was
3 going to be able to speak because I had a prior attorney
4 before. And that's why Rick Dreskin wasn't added is because
5 she refused to allow him ---

6 **THE COURT:** Ma'am, ma'am, ma'am. You have a lawyer now,
7 and I apologize for cutting you off, but it would be unfair to
8 Mr. Fennell and Mr. Smith to allow a client to advocate for
9 themselves when they have been hired to advocate for clients.

10 And so, you know, you talk to Mr. Fennell. If he wants
11 to present you as a witness, then get with Mr. Smith, I'll be
12 more than happy to hear from you. I'm not trying to just cut
13 you off just to cut you off, but, you know, we've got lawyers
14 and they're -- listen, Mr. Fennell and Mr. Smith are two of
15 the best lawyers that have ever appeared in front of me. And
16 they have presented to me very complex and thorough arguments.

17 You know, I, you know, my questions to both of them,
18 please do not read into it that I have some type of
19 predetermined outcome because I don't. The reason I ask these
20 questions of Mr. Fennell and Mr. Smith is because I'm trying
21 to understand because this is a very -- legally a very complex
22 case.

23 So if you want me to know something and you feel like Mr.
24 Fennell or Mr. Smith has misrepresented or hadn't let me know,
25 reach out to Mr. Fennell. He can let me know whatever it is

1 you want me to know. But I just cannot let you speak, okay?

2 **MS. EPPS:** Yeah, I didn't know that. So that's why I
3 raised my hand.

4 **THE COURT:** Okay.

5 **MS. EPPS:** But I realized that there was a chat. And so
6 I sent a message through the chat. And so -- and I apologize.
7 I'm at my office, my accounting firm, and somebody asked me a
8 question. So I was just trying to answer it. I'm not trying
9 to bother you.

10 **THE COURT:** No. I appreciate that, but we are conducting
11 a court hearing. And I appreciate -- understand with COVID
12 and everything it gets tough. This is the way Court
13 Administration allows us to take care of matters. But I would
14 not allow someone from your accounting firm to walk up while
15 you're in a court of law and ask you an accounting question.

16 **MS. EPPS:** Okay.

17 **THE COURT:** You know, this is ---

18 **MS. EPPS:** And I'm -- and I'm sorry.

19 **THE COURT:** --- a court of law, okay?

20 **MS. EPPS:** Yes, sir. And I'm sorry. They didn't -- they
21 didn't realize I was on -- I was listening because I'm on a
22 headset. So they just walked up, and I pushed them away. So
23 I apologize. I won't do it anymore.

24 And I did send a message through the chat to say am I not
25 going to be able to speak? And they told me, no. And then I

1 sent a message to Rick. So I just -- the only -- the only
2 reason is I had a prior attorney ---

3 **THE COURT:** There you go. You're telling me something --
4 you're telling me something that Mr. Fennell might not want me
5 to know. So if you feel like -- know something about a prior
6 lawyer, tell Mr. Fennell and he will get it to me if he
7 believes that it is material to the issues that we're going to
8 hear, okay?

9 **MS. EPPS:** You got it.

10 **THE COURT:** All right. Thank you.

11 Gentlemen, anything else?

12 **MR. SMITH:** Not on that motion, Your Honor.

13 **THE COURT:** All right. I'd like to talk to y'all
14 privately. We're going to send you a Webex link, and we'll
15 talk to you just shortly.

16 **MR. FENNEL:** Yes, sir.

17 **MR. SMITH:** Yes, Your Honor.

18 (Hearing Ended at 11:39 am)

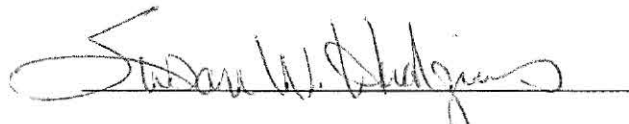
19 (End of Requested Transcript of Record)

Certificate of Reporter

I, the undersigned, Susan W. Hudgins, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record to the best of my ability through Webex of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Spartanburg County, South Carolina, on the 24th day of March 2021.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

February 19, 2022



Circuit Court Reporter