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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas
The Honorable J. Cordell Maddox, Jr. Circuit Court Judge

Appellate Case No. 2023-001479
Case No. 2021-CP-02-00889

Julianne Foster..... Respondent,

v.

Rhett Riviere, Katherine A. Thomas, Chase Enterprises, LLC of South Carolina, and Airbnb, Inc.,.....Defendants,

of which

Airbnb, Inc., is the ..... Appellant.

and

Rhett Riviere is a ..... Respondent.

RECORD ON APPEAL
VOLUME II

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STATE OF SOUTH CAROLINA COUNTY OF AIKEN	)))	IN THE COURT OF COMMON PLEAS SECOND JUDICIAL CIRCUIT
Julianne Foster, Plaintiff, vs. Rhett Riviere, Katherine A. Thomas, Chase Enterprises, LLC of South Carolina, and Airbnb, Inc., Defendants.	)	Civil Action No. 2021-CP-02-00889 **AIRBNB, INC.'S MOTION TO COMPEL ARBITRATION**

Pursuant to Rules 12(b)(1), (3), and (6) of the South Carolina Rules of Civil Procedure and any other applicable Rule, and pursuant to 9 U.S.C. §§ 3 and 4 of the Federal Arbitration Act ("FAA"), Defendant Airbnb, Inc. ("Airbnb") moves Compel Arbitration of the above-captioned action and dismiss. All of Plaintiff's claims against Airbnb arise out of a transaction involving interstate commerce and are subject to a binding arbitration agreement that is governed by the FAA. Moreover, Airbnb's crossclaims and third-party claims are also subject to a binding arbitration agreement, and Airbnb is opting to compel those claims to arbitration as well. This entire action, therefore, should be dismissed and compelled to arbitration.[1]

FACTUAL BACKGROUND

This action arose from an incident that occurred from May 17–18, 2019. (Am. Compl. ¶ 89.) Plaintiff alleges that her friend used Airbnb to locate a rental property in Aiken, South Carolina. (*Id.* ¶ 93.) This property was owned by Defendant Chase Enterprises, which was

[1] Airbnb denies that Plaintiff's claims have any merit whatsoever. It reserves all defenses to Plaintiff's claims and does not waive any available defenses. In Airbnb's answers to the original Complaint and Amended Complaint, it expressly reserved "all rights to compel mandatory contractual arbitration," and submitted its answers "without waiving such rights."

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managed by Defendant Riviere. (*Id*. ¶¶ 89–91.) Defendant Thomas held herself out to be the "host" or property manager for the property. (*Id*. ¶ 95.) Plaintiff and her friends rented the property through Airbnb and all "paid the Defendants to rent the Airbnb property." (*Id*. ¶ 100.)

Plaintiff alleges that during the time she was staying at the property, Defendant Riviere had a hidden camera placed in a bedroom which captured recordings of her. (*Id*. ¶ 100.)

Plaintiff filed her initial Complaint on April 28, 2021. That pleading was 83 paragraphs and asserted claims for: (1) negligence (all Defendants), (2) invasion of privacy (Defendant Riviere), (3) intentional infliction of emotional distress (Defendant Riviere), (4) constructive fraud/misrepresentation (Defendant Riviere), and (5) negligence per se (Defendants Riviere, Thomas, and Airbnb). Plaintiff filed her Amended Complaint on November 30, 2022. This new pleading ballooned to 257 paragraphs and added a significant amount of new factual allegations as well as several new claims and prayers for relief. The Amended Complaint asserts claims for: (1) negligence (all Defendants), (2) *negligent hiring, supervision, or retention of employees (Defendant Airbnb)*, (3) *negligent hiring, supervision, or retention of employees, or alternatively independent contractors (Defendant Airbnb)*, (4) *premises liability (all Defendants)*, (5) invasion of privacy (Defendant Riviere), (6) *vicarious liability for invasion of privacy (Defendant Airbnb)*, (7) intentional infliction of emotional distress (Defendant Riviere), (8) constructive fraud/misrepresentation (Defendant Riviere), and (9) negligence per se (all Defendants), and (10) *violation of the South Carolina Unfair Trade Practices Act (all Defendants)*. (The newly added claims are italicized above.)

Airbnb's Terms of Service governed this transaction. (*See* **Exhibit A**, Terms of Service, AIRBNB-000272–314.) As detailed more fully below, Plaintiff's friend expressly agreed to the terms in booking the rental and Plaintiff directly benefited from the transaction making her subject

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to those Terms. Moreover, Defendants Riviere and Thomas both agreed to the Terms of Service as a condition of their being allowed to list their properties on Airbnb's online platform. (Airbnb's Third Party Compl. ¶ 1.)

The Terms of Service in effect at the time of the booking provide in bold on page one:

> **Please note: Section 19 of these Terms contains an arbitration clause and class action waiver that applies to all Airbnb Members. If your country of residence is the United States, this provision applies to all disputes with Airbnb. If your country of residence is outside of the United States, this provision applies to any action you bring against Airbnb in the United States. It affects how disputes with Airbnb are resolved. By accepting these Terms, you agree to be bound by this arbitration clause and class action waiver. Please read it carefully.**

(Exhibit A, Terms of Service at 272.) Section 19 is entitled "Dispute Resolution and Arbitration Agreement" and provides that it applies to all residents of the United States. (*Id.* at 290–93.) Section 19.4 then states in bold:

> **Agreement to Arbitrate. You and Airbnb mutually agree that any dispute, claim or controversy arising out of or relating to these Terms or the applicability, breach, termination, validity, enforcement or interpretation thereof, or to the use of the Airbnb Platform, the Host Services, the Group Payment Service, or the Collective Content (collectively, "Disputes") will be settled by binding individual arbitration (the "Arbitration Agreement"). If there is a dispute about whether this Arbitration Agreement can be enforced or applies to our Dispute, you and Airbnb agree that the arbitrator will decide that issue.**

(*Id.* at 291.)

Section 19.6 provides that the Arbitration Agreement "evidences a transaction in interstate commerce and thus the Federal Arbitration Act governs the interpretation and enforcement of this provision." (*Id.*)

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ARGUMENT

Plaintiff is bound by the Arbitration Agreement set forth above. As detailed below, the issue of arbitrability is for the arbitrator to decide and that alone warrants the Court granting Airbnb's motion. Moreover, the Agreement provides, among other things, that ***any dispute, claim, or controversy*** arising out of or relating to the Terms and Conditions ***or*** the use of the Airbnb platform. (*See* Exhibit A, Terms of Service at 291.) All of Plaintiff's claims, therefore, fall within the Arbitration Agreement's broad scope. Likewise, Airbnb's crossclaims against Defendant Thomas and third-party claims against Defendant Riviere also fall within the Arbitration Agreement's broad scope and Airbnb will pursue those in arbitration as well. Airbnb, therefore, respectfully moves this Court to compel the matter to arbitration and to dismiss this action with prejudice, or, in the alternative, stay it until the arbitration is completed.

I. Standard of law for arbitration

There is a strong policy in favor of arbitration which requires courts to "rigorously enforce agreements to arbitrate." *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 221 (1985). The FAA "leaves no place for the exercise of discretion by a . . . court, but instead mandates that . . . courts *shall* direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed." *Id.* at 218; *Cox v. Assisted Living Concepts, Inc.*, No. 6:13-00747, 2014 WL 1094394, at *10 (D.S.C. Mar. 18, 2014) ("[A] court . . . has no choice but to grant a motion to compel arbitration where a valid agreement exists and the issues in a case fall within its purview." (quoting *Adkins v. Labor Ready, Inc.*, 303 F.3d 496, 50 (4th Cir. 2002))).

Moreover, federal law dictates that arbitration agreements are to be construed as broadly as possible, and any doubts must be resolved in favor of arbitration. *See Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24–25 (1983) ("The Arbitration Act establishes that,

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as a matter of federal law, any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration . . . ."); *see also S&ME, Inc. v. STV Inc.*, No. 3:19-CV-03567-JFA, 2020 WL 4700643, at *3 (D.S.C. July 22, 2020) (same). Any state law standing "as an obstacle to the accomplishment and execution of the full purposes and objectives" of the FAA, is preempted. *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 352 (2011); *see also Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 539–41, 542 S.E.2d 360, 364 (2001) (holding that South Carolina's Consumer Protection Code cannot invalidate arbitration agreements in consumer contracts).[2]

II. The Court should compel the matter to arbitration because the issue of arbitrability is for the arbitrator to decide.

A. The Airbnb Terms of Service contemplate the arbitrator will decide issues of arbitrability.

The arbitration agreement provides that "[i]f there is a dispute about whether this Arbitration Agreement can be enforced or applies to our Dispute, you and Airbnb agree that the arbitrator will decide that issue." (Exhibit A, Terms of Service at 291, § 19.4.) Therefore, this matter must be compelled to arbitration to permit the arbitrator to make this threshold determination at a minimum.

The U.S. Supreme Court has recognized that the parties may agree to have an arbitrator decide not only the merits but also "gateway" questions such as arbitrability. *Palmetto Wildlife Extractors, LLC v. Ludy*, 435 S.C. 690, 699–700, 869 S.E.2d 859, 864 (Ct. App. 2022), *reh'g*

[2] Because the Arbitration Agreement is governed by the FAA, the South Carolina Uniform Arbitration Act does not apply here. *Cox*, 2014 WL 1094394, at *11 ("[E]ven where an arbitration agreement specifically states that the SCUAA is applicable, if the arbitration agreement is covered by the FAA and cannot be enforced under state law because of failure to comply with the notification requirements of the SCUAA, the FAA preempts the state law."); *see also Walden v. Harrelson Nissan, Inc.*, 399 S.C. 205, 208, 731 S.E.2d 324, 325 (Ct. App. 2012) ("Generally, if the contract providing for arbitration involves interstate commerce, the Federal Arbitration Act (FAA) displaces the state arbitration statute.").

denied (Feb. 25, 2022) (discussing *Rent-A-Ctr., W., Inc. v. Jackson*, 561 U.S. 63, 68–69 (2010)). "As long as the parties' agreement delegates the arbitrability question to an arbitrator 'by clear and unmistakable evidence,' a court may not override the contract and decide the arbitrability question." *Id.* (quoting *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 139 S. Ct. 524, 529–30 (2019)). In *Palmetto Wildlife*, the Court of Appeals found that the parties had agreed to have the arbitrator decide issues of arbitrability and held that "if there is any dispute over the arbitrability of [respondent's] counterclaims, the circuit court should send the counterclaims to the arbitrator to decide which are arbitrable under the Agreement." *Id.* at 706, 869 S.E.2d at 867.

Here, the Terms of Service unequivocally provided that an arbitrator shall decide questions of arbitrability. Other courts have found that this provision in Airbnb's terms is enforceable and compelled actions to arbitration for the arbitrator to decide arbitrability. *Airbnb, Inc. v. Rice*, 518 P.3d 88, 91 (Nev. 2022) (finding that the Airbnb arbitration agreement had a "clear delegation clause requiring that an arbitrator decide any dispute as to whether the agreement applies to the claims at issue," and reversing the lower court's refusal to compel the matter to arbitration based on its finding that the claims did not arise out of the Terms of Service, explaining that this issue was for the arbitrator to decide); *Airbnb, Inc. v. Doe*, 336 So. 3d 698, 705 (Fla. 2022), *cert. denied*, 143 S. Ct. 484 (2022) (reaching the same conclusion). As the *Rice* court explained, under applicable U.S. Supreme Court precedent, "when a contract delegates the arbitrability question to the arbitrator, a court has no authority to decide whether the arbitration agreement applies to the dispute, even where the argument for arbitrability is wholly groundless." *Rice*, 518 P.3d at 91 (quoting *Henry Schein*, 139 S. Ct. at 528–29).

Therefore, because the Terms of Service expressly and unequivocally contemplate that the arbitrator must decide issues of arbitrability, the Court should compel this matter to arbitration.

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B. Plaintiff is bound by the Airbnb Terms of Service.

It is undisputed that Plaintiff's friend expressly agreed to the Terms of Service in booking the rental. Although she was the person who physically booked the property, there is also no dispute that Plaintiff learned the property was booked through Airbnb and that she paid the friend for her portion of the stay. Thus, Plaintiff became aware that an agreement existed with Airbnb. Plaintiff received the direct benefit of use of the property through this rental transaction and thus the Terms of Service also cover her claims. She obtained the same contractual benefits as her signatory friend in the transaction and, therefore, must accept the corresponding obligations, including the agreement to submit any claims to arbitration. *See Wilson v. Willis*, 426 S.C. 326, 340–41, 827 S.E.2d 167, 175 (2019) (explaining that under direct benefits estoppel, a "nonsignatory is estopped from refusing to comply with an arbitration clause when it receives a direct benefit from a contract containing an arbitration clause" (quoting *Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 290, 733 S.E.2d 597, 601 (Ct. App. 2012)));[3] *see also R.J. Griffin & Co. v. Beach Club II Homeowners Assoc., Inc.*, 384 F.3d 157, 160 (4th Cir. 2004) (holding that a party cannot try to "hold another party to the terms of an agreement while simultaneously trying to avoid the agreement's arbitration clause").

As the Court of Appeals recently reiterated, a non-signatory is estopped from refusing to comply with an arbitration provision if (1) the nonsigner's claim arises from the contractual relationship, (2) the nonsigner has "exploited" other parts of the contract by reaping its benefits,

[3] Direct benefits estoppel "recognizes that a party may be estopped from asserting that the lack of his signature on a written contract precludes enforcement of the contract's arbitration clause when he has consistently maintained that other provisions of the same contract should be enforced to benefit him." *Willis*, 426 S.C. at 344, 827 S.E.2d at 177. As *Willis* explained, where plaintiffs "sue and seek relief based on contracts containing arbitration clauses, courts have applied equitable estoppel." *Id.*

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and (3) the claim relies solely on the contract terms to impose liability. *Weaver v. Brookdale Senior Living, Inc.*, 431 S.C. 223, 230–31, 847 S.E.2d 268, 272 (Ct. App. 2020). Again, Plaintiff's claims all arise out of the Airbnb booking and she reaped the benefits of the contract through her use of the property. Moreover, all of her claims rely on the contract terms to impose liability since the ***only*** relationship between Plaintiff and Airbnb is through the booking agreement and the Terms of Service and Plaintiff relies on that relationship in contending that Airbnb owed her a duty. (*See* Am. Compl. ¶ 140 ("Airbnb owed a duty to Plaintiff because Plaintiff has a special relationship with Airbnb, by virtue of their staying at an accommodation rented through Airbnb . . . .").)

Thus, because Plaintiff is subject to the Terms of Service and those terms provide that the issue of arbitrability is properly directed to the arbitrator, the Court should grant Airbnb's motion.

III. Even if the Court found that it could decide arbitrability, it should conclude that Plaintiff's claims are subject to the arbitration agreement.

A. The FAA applies and requires enforcement of the arbitration agreement.

The FAA governs the enforceability of the Arbitration Agreement in the Contract. As provided in the FAA, a two-part test is used to determine whether a dispute is arbitrable. First, the court must decide if a valid agreement to arbitrate exists; and second, the court must find that the specific dispute falls within the substantive scope of the agreement. *See Knight v. Rent-A-Ctr. E., Inc.*, No. 4:13-1734-MGL, 2013 WL 6826963, at *1 (D.S.C. Dec. 23, 2013) ("[A] court's role is limited to determining (1) whether the parties agreed to arbitrate and, if so, (2) whether the scope of the agreement to arbitrate encompasses the claims at issue."). Any question relating to the scope of arbitrable issues is resolved in favor of enforcing the agreement to arbitrate. *See, e.g.*, *Moses H. Cone Mem'l Hosp.*, 460 U.S. at 24–25. As discussed below, this two-part test is met in the instant case. Hence, the Court should grant this Motion, compel the parties to arbitration, and dismiss this action, or, in the alternative, stay it until the arbitration is completed.

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The FAA applies to any arbitration agreement that is executed in connection with a transaction involving interstate commerce in any way. *See* 9 U.S.C. § 2; *see also Allied-Bruce Terminix Companies v. Dobson*, 513 U.S. 265, 281 (1995) (explaining that FAA applies to arbitration agreement involving transaction in interstate commerce, even if parties do not contemplate an interstate commerce connection). The FAA provides that a written arbitration agreement contained in a "contract evidencing a transaction involving commerce . . . shall be valid, irrevocable and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. The FAA defines "commerce" as "commerce among the several states." 9 U.S.C. § 1. In section 2 of the FAA, "[t]he word 'involving'. . . signals an intent to exercise Congress's commerce power to the full," and the phrase "'evidencing a transaction' mean[s] only that the transaction . . . turn[s] out, *in fact*, to have involved interstate commerce." *Allied-Bruce Terminix Cos.*, 513 U.S. at 276, 277.

First, the Arbitration Agreement in the Contract specifically provides that the transaction involved interstate commerce and that the FAA governs. (Exhibit A, Terms of Service at 291, § 19.6.) Courts consider such language evidence of the satisfaction of the interstate commerce requirement. *See Zabinski v. Bright Acres Assoc.*, 346 S.C. 580, 592, 553 S.E.2d 110, 116 (2008) (stating that choice of law provisions in arbitration agreements are enforceable); *Credit Acceptance Corp. v. Davisson*, 644 F. Supp. 2d 948, 954 (N.D. Ohio 2009) (finding FAA applied because "the Contract itself provides that '[t]he Federal Arbitration Act governs this Arbitration Clause. . . . The Arbitration Clause is governed by the Federal Arbitration Act . . . and not by any state arbitration law.'"); *Staples v. Money Tree, Inc.*, 936 F. Supp. 856, 858 (M.D. Ala. 1996) (same).

Further, the facts as alleged in Plaintiff's Amended Complaint demonstrate that the transaction involved interstate commerce. Plaintiff is a resident of South Carolina and Airbnb is

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a Delaware corporation with its principal place of business in San Francisco, California. (Am. Compl. ¶¶ 49, 53.) The Airbnb rental was booked in South Carolina and associated fees were paid to Airbnb in California. Thus, in the instant case, monies were necessarily transmitted across interstate lines. These facts establish interstate commerce within the meaning of section 2 of the FAA. *See, e.g.*, *Walden*, 399 S.C. at 208, 731 S.E.2d at 326 ("There is no dispute the transaction here . . . involved interstate commerce as Mary is a South Carolina resident, Harrelson is a North Carolina corporation, the vehicle was manufactured in Tennessee, and financing was provided by Nissan-Infiniti LT of California").

Accordingly, the transaction at issue in this case involved interstate commerce, and therefore, the FAA applies to this action.

B. Plaintiff's claims are subject to a valid Arbitration Agreement with Airbnb.

The FAA provides that arbitration agreements are enforceable according to their terms:

> A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or any agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

9 U.S.C. § 2. In this case, the Arbitration Agreement provides that ***any*** claim arising out of the Terms of Service or ***use of the Airbnb platform*** is subject to binding arbitration.

Plaintiff's friend expressly agreed to the Terms of Service in booking the rental. As detailed above, although the friend was the person who physically booked the property, Plaintiff learned the property was booked through Airbnb, and she paid for her portion of the stay. Plaintiff received the direct benefit of the property rental through this transaction. Therefore, the Terms of Service also cover her claims as well.

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Plaintiff bears the burden of any challenge to the validity of the Arbitration Agreement. *See Swanson v. Prof'l Serv. Indus.*, No. 2:11-cv-2880, 2012 WL 1130664 at *4–5 (D.S.C. Jan. 4, 2012). Courts may only invalidate arbitration agreements based upon generally applicable contract defenses. 9 U.S.C. § 2; *see also Doctor's Assocs., Inc. v. Casarotto*, 517 U.S. 681, 687 (1996). A court should uphold and enforce an arbitration agreement even if an arbitrator may later hold the remainder of the contract invalid. *See Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 403–04 (1967); *see also Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 448 (2006) ("It is true . . . that the *Prima Paint* rule permits a court to enforce an arbitration agreement in a contract that the arbitrator later finds to be void."). Moreover, even when using doctrines of general applicability in examining an arbitration agreement, such as unconscionability, courts are not permitted to employ those doctrines in a manner which would subject arbitration agreements to special scrutiny. *See, e.g.*, *Perry v. Thomas*, 482 U.S. 483, 492 n.9 (1987) ("A court may not, then, in assessing the rights of litigants to enforce an arbitration agreement, construe that agreement in a manner different from that in which it otherwise construes nonarbitration agreements . . . .").

Under this standard, Plaintiff cannot overcome the validity of the Arbitration Agreement in the Terms of Service. Therefore, Plaintiff is bound to arbitrate the claims against Airbnb in accordance with the Arbitration Agreement.

C. The scope of the Arbitration Agreement encompasses Plaintiff's claims in this action.

The FAA mandates that "any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration." *Moses H. Cone Mem. Hosp.*, 460 U.S. at 24-25; *see also Brown v. Santander Consumer USA, Inc.*, No. CA 0:12-2825-CMC-PJG, 2013 WL 4017162, at *2 (D.S.C. Aug. 5, 2013) ("Arbitration is compelled 'unless it may be said with positive assurance

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that the arbitration [agreement] is not susceptible of an interpretation that covers the asserted dispute." (quoting *Peoples Sec. Life Ins. Co. v. Monumental Life Ins. Co.*, 867 F.2d 809, 812 (4th Cir. 1989))). The Supreme Court dictates that a presumption of arbitrability exists where a contract contains an arbitration clause. *AT&T Technologies, Inc. v. Commc'ns Workers of Am.*, 475 U.S. 643, 650 (1986). The presumption in favor of arbitrability "is particularly applicable where the [arbitration] clause is . . . broad," as it is in this case. *Id*.

Here, each of Plaintiff's claims fall within the Arbitration Agreement's broad scope. The Arbitration Agreement requires that Plaintiff arbitrate "any claim" arising out of the Terms of Service or use of the Airbnb platform. (Exhibit A, Terms of Service at 291.) All of Plaintiff's claims arise out of her stay at the property, which booked through Airbnb, and thus arise out of both the Terms of Service and the Airbnb platform. As noted above, the ***only*** tie between Airbnb and any of the relevant parties in this matter was the online booking. Thus, all of Plaintiff's claims have a significant relationship to the Terms of Service and fall within the scope of the Arbitration Agreement. Therefore, all claims are subject to arbitration.

IV. This action should be dismissed because arbitration is the proper forum.

Because the issue of arbitrability should be decided by the arbitrator and all of Plaintiff's claims are subject to arbitration in any event, the Court lacks subject matter jurisdiction and, additionally, is not a proper venue for the adjudication of those claims. Therefore, the Court should dismiss all claims asserted against Airbnb in this matter with prejudice, or in the alternative, without prejudice. *See Cox*, 2014 WL 1094394, at *7 ("Where all claims pled by a plaintiff are subject to an arbitration agreement, the court should dismiss the claims rather than merely stay further judicial proceedings." (quoting *Choice Hotels Int'l, Inc. v. BSR Tropicana Resort, Inc.*, 252 F.3d 707, 709-10 (4th Cir. 2001) ("Notwithstanding the terms of § 3 [of the FAA] . . . dismissal is

a proper remedy when all of the issues presented in a lawsuit are arbitrable."))); *see also Brown*, 2013 WL 4017162, at *2 ("If all of the claims asserted in a complaint are subject to arbitration, dismissal of the complaint is appropriate.").

Failing this, should the Court decide not to dismiss this action, in the alternative Airbnb requests that the Court stay the action until the completion of the arbitration action. 9 U.S.C. § 3 (providing that "the court . . . upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration . . . ***shall*** on application of one of the parties stay the trial of the action . . . .") (emphasis added); *Hensel v. Cargill*, 198 F.3d 145, 1999 WL 993775, at *4 (6th Cir. Oct 19, 1999) (unpublished table decision) ("Under § 3 of the FAA, if any separate claim is referable to arbitration, then a stay of proceedings on the remaining claims is ***mandatory***." (emphasis added)).

V. Airbnb has not waived the arbitration agreement.

Lastly, Airbnb anticipates that Plaintiff will contend that it has waived its right to arbitrate by participating in the litigation. This is not correct. As detailed above, Airbnb has reserved its right to compel arbitration from the time of its initial answer, and has continued to reiterate this right in its most recent answer. Moreover, Plaintiff's recent amendment adding over 150 new paragraphs of allegations and five claims fundamentally altered the nature and scope of the lawsuit, which further supports the propriety of Airbnb's assertion of its arbitration right at this juncture.

South Carolina traditionally followed a three-part test in assessing whether a party has waived its right to compel arbitration: "(1) whether a substantial length of time transpired between the commencement of the action and the commencement of the motion to compel arbitration; (2) whether the party requesting arbitration engaged in extensive discovery before moving to compel arbitration; and (3) whether the non-moving party was prejudiced by the delay in seeking arbitration. These factors, of course, are not mutually exclusive, as one factor may be inextricably

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connected to, and influenced by, the others." *Benson Chrysler-Plymouth, Inc.*, 374 S.C. 122, 125, 647 S.E.2d 249, 250 (Ct. App. 2007).

However, the Supreme Court of the United States recently clarified that courts could not develop an arbitration specific variant of procedural rules such as requiring, for example, a showing of prejudice. *Morgan v. Sundance, Inc.*, 142 S. Ct. 1708, 1714 (2022). *Morgan* emphasized the general waiver rule of "voluntary relinquishment of a known right" and noted that the analysis should focus on the actions of the party who held the right. *Id.*

Therefore, the Court's analysis should turn on whether Airbnb has voluntarily relinquished its right to arbitrate. By maintaining this right in its pleading and providing Plaintiff notice of the same, Airbnb has made it clear that it was maintaining this right and was not voluntarily relinquishing it. *See, e.g., Soriano v. Experian Info. Sols., Inc.*, No. 2:22-CV-197-SPC-KCD, 2022 WL 6734860, at *3 (M.D. Fla. Oct. 11, 2022) (highlighting the importance of a party's pleading of arbitration as an affirmative defense in assessing waiver); *Armstrong v. Michaels Stores, Inc.*, 59 F.4th 1011, 1015 (9th Cir. 2023) (compelling arbitration and noting that defendant pleaded arbitration as an defense in its two filed answers and in the initial case management conference)

Moreover, the Terms of Service, which apply here for the reasons discussed above, contain an express non-waiver provision. Section 22.5 states that "Airbnb's failure to enforce any right or provision in these Terms will not constitute a waiver of such right or provision unless acknowledged and agreed to by us in writing. Except as expressly set forth in these Terms, the exercise by either party of any of its remedies under these Terms will be without prejudice to its other remedies under these Terms or otherwise permitted under law." (*See* Exhibit A, Terms of Service at 294.) This also supports that Airbnb did not waive its right to arbitrate.

Finally, Plaintiff's addition of considerably more allegations and new claims in recent months also weighs against any claim that Airbnb waived its right. This is particularly so in light of Plaintiff's new claim for violation of the South Carolina Unfair Trade Practices Act. A central element of such a claim requires demonstrating impact on the public interest, which is shown through capability of repetition, *see Crary v. Djebelli*, 329 S.C. 385, 387, 496 S.E.2d 21, 22–23 (1998), significantly expanding the scope of this lawsuit and potentially involve government regulators. *See Daisy Outdoor Adver. Co. v. Abbott*, 322 S.C. 489, 496, 473 S.E.2d 47, 51 (1996) (providing that generally to establish the potential for repetition requirement, the claimant must make a "(1) showing the same kind of actions occurred in the past, thus making it likely they will occur absent deterrence, or (2) . . . showing the company's procedures create a potential for repetition of the unfair and deceptive acts").

In these circumstances, the relevant waiver analysis should be as to the amended complaint, not the original pleading. *Haarslev, Inc. v. Nissen*, No. 5:19-CV-06128-BCW, 2023 WL 2782313, at *7 (W.D. Mo. Jan. 30, 2023); *see also Cannon Equip. Co. v. Troisi*, No. CV 08-2391 (PAM/AJB), 2009 WL 10710732, at *2 (D. Minn. Oct. 30, 2009). As the *Haarslev* court explained, "[w]hen a plaintiff files an amended complaint which changes the theory or scope of the case, the [d]efendant is allowed to plead anew as though it were the original complaint filed by the [p]laintiff." *Haarslev*, 2023 WL 2782313, at *7 (quoting *Troisi*, 2009 WL 10710732, at *2); *see also Solis v. Experian Info. Sols., Inc.*, No. SACV2200102CJCKESX, 2022 WL 4376077, at *3 (C.D. Cal. Sept. 21, 2022) ("The Court need not—and therefore does not—decide whether Experian in fact waived its right to compel arbitration, because Cantong's amended complaint

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revived the right even if it were waived.").[4] Here, Plaintiff's voluntary decision to expand the scope of this suit also weighs against a finding of waiver.

For all these reasons, the Court should reject any argument from Plaintiff that Airbnb waived its right to arbitrate.

CONCLUSION

Airbnb respectfully requests that the Court grant its motion and compel the parties to arbitrate their dispute. As detailed above, Plaintiff's claims are subject to a binding arbitration agreement and, therefore, Airbnb is properly asserting its right to demand arbitration. Airbnb's crossclaims and third-party claims also fall within the scope of the arbitration agreement and Airbnb is opting to arbitrate those claims as well.

If the Court grants this motion, Airbnb also requests the Court to dismiss this action with prejudice, or in the alternative, dismiss this action without prejudice. In the second alternative, Airbnb requests the Court stay this action, including further discovery, pending the completion of the arbitration.

[**Signature on following page.**]

[4] The District of South Carolina has also held that where the amended complaint altered the lawsuit significantly by adding additional allegations, the defendant would not have been "deemed to have waived its right to compel arbitration merely because of the delay [of 13 months]." *Brown v. Green Tree Servs., LLC,* 585 F. Supp. 2d 770, 782 (D.S.C. 2008).

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Updated Terms of Service

We've recently updated our: (1) Terms of Service, (2) Payments Terms of Service, and (3) Privacy Policy (collectively, "**Terms**"). If you signed up for an account prior to January 21, 2019, we'll ask you to agree to the new Terms of Service and Payments Terms of Service when you use Airbnb on or after March 27, 2019; until March 27, 2019 the prior Terms of Service and Payments Terms of Service will continue to apply to you. The updated Privacy Policy will automatically come into effect for all existing users on March 27, 2019. Your continued use of the Airbnb Platform from that day on will be subject to the new Privacy Policy. Please read these Terms carefully. If you signed up for an account on or after January 21, 2019, the updated Terms apply to you. Learn more about what's changing

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If your country of residence is outside of the European Economic Area ("EEA"), your agreement with Airbnb comprises the Terms of Service for Non-European Users.

If your country of residence is within the EEA, your agreement with Airbnb comprises the Terms of Service for European Users.

Terms of Service

Please read these Terms of Service ("Terms") carefully as they contain important information about your legal rights, remedies and obligations. By accessing or using the Airbnb Platform, you agree to comply with and be bound by these Terms.

Please note: Section 19 of these Terms contains an arbitration clause and class action waiver that applies to all Airbnb Members. If your country of residence is the United States, this provision applies to all disputes with Airbnb. If your country of residence is outside of the United States, this provision applies to any action you bring against Airbnb in the United States. It affects how disputes with Airbnb are resolved. By accepting these Terms, you agree to be bound by this arbitration clause and class action waiver. Please read it carefully.

Last Updated: January 21, 2019

Thank you for using Airbnb!

These Terms constitute a legally binding agreement ("**Agreement**") between you and Airbnb (as defined below) governing your access to and use of the Airbnb website, including any subdomains thereof, and any other websites through which Airbnb makes its services available (collectively, "**Site**"), our mobile, tablet and other smart device applications, and application program interfaces (collectively, "**Application**") and all associated services (collectively, "**Airbnb Services**"). The Site, Application and Airbnb Services together are hereinafter collectively referred to as the

"**Airbnb Platform**". Our Host Guarantee Terms, Japan Host Insurance Terms, Guest Refund Policy, Nondiscrimination Policy and other Policies applicable to your use of the Airbnb Platform are incorporated by reference into this Agreement.

When these Terms mention "**Airbnb**," "**we**," "**us**," or "**our**," it refers to the Airbnb company you are contracting with. Your contracting entity will generally be determined based on your country of residence or establishment.

- If your country of residence or establishment is the United States, you are contracting with Airbnb, Inc., 888 Brannan Street, 4th Floor, San Francisco, CA 94103, United States.
- If your country of residence or establishment is outside of the United States, the People's Republic of China (which for purposes of these Terms does not include Hong Kong, Macau and Taiwan) (hereinafter "**China**"), Japan and the European Economic Area, you are contracting with Airbnb Ireland UC ("**Airbnb Ireland**"), The Watermarque Building, South Lotts Road, Ringsend, Dublin 4, Ireland.
- If your country of residence or establishment is in the European Economic Area, you are contracting with Airbnb Ireland UC ("**Airbnb Ireland**"), The Watermarque Building, South Lotts Road, Ringsend, Dublin 4, Ireland and your Agreement with Airbnb is subject to the Terms of Service for European Users.
- If your country of residence or establishment is China, you are contracting with Airbnb Internet (Beijing) Co., Ltd. ("**Airbnb China**") except where you book a Host Service (as defined below) or when you create a Listing located outside of China, in which case you are contracting with Airbnb Ireland for that transaction.
- If your country of residence or establishment is Japan, you are contracting with Airbnb Global Services Limited ("**Airbnb GSL**"), 25-28 North Wall Quay, Dublin 1, D01 H104, Ireland, except where you book a Host Service (as defined below) or when you create a Listing located outside of Japan, in which case you are contracting with Airbnb Ireland for that transaction.

If you change your country of residence or establishment, the Airbnb company you contract with will be determined by your new country of residence or establishment as specified above, from the date on which your country of residence changes.

Our collection and use of personal information in connection with your access to and use of the Airbnb Platform is described in our Privacy Policy.

Any and all payment processing services through or in connection with your use of the Airbnb Platform ("**Payment Services**") are provided to you by one or more Airbnb Payments entities (individually and collectively, as appropriate, "**Airbnb Payments**") as set out in the Payments Terms of Service ("**Payments Terms**").

Hosts alone are responsible for identifying, understanding, and complying with all laws, rules and regulations that apply to their Listings and Host Services (as defined below). For example, some cities have laws that restrict their ability to host paying guests for short periods or provide certain Host Services. In many cities, Hosts may have to register, get a permit or obtain a license before providing certain Host Services (such as preparing food, serving alcohol for sale, guiding tours or operating a vehicle). Host are alone responsible for identifying and obtaining any required licenses, permits, or registrations for any Host Services they offer. Certain types of Host Services may be prohibited altogether. Penalties may include fines or other enforcement. We provide some information in our Help Center to help you identify some of the obligations that apply to you. If you have questions about how local laws apply to your Listing(s) and Host Service(s) on Airbnb, you should always seek legal guidance.

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1. Scope of Airbnb Services

1.1 The Airbnb Platform is an online marketplace that enables registered users ("**Members**") and certain third parties who offer services (Members and third parties who offer services are "**Hosts**" and the services they offer are "**Host Services**") to publish such Host Services on the Airbnb Platform ("**Listings**") and to communicate and transact directly with Members that are seeking to book such Host Services (Members using Host Services are "**Guests**"). Host Services may include the offering of vacation or other properties for use ("**Accommodations**"), single or multi-day activities in various categories ("**Experiences**"), access to unique events and locations ("**Events**"), and a variety of other travel and non-travel related services.

1.2 As the provider of the Airbnb Platform, Airbnb does not own, create, sell, resell, provide, control, manage, offer, deliver, or supply any Listings or Host Services, nor is Airbnb an organiser or retailer of travel packages under Directive (EU) 2015/2302. Hosts alone are responsible for their Listings and Host Services. When Members make or accept a booking, they are entering into a contract directly with each other. Airbnb is not and does not become a party to or other participant in any contractual relationship between Members, nor is Airbnb a real estate broker or insurer. Airbnb is not acting as an agent in any capacity for any Member, except as specified in the Payments Terms.

1.3 While we may help facilitate the resolution of disputes, Airbnb has no control over and does not guarantee (i) the existence, quality, safety, suitability, or legality of any Listings or Host Services, (ii) the truth or accuracy of any Listing descriptions, Ratings, Reviews, or other Member Content (as defined below), or (iii) the performance or conduct of any Member or third party. Airbnb does not endorse any Member, Listing or Host Services. Any references to a Member being "verified" (or similar language) only indicate that the Member has completed a relevant verification or

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identification process and nothing else. Any such description is not an endorsement, certification or guarantee by Airbnb about any Member, including of the Member's identity or background or whether the Member is trustworthy, safe or suitable. You should always exercise due diligence and care when deciding whether to stay in an Accommodation, participate in an Experience or Event or use other Host Services, accept a booking request from a Guest, or communicate and interact with other Members, whether online or in person. Verified Images (as defined below) are intended only to indicate a photographic representation of a Listing at the time the photograph was taken and are therefore not an endorsement by Airbnb of any Host or Listing.

1.4 If you choose to use the Airbnb Platform as a Host or Co-Host (as defined below), your relationship with Airbnb is limited to being an independent, third-party contractor, and not an employee, agent, joint venturer or partner of Airbnb for any reason, and you act exclusively on your own behalf and for your own benefit, and not on behalf, or for the benefit, of Airbnb. Airbnb does not, and shall not be deemed to, direct or control you generally or in your performance under these Terms specifically, including in connection with your provision of the Host Services. You acknowledge and agree that you have complete discretion whether to list Host Services or otherwise engage in other business or employment activities.

1.5 To promote the Airbnb Platform and to increase the exposure of Listings to potential Guests, Listings and other Member Content may be displayed on other websites, in applications, within emails, and in online and offline advertisements. To assist Members who speak different languages, Listings and other Member Content may be translated, in whole or in part, into other languages. Airbnb cannot guarantee the accuracy or quality of such translations and Members are responsible for reviewing and verifying the accuracy of such translations. The Airbnb Platform may contain translations powered by Google. Google disclaims all warranties related to the translations, express or implied, including any warranties of accuracy, reliability, and any implied warranties for merchantability, fitness for a particular purpose and non-infringement.

1.6 The Airbnb Platform may contain links to third-party websites or resources ("**Third-Party Services**"). Such Third-Party Services may be subject to different terms and conditions and privacy practices. Airbnb is not responsible or liable for the availability or accuracy of such Third-Party Services, or the content, products, or services available from such Third-Party Services. Links to such Third-Party Services are not an endorsement by Airbnb of such Third-Party Services.

1.7 Due to the nature of the Internet, Airbnb cannot guarantee the continuous and uninterrupted availability and accessibility of the Airbnb Platform. Airbnb may restrict the availability of the Airbnb Platform or certain areas or features thereof, if this is necessary in view of capacity limits, the security or integrity of our servers, or to carry out maintenance measures that ensure the proper or improved functioning of the Airbnb Platform. Airbnb may improve, enhance and modify the Airbnb Platform and introduce new Airbnb Services from time to time.

2. Eligibility, Using the Airbnb Platform, Member Verification

2.1 In order to access and use the Airbnb Platform or register an Airbnb Account you must be an individual at least 18 years old or a duly organized, validly existing business, organization or other legal entity in good standing under the laws of the country you are established and able to enter into legally binding contracts.

2.2 You will comply with any applicable export control laws in your local jurisdiction. You also represent and warrant that (i) neither you nor your Host Service(s) are located or take place in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country, and (ii) you are not

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listed on any U.S. Government list of prohibited or restricted parties.

2.3 Airbnb may make access to and use of the Airbnb Platform, or certain areas or features of the Airbnb Platform, subject to certain conditions or requirements, such as completing a verification process, meeting specific quality or eligibility criteria, meeting Ratings or Reviews thresholds, or a Member's booking and cancellation history.

2.4 User verification on the Internet is difficult and we do not assume any responsibility for the confirmation of any Member's identity. Notwithstanding the above, for transparency and fraud prevention purposes, and as permitted by applicable laws, we may, but have no obligation to (i) ask Members to provide a form of government identification or other information or undertake additional checks designed to help verify the identities or backgrounds of Members, (ii) screen Members against third party databases or other sources and request reports from service providers, and (iii) where we have sufficient information to identify a Member, obtain reports from public records of criminal convictions or sex offender registrations or an equivalent version of background or registered sex offender checks in your local jurisdiction (if available).

2.5 The access to or use of certain areas and features of the Airbnb Platform may be subject to separate policies, standards or guidelines, or may require that you accept additional terms and conditions, before you can access the relevant areas or features of the Airbnb Platform. If there is a conflict between these Terms and terms and conditions applicable to a specific area or feature of the Airbnb Platform, the latter terms and conditions will take precedence with respect to your access to or use of that area or feature, unless specified otherwise in the latter terms and conditions.

2.6 If you access or download the Application from the Apple App Store, you agree to Apple's Licensed Application End User License Agreement. Some areas of the Airbnb Platform implement Google Maps/Earth mapping services, including Google Maps API(s). Your use of Google Maps/Earth is subject to the Google Maps/Google Earth Additional Terms of Service.

3. Modification of these Terms

Airbnb reserves the right to modify these Terms at any time in accordance with this provision. If we make changes to these Terms, we will post the revised Terms on the Airbnb Platform and update the "Last Updated" date at the top of these Terms. We will also provide you with notice of the modifications by email at least thirty (30) days before the date they become effective. If you disagree with the revised Terms, you may terminate this Agreement with immediate effect. We will inform you about your right to terminate the Agreement in the notification email. If you do not terminate your Agreement before the date the revised Terms become effective, your continued access to or use of the Airbnb Platform will constitute acceptance of the revised Terms.

4. Account Registration

4.1 You must register an account ("**Airbnb Account**") to access and use certain features of the Airbnb Platform, such as publishing or booking a Listing. If you are registering an Airbnb Account for a business, organization or other legal entity, you represent and warrant that you have the authority to legally bind that entity and grant us all permissions and licenses provided in these Terms.

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4.2 You can register an Airbnb Account using an email address and creating a password, or through your account with certain third-party social networking services, such as Facebook or Google ("**SNS Account**"). You have the ability to disable the connection between your Airbnb Account and your SNS Account at any time, by accessing the "Settings" section of the Airbnb Platform.

4.3 You must provide accurate, current and complete information during the registration process and keep your Airbnb Account and public Airbnb Account profile page information up-to-date at all times.

4.4 You may not register more than one (1) Airbnb Account unless Airbnb authorizes you to do so. You may not assign or otherwise transfer your Airbnb Account to another party.

4.5 You are responsible for maintaining the confidentiality and security of your Airbnb Account credentials and may not disclose your credentials to any third party. You must immediately notify Airbnb if you know or have any reason to suspect that your credentials have been lost, stolen, misappropriated, or otherwise compromised or in case of any actual or suspected unauthorized use of your Airbnb Account. You are liable for any and all activities conducted through your Airbnb Account, unless such activities are not authorized by you and you are not otherwise negligent (such as failing to report the unauthorized use or loss of your credentials).

4.6 Airbnb may enable features that allow you to authorize other Members or certain third parties to take certain actions that affect your Airbnb Account. For example, we may enable Members to link their Airbnb Accounts to businesses and take actions for those businesses, we may enable eligible Members or certain third parties to book Listings on behalf of other Members, or we may enable Hosts to add other Members as Co-Hosts (as defined below) to help manage their Listings. These features do not require that you share your credentials with any other person. No third party is authorized by Airbnb to ask for your credentials, and you shall not request the credentials of another Member.

5. Content

5.1 Airbnb may, at its sole discretion, enable Members to (i) create, upload, post, send, receive and store content, such as text, photos, audio, video, or other materials and information on or through the Airbnb Platform ("**Member Content**"); and (ii) access and view Member Content and any content that Airbnb itself makes available on or through the Airbnb Platform, including proprietary Airbnb content and any content licensed or authorized for use by or through Airbnb from a third party ("**Airbnb Content**" and together with Member Content, "**Collective Content**").

5.2 The Airbnb Platform, Airbnb Content, and Member Content may in its entirety or in part be protected by copyright, trademark, and/or other laws of the United States and other countries. You acknowledge and agree that the Airbnb Platform and Airbnb Content, including all associated intellectual property rights, are the exclusive property of Airbnb and/or its licensors or authorizing third-parties. You will not remove, alter or obscure any copyright, trademark, service mark or other proprietary rights notices incorporated in or accompanying the Airbnb Platform, Airbnb Content or Member Content. All trademarks, service marks, logos, trade names, and any other source identifiers of Airbnb used on or in connection with the Airbnb Platform and Airbnb Content are trademarks or registered trademarks of Airbnb in the United States and abroad. Trademarks, service marks, logos, trade names and any other proprietary designations of third parties used on or in connection with the Airbnb Platform, Airbnb Content, and/or Collective Content are used for identification purposes only and may be the property of their respective owners.

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5.3 You will not use, copy, adapt, modify, prepare derivative works of, distribute, license, sell, transfer, publicly display, publicly perform, transmit, broadcast or otherwise exploit the Airbnb Platform or Collective Content, except to the extent you are the legal owner of certain Member Content or as expressly permitted in these Terms. No licenses or rights are granted to you by implication or otherwise under any intellectual property rights owned or controlled by Airbnb or its licensors, except for the licenses and rights expressly granted in these Terms.

5.4 Subject to your compliance with these Terms, Airbnb grants you a limited, non-exclusive, non-sublicensable, revocable, non-transferable license to (i) download and use the Application on your personal device(s); and (ii) access and view any Collective Content made available on or through the Airbnb Platform and accessible to you, solely for your personal and non-commercial use.

5.5 By creating, uploading, posting, sending, receiving, storing, or otherwise making available any Member Content on or through the Airbnb Platform, you grant to Airbnb a non-exclusive, worldwide, royalty-free, irrevocable, perpetual (or for the term of the protection), sub-licensable and transferable license to such Member Content to access, use, store, copy, modify, prepare derivative works of, distribute, publish, transmit, stream, broadcast, and otherwise exploit in any manner such Member Content to provide and/or promote the Airbnb Platform, in any media or platform. Insofar as Member Content (including Verified Images) includes personal information, such Member Content will only be used for these purposes if such use complies with applicable data protection laws in accordance with our Privacy Policy. Unless you provide specific consent, Airbnb does not claim any ownership rights in any Member Content and nothing in these Terms will be deemed to restrict any rights that you may have to use or exploit your Member Content.

5.6 Airbnb may offer Hosts the option of having professional photographers take photographs of their Host Services which are made available by the photographer to Hosts to include in their Listings with or without a watermark or tag bearing the words "Airbnb.com Verified Photo" or similar wording ("**Verified Images**"). You are responsible for ensuring that your Host Service is accurately represented in the Verified Images and you will stop using the Verified Images on or through the Airbnb Platform if they no longer accurately represent your Listing, if you stop hosting the Host Service featured, or if your Airbnb Account is terminated or suspended for any reason. You acknowledge and agree that Airbnb shall have the right to use any Verified Images in accordance with Section 5.5 for advertising, marketing and/or any other business purposes in any media or platform, whether in relation to your Listing or otherwise, without further notice or compensation to you. Where Airbnb is not the exclusive owner of Verified Images, by using such Verified Images on or through the Airbnb Platform, you grant to Airbnb an exclusive, worldwide, royalty-free, irrevocable, perpetual (or for the term of the protection), sub-licensable and transferable license to use such Verified Images for advertising, marketing and/or any other business purposes in any media or platform, whether in relation to your Listing or otherwise, without further notice or compensation to you. Airbnb in turn grants you a limited, non-exclusive, non-sublicensable, revocable, non-transferable license to use Verified Images outside of the Airbnb Platform solely for your personal and non-commercial use.

5.7 You are solely responsible for all Member Content that you make available on or through the Airbnb Platform. Accordingly, you represent and warrant that: (i) you either are the sole and exclusive owner of all Member Content that you make available on or through the Airbnb Platform or you have all rights, licenses, consents and releases that are necessary to grant to Airbnb the rights in and to such Member Content, as contemplated under these Terms; and (ii) neither the Member Content nor your posting, uploading, publication, submission or transmittal of the Member Content or Airbnb's use of the Member Content (or any portion thereof) as contemplated under these Terms will infringe, misappropriate or violate a third party's patent, copyright, trademark, trade secret, moral rights or other proprietary or intellectual property rights, or rights of publicity or privacy, or result in the violation of any applicable law or regulation.

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5.8 You will not post, upload, publish, submit or transmit any Member Content that: (i) is fraudulent, false, misleading (directly or by omission or failure to update information) or deceptive; (ii) is defamatory, libelous, obscene, pornographic, vulgar or offensive; (iii) promotes discrimination, bigotry, racism, hatred, harassment or harm against any individual or group; (iv) is violent or threatening or promotes violence or actions that are threatening to any other person or animal; (v) promotes illegal or harmful activities or substances; or (vi) violates Airbnb's Content Policy or any other Airbnb policy. Airbnb may, without prior notice, remove or disable access to any Member Content that Airbnb finds to be in violation of applicable law, these Terms or Airbnb's then-current Policies or Standards, or otherwise may be harmful or objectionable to Airbnb, its Members, third parties, or property.

5.9 Airbnb respects copyright law and expects its Members to do the same. If you believe that any content on the Airbnb Platform infringes copyrights you own, please notify us in accordance with our Copyright Policy.

6. Service Fees

6.1 Airbnb may charge fees to Hosts ("**Host Fees**") and/or Guests ("**Guest Fees**") (collectively, "**Service Fees**") in consideration for the use of the Airbnb Platform. More information about when Service Fees apply and how they are calculated can be found on our Service Fees page.

6.2 Any applicable Service Fees (including any applicable Taxes) will be displayed to a Host or Guest prior to publishing or booking a Listing. Airbnb reserves the right to change the Service Fees at any time, and will provide Members adequate notice of any fee changes before they become effective. Such fee changes will not affect any bookings made prior to the effective date of the fee change.

6.3 You are responsible for paying any Service Fees that you owe to Airbnb. The applicable Service Fees (including any applicable Taxes) are collected by Airbnb Payments. Airbnb Payments will deduct any Host Fees from the Listing Fee before remitting the payout to the Host. Any Guest Fees are included in the Total Fees collected by Airbnb Payments. Except as otherwise provided on the Airbnb Platform, Service Fees are non-refundable.

7. Terms specific for Hosts

7.1 Terms applicable to all Listings

7.1.1 When creating a Listing through the Airbnb Platform you must (i) provide complete and accurate information about your Host Service (such as listing description, location, and calendar availability), (ii) disclose any deficiencies, restrictions (such as house rules) and requirements that apply (such as any minimum age, proficiency or fitness requirements for an Experience) and (iii) provide any other pertinent information requested by Airbnb. You are responsible for keeping your Listing information (including calendar availability) up-to-date at all times.

7.1.2 You are solely responsible for setting a price (including any Taxes if applicable, or charges such as cleaning fees) for your Listing ("**Listing Fee**"). Once a Guest requests a booking of your Listing, you may not request that the Guest pays a higher price than in the booking request.

7.1.3 Any terms and conditions included in your Listing, in particular in relation to cancellations, must not conflict with these Terms or the relevant cancellation policy for your Listing.

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7.1.4 Airbnb may enable certain Hosts to participate in its "**Open Homes Program**." The Open Homes Program enables Hosts to provide Listings to certain Guests, such as refugees or evacuees, for free. You acknowledge that if you choose to participate in the Open Homes Program, your ability to restrict your Listing to certain Guests, such as Guests with previous positive Reviews, may be limited.

7.1.5 Pictures, animations or videos (collectively, "**Images**") used in your Listings must accurately reflect the quality and condition of your Host Services. Airbnb reserves the right to require that Listings have a minimum number of Images of a certain format, size and resolution.

7.1.6 The placement and ranking of Listings in search results on the Airbnb Platform may vary and depend on a variety of factors, such as Guest search parameters and preferences, Host requirements, price and calendar availability, number and quality of Images, customer service and cancellation history, Reviews and Ratings, type of Host Service, and/or ease of booking. More information about the factors that determine how your Listing appears in search results can be found on our help center.

7.1.7 When you accept or have pre-approved a booking request by a Guest, you are entering into a legally binding agreement with the Guest and are required to provide your Host Service(s) to the Guest as described in your Listing when the booking request is made. You also agree to pay the applicable Host Fee and any applicable Taxes.

7.1.8 Airbnb recommends that Hosts obtain appropriate insurance for their Host Services. Please review any respective insurance policy carefully, and in particular make sure that you are familiar with and understand any exclusions to, and any deductibles that may apply for, such insurance policy, including, but not limited to, whether or not your insurance policy will cover the actions or inactions of Guests (and the individuals the Guest has booked for, if applicable) while staying at your Accommodation or participating in your Experience, Event or other Host Service.

7.2 Listing Accommodations

7.2.1 Unless expressly allowed by Airbnb, you may not list more than one Accommodation per Listing.

7.2.2 If you choose to require a security deposit for your Accommodation, you must specify this in your Listing ("**Security Deposit**"). Hosts are not allowed to ask for a Security Deposit (i) after a booking has been confirmed or (ii) outside of the Airbnb Platform.

7.2.3 You represent and warrant that any Listing you post and the booking of, or a Guest's stay at, an Accommodation will (i) not breach any agreements you have entered into with any third parties, such as homeowners association, condominium, or other agreements, and (ii) comply with all applicable laws (such as zoning laws), Tax requirements, and other rules and regulations (including having all required permits, licenses and registrations). As a Host, you are responsible for your own acts and omissions and are also responsible for the acts and omissions of any individuals who reside at or are otherwise present at the Accommodation at your request or invitation, excluding the Guest and any individuals the Guest invites to the Accommodation.

7.3 Listing Experiences, Events and other Host Services

Hosts who list Experiences, Events and Host Services other than Accommodations agree to and are subject to the Additional Terms for Experience Hosts.

7.4 Co-Hosts

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7.4.1 Airbnb may enable Hosts to authorize other Members ("**Co-Hosts**") to administer the Host's Listing(s), and to bind the Host and take certain actions in relation to the Listing(s) as permitted by the Host, such as accepting booking requests, messaging and welcoming Guests, and updating the Listing Fee and calendar availability (collectively, "**Co-Host Services**"). Any agreement formed between Host and Co-Host may not conflict with these Terms, the Payments Terms, or any other Policies applicable to your Host Service(s). Co-Hosts may only act in an individual capacity and not on behalf of a company or other organization, unless expressly authorized by Airbnb. Airbnb reserves the right, in our sole discretion, to limit the number of Co-Hosts a Host may invite for each Listing and to limit the number of Listings a Co-Host may manage.

7.4.2 Hosts should exercise due diligence and care when deciding who to add as a Co-Host to their Listing(s). Hosts remain solely responsible and liable for any and all Listings and Member Content published on the Airbnb Platform, including any Listing created by a Co-Host on their behalf. Further, Hosts remain responsible and liable for their own acts and omissions, including, but not limited to, conduct that causes harm or damage to the Co-Host(s). Co-Hosts remain responsible and liable for their own acts and omissions when engaging in their roles and responsibilities as a Co-Host, including, but not limited to, conduct that causes harm or damage to the Host. In addition, both Host and Co-Host are jointly responsible and severally liable for third party claims, including Guest claims, arising from the acts and omissions of the other person as related to hosting activities, communications with Guests, and the provision of any Co-Host Services.

7.4.3 Unless agreed otherwise by Host and Co-Host, Host and Co-Host may terminate the Co-Host agreement at any time. In addition, both Host and Co-Host acknowledge that their Co-hosting relationship will terminate in the event that Airbnb (i) terminates the Co-Host service or (ii) terminates either party's participation in the Co-Host service. When the Co-Host agreement is terminated, the Host will remain responsible for all of the Co-Host's actions prior to the termination, including the responsibility to fulfill any pending or future bookings initiated prior to the termination. When a Member is removed as a Co-Host, that Member will no longer have access to any Host or Guest information related to the applicable Host's Listing(s).

7.4.4 As a Co-Host, you will not be reviewed by Guests, meaning that your Co-Host activities will not affect your Reviews or Ratings for other Listings for which you are a Host. Instead, the Host of such Listing(s) will be reviewed by Guests (including potentially on the basis of the Co-Host's conduct and performance). Hosts acknowledge that Reviews and Ratings from Guests for their Listing(s) may be impacted by a Co-Host's conduct and performance.

8. Terms specific for Guests

8.1 Terms applicable to all bookings

8.1.1 Subject to meeting any requirements (such as completing any verification processes) set by Airbnb and/or the Host, you can book a Listing available on the Airbnb Platform by following the respective booking process. All applicable fees, including the Listing Fee, Security Deposit (if applicable), Guest Fee and any applicable Taxes (collectively, "**Total Fees**") will be presented to you prior to booking a Listing. You agree to pay the Total Fees for any booking requested in connection with your Airbnb Account.

8.1.2 Upon receipt of a booking confirmation from Airbnb, a legally binding agreement is formed between you and your Host, subject to any additional terms and conditions of the Host that apply, including in particular the applicable cancellation policy and any rules and restrictions specified in the Listing. Airbnb Payments will collect the Total Fees at

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the time of the booking request or upon the Host's confirmation pursuant to the Payments Terms. For certain bookings, Guests may be required to pay or have the option to pay in multiple installments.

8.1.3 If you book a Host Service on behalf of additional guests, you are required to ensure that every additional guest meets any requirements set by the Host, and is made aware of and agrees to these Terms and any terms and conditions, rules and restrictions set by the Host. If you are booking for an additional guest who is a minor, you represent and warrant that you are legally authorized to act on behalf of the minor. Minors may only participate in an Experience, Event or other Host Service if accompanied by an adult who is responsible for them.

8.1.4 Airbnb may enable a Guest who is booking a Listing on behalf of one or more additional guests (the "**Organizer**") to split the payment of the Total Fees for an eligible booking on a pro-rata basis between the Organizer and at least one other additional guest (each a "**Co-Payer**") (the "**Group Payment Service**"). In order to participate in the Group Payment Service, each Co-Payer must have or register an Airbnb Account prior to making a payment. All payments via the Group Payment Service are handled by Airbnb Payments and are subject to the Group Payment Terms of Service.

8.2 Booking Accommodations

8.2.1 You understand that a confirmed booking of an Accommodation ("**Accommodation Booking**") is a limited license granted to you by the Host to enter, occupy and use the Accommodation for the duration of your stay, during which time the Host (only where and to the extent permitted by applicable law) retains the right to re-enter the Accommodation, in accordance with your agreement with the Host.

8.2.2 You agree to leave the Accommodation no later than the checkout time that the Host specifies in the Listing or such other time as mutually agreed upon between you and the Host. If you stay past the agreed upon checkout time without the Host's consent ("**Overstay**"), you no longer have a license to stay in the Accommodation and the Host is entitled to make you leave in a manner consistent with applicable law. In addition, you agree to pay, if requested by the Host, for each twenty-four (24) hour period (or any portion thereof) that you Overstay, an additional nightly fee of up to two (2) times the average nightly Listing Fee originally paid by you to cover the inconvenience suffered by the Host, plus all applicable Guest Fees, Taxes, and any legal expenses incurred by the Host to make you leave (collectively, "**Overstay Fees**"). Overstay Fees for late checkouts on the checkout date that do not impact upcoming bookings may be limited to the additional costs incurred by the Host as a result of such Overstay. If you Overstay at an Accommodation, you authorize Airbnb (via Airbnb Payments) to charge you to collect Overstay Fees. A Security Deposit, if required by a Host, may be applied to any Overstay Fees due for a Guest's Overstay.

8.3 Booking Experiences, Events and other Host Services

8.3.1 You should carefully review the description of any Experience, Event or other Host Service you intend to book to ensure you (and any additional guests you are booking for) meet any minimum age, proficiency, fitness or other requirements which the Host has specified in their Listing. At your sole discretion you may want to inform the Host of any medical or physical conditions, or other circumstances that may impact your and any additional guest's ability to participate in any Experience, Event or other Host Service. In addition, certain laws, like the minimum legal drinking age in the location of the Experience, Event or other Host Service, may also apply. You are responsible for identifying, understanding, and complying with all laws, rules and regulations that apply to your participation in an Experience, Event or other Host Service.

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8.3.2 Before and during an Experience, Event or other Host Service you must at all times adhere to the Hosts' instructions.

8.3.3 You may not bring any additional individuals to an Experience, Event or other Host Service unless such an individual was added by you as an additional guest during the booking process on the Airbnb Platform.

8.4 Airbnb Travel Credits

Airbnb Travel Credits may be redeemed for eligible bookings via the Airbnb Platform as specified in the terms and conditions provided with the Travel Credit. You may only redeem Airbnb Travel Credits after the Airbnb Travel Credit are reflected in your Airbnb Account.

9. Booking Modifications, Cancellations and Refunds, Resolution Center

9.1 Hosts and Guests are responsible for any modifications to a booking that they make via the Airbnb Platform or direct Airbnb customer service to make ("**Booking Modifications**"), and agree to pay any additional Listing Fees, Host Fees or Guest Fees and/or Taxes associated with such Booking Modifications.

9.2 Guests can cancel a confirmed booking at any time pursuant to the Listing's cancellation policy set by the Host, and Airbnb Payments will refund the amount of the Total Fees due to the Guest in accordance with such cancellation policy. Unless extenuating circumstances exist, any portion of the Total Fees due to the Host under the applicable cancellation policy will be remitted to the Host by Airbnb Payments pursuant to the Payments Terms.

9.3 If a Host cancels a confirmed booking, the Guest will receive a full refund of the Total Fees for such booking. In some instances, Airbnb may allow the Guest to apply the refund to a new booking, in which case Airbnb Payments will credit the amount against the Guest's subsequent booking at the Guest's direction. Further, Airbnb may publish an automated review on the Listing cancelled by the Host indicating that a booking was cancelled. In addition, Airbnb may (i) keep the calendar for the Listing unavailable or blocked for the dates of the cancelled booking, and/or (ii) impose a cancellation fee, unless the Host has a valid reason for cancelling the booking pursuant to Airbnb's Extenuating Circumstances Policy or has legitimate concerns about the Guest's behavior.

9.4 For Experiences, Events and other Host Services, if weather poses a safety risk to Guests, or if it prevents a Host from carrying out a Host Service that takes place primarily outdoors, Hosts may cancel the Host Service. Hosts may also cancel the Host Service if other conditions exist that would prevent the Host from offering the Host Service safely.

9.5 In certain circumstances, Airbnb may decide, in its sole discretion, that it is necessary to cancel a pending or confirmed booking and initiate corresponding refunds and payouts. This may be for reasons set forth in Airbnb's Extenuating Circumstances Policy or (i) where Airbnb believes in good faith, while taking the legitimate interests of both parties into account, this is necessary to avoid significant harm to Airbnb, other Members, third parties or property, or (ii) for any of the reasons set out in these Terms.

9.6 If a Guest who books an Accommodation suffers a Travel Issue as defined in the Guest Refund Policy, Airbnb may determine, in its sole discretion, to refund the Guest part or all of the Total Fees in accordance with the Guest Refund Policy. If a Guest who books an Experience, Event or other Host Service suffers a Travel Issue as defined in the Experiences Guest Refund Policy, Airbnb may determine, in its sole discretion, to refund the Guest part or all of the Total Fees in accordance with the Experiences Guest Refund Policy.

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9.7 If a Guest or Airbnb cancels a confirmed booking, and the Guest receives a refund in accordance with the Guest Refund Policy, Experiences Guest Refund Policy, Extenuating Circumstances Policy, or the applicable cancellation policy set by the Host and mentioned in the Listing, after the Host has already been paid, Airbnb Payments will be entitled to recover the amount of any such refund from the Host, including by subtracting such refund amount out from any future Payouts due to the Host.

9.8 Except as otherwise set out in these Terms, Members may use the Resolution Center to send or request money for refunds, additional Host Services or Damage Claims related to bookings. You agree to pay all amounts sent through the Resolution Center in connection with your Airbnb Account, and Airbnb Payments will handle all such payments.

10. Ratings and Reviews

10.1 Within a certain timeframe after completing a booking, Guests and Hosts can leave a public review ("**Review**") and submit a star rating ("**Rating**") about each other. Ratings or Reviews reflect the opinions of individual Members and do not reflect the opinion of Airbnb. Ratings and Reviews are not verified by Airbnb for accuracy and may be incorrect or misleading.

10.2 Ratings and Reviews by Guests and Hosts must be accurate and may not contain any offensive or defamatory language. Ratings and Reviews are subject to Section 5 and must comply with Airbnb's Content Policy and Extortion Policy.

10.3 Members are prohibited from manipulating the Ratings and Reviews system in any manner, such as instructing a third party to write a positive or negative Review about another Member.

10.4 Ratings and Reviews are part of a Member's public profile and may also be surfaced elsewhere on the Airbnb Platform (such as the Listing page) together with other relevant information such as number of bookings, number of cancellations, average response time and other information.

11. Damage to Accommodations, Disputes between Members

11.1 As a Guest, you are responsible for leaving the Accommodation (including any personal or other property located at the Accommodation) in the condition it was in when you arrived. You are responsible for your own acts and omissions and are also responsible for the acts and omissions of any individuals whom you invite to, or otherwise provide access to, the Accommodation, excluding the Host (and the individuals the Host invites to the Accommodation, if applicable).

11.2 If a Host claims and provides evidence that you as a Guest have damaged an Accommodation or any personal or other property at an Accommodation ("**Damage Claim**"), the Host can seek payment from you through the Resolution Center. If a Host escalates a Damage Claim to Airbnb, you will be given an opportunity to respond. If you agree to pay the Host, or Airbnb determines in its sole discretion that you are responsible for the Damage Claim, Airbnb via Airbnb Payments will, after the end of your stay, collect any such sums from you and/or against the Security Deposit (if applicable) required to cover the Damage Claim pursuant to the Payments Terms. Airbnb also reserves the right to otherwise collect payment from you and pursue any remedies available to Airbnb in this regard in situations in which you are responsible for a Damage Claim, including, but not limited to, in relation to any payment requests made by Hosts under the Airbnb Host Guarantee or Japan Host Insurance.

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11.3 Members agree to cooperate with and assist Airbnb in good faith, and to provide Airbnb with such information and take such actions as may be reasonably requested by Airbnb, in connection with any Damage Claims or other complaints or claims made by Members relating to (i) Accommodations or any personal or other property located at an Accommodation (including, without limitation, payment requests made under the Airbnb Host Guarantee or Japan Host Insurance), (ii) Experiences, (iii) Co-Host agreements, or (iv) a Group Payment Booking. A Member shall, upon Airbnb's reasonable request and at no cost to the Member, participate in mediation or a similar resolution process with another Member, which process will be conducted by Airbnb or a third party selected by Airbnb or its insurer, with respect to losses for which a Member is requesting payment from Airbnb (including but not limited to payments under the Airbnb Host Guarantee or payment under Japan Host Insurance).

11.4 If you are a Guest or a Co-Host, you understand and agree that Airbnb may make a claim under your homeowner's, renter's or other insurance policy related to any damage or loss that you may have caused, or been responsible for, to any personal or other property (including an Accommodation) of the Host (including without limitation amounts paid by Airbnb under the Airbnb Host Guarantee or amounts paid under Japan Host Insurance). You agree to cooperate with and assist Airbnb in good faith, and to provide Airbnb with such information as may be reasonably requested by Airbnb, to make a claim under your homeowner's, renter's or other insurance policy, including, but not limited to, executing documents and taking such further acts as Airbnb may reasonably request to assist Airbnb in accomplishing the foregoing.

12. Rounding off

Airbnb generally supports payment amounts that are payable from or to Guests or Hosts to the smallest unit supported by a given currency (i.e., U.S. cents, Euro cents or other supported currencies). Where Airbnb's third-party payment services provider does not support payments in the smaller unit supported by a given currency, Airbnb may, in its sole discretion, round up or round down the displayed amounts that are payable from or to Guests or Hosts to the nearest whole functional base unit in which the currency is denominated (i.e. to the nearest dollar, Euro or other supported currency); for example, Airbnb may round up an amount of $101.50 to $102.00, and round down an amount of $101.49 to $101.00.

13. Taxes

13.1 As a Host you are solely responsible for determining your obligations to report, collect, remit or include in your Listing Fees any applicable VAT or other indirect sales taxes, occupancy tax, tourist or other visitor taxes or income taxes ("**Taxes**").

13.2 Tax regulations may require us to collect appropriate Tax information from Hosts, or to withhold Taxes from payouts to Hosts, or both. If a Host fails to provide us with the required documentation under applicable law (e.g., a tax number) that we determine to be sufficient to alleviate our obligation (if any) to withhold Taxes from payouts to you, we reserve the right to withhold payouts up to the tax-relevant amount as required by law, until resolution.

13.3 You understand that any appropriate governmental agency, department and/or authority ("**Tax Authority**") where your Accommodation is located may require Taxes to be collected from Guests or Hosts on Listing Fees, and to be remitted to the respective Tax Authority. The laws in jurisdictions may vary, but these Taxes may be required to be collected and remitted as a percentage of the Listing Fees set by Hosts, a set amount per day, or other variations, and are sometimes called "transient occupancy taxes," "hotel taxes," "lodging taxes," "city taxes," "room taxes" or "tourist taxes" ("**Occupancy Taxes**").

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13.4 In certain jurisdictions, Airbnb may decide in its sole discretion to facilitate collection and remittance of Occupancy Taxes from or on behalf of Guests or Hosts, in accordance with these Terms ("**Collection and Remittance**") if such jurisdiction asserts Airbnb or Hosts have an Occupancy Tax collection and remittance obligation. In any jurisdiction in which we decide to facilitate direct Collection and Remittance, you hereby instruct and authorize Airbnb (via Airbnb Payments) to collect Occupancy Taxes from Guests on the Host's behalf at the time Listing Fees are collected, and to remit such Occupancy Taxes to the Tax Authority. In other jurisdictions Airbnb may decide in its sole discretion to collect Occupancy Taxes and remit such Taxes to eligible and qualifying Hosts, based on tax information supplied by the Host, for ultimate reporting and remittance by such Host to the Tax Authority ("**Pass-Through Tax Feature**"). Such Hosts using the Pass-Through Tax Feature will be solely responsible for informing Airbnb about the correct Occupancy Tax amount to be collected from the Guest in accordance with applicable law and directly remitting the Occupancy Taxes to the relevant Tax Authority. Airbnb does not assume any liability for the failure of a participating Host to comply with any applicable tax reporting or remittance obligations. The amount of Occupancy Taxes, if any, collected and remitted by Airbnb will be visible to and separately stated to both Guests and Hosts on their respective transaction documents. Where Airbnb is facilitating Collection and Remittance, Hosts are not permitted to collect any Occupancy Taxes being collected by Airbnb relating to their Accommodations in that jurisdiction.

13.5 You agree that any claim or cause of action relating to Airbnb's facilitation of Collection and Remittance of Occupancy Taxes shall not extend to any supplier or vendor that may be used by Airbnb in connection with facilitation of Collection and Remittance, if any. Guests and Hosts agree that we may seek additional amounts from you in the event that the Taxes collected and/or remitted are insufficient to fully discharge your obligations to the Tax Authority and agree that your sole remedy for Occupancy Taxes collected is a refund of Occupancy Taxes collected by Airbnb from the applicable Tax Authority in accordance with applicable procedures set by that Tax Authority.

13.6 Airbnb reserves the right, with prior notice to Hosts, to cease the Collection and Remittance in any jurisdiction for any reason at which point Hosts and Guests are once again solely responsible and liable for the collection and/or remittance of any and all Occupancy Taxes that may apply to Accommodations in that jurisdiction.

14. Prohibited Activities

14.1 You are solely responsible for compliance with any and all laws, rules, regulations, and Tax obligations that may apply to your use of the Airbnb Platform. In connection with your use of the Airbnb Platform, you will not and will not assist or enable others to:

- breach or circumvent any applicable laws or regulations, agreements with third-parties, third-party rights, or our Terms, Policies or Standards;
- use the Airbnb Platform or Collective Content for any commercial or other purposes that are not expressly permitted by these Terms or in a manner that falsely implies Airbnb endorsement, partnership or otherwise misleads others as to your affiliation with Airbnb;
- copy, store or otherwise access or use any information, including personally identifiable information about any other Member, contained on the Airbnb Platform in any way that is inconsistent with Airbnb's Privacy Policy or these Terms or that otherwise violates the privacy rights of Members or third parties;
- use the Airbnb Platform in connection with the distribution of unsolicited commercial messages ("spam");
- offer, as a Host, any Accommodation that you do not yourself own or have permission to make available as a residential or other property through the Airbnb Platform;

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- unless Airbnb explicitly permits otherwise, book any Listing if you will not actually be using the Host Services yourself;
- contact another Member for any purpose other than asking a question related to a your own booking, Listing, or the Member's use of the Airbnb Platform, including, but not limited to, recruiting or otherwise soliciting any Member to join third-party services, applications or websites, without our prior written approval;
- use the Airbnb Platform to request, make or accept a booking independent of the Airbnb Platform, to circumvent any Service Fees or for any other reason;
- request, accept or make any payment for Listing Fees outside of the Airbnb Platform or Airbnb Payments. If you do so, you acknowledge and agree that you: (i) would be in breach of these Terms; (ii) accept all risks and responsibility for such payment, and (iii) hold Airbnb harmless from any liability for such payment;
- discriminate against or harass anyone on the basis of race, national origin, religion, gender, gender identity, physical or mental disability, medical condition, marital status, age or sexual orientation, or otherwise engage in any violent, harmful, abusive or disruptive behavior;
- misuse or abuse any Listings or services associated with the Airbnb Open Homes program as determined by Airbnb in its sole discretion.
- use, display, mirror or frame the Airbnb Platform or Collective Content, or any individual element within the Airbnb Platform, Airbnb's name, any Airbnb trademark, logo or other proprietary information, or the layout and design of any page or form contained on a page in the Airbnb Platform, without Airbnb's express written consent;
- dilute, tarnish or otherwise harm the Airbnb brand in any way, including through unauthorized use of Collective Content, registering and/or using Airbnb or derivative terms in domain names, trade names, trademarks or other source identifiers, or registering and/or using domains names, trade names, trademarks or other source identifiers that closely imitate or are confusingly similar to Airbnb domains, trademarks, taglines, promotional campaigns or Collective Content;
- use any robots, spider, crawler, scraper or other automated means or processes to access, collect data or other content from or otherwise interact with the Airbnb Platform for any purpose;
- avoid, bypass, remove, deactivate, impair, descramble, or otherwise attempt to circumvent any technological measure implemented by Airbnb or any of Airbnb's providers or any other third party to protect the Airbnb Platform;
- attempt to decipher, decompile, disassemble or reverse engineer any of the software used to provide the Airbnb Platform;
- take any action that damages or adversely affects, or could damage or adversely affect the performance or proper functioning of the Airbnb Platform;
- export, re-export, import, or transfer the Application except as authorized by United States law, the export control laws of your jurisdiction, and any other applicable laws; or
- violate or infringe anyone else's rights or otherwise cause harm to anyone.

14.2 You acknowledge that Airbnb has no obligation to monitor the access to or use of the Airbnb Platform by any Member or to review, disable access to, or edit any Member Content, but has the right to do so to (i) operate, secure and improve the Airbnb Platform (including without limitation for fraud prevention, risk assessment, investigation and customer support purposes); (ii) ensure Members' compliance with these Terms; (iii) comply with applicable law or the order or requirement of a court, law enforcement or other administrative agency or governmental body; (iv) respond to Member Content that it determines is harmful or objectionable; or (v) as otherwise set forth in these Terms. Members agree to cooperate with and assist Airbnb in good faith, and to provide Airbnb with such information and take such actions as may be reasonably requested by Airbnb with respect to any investigation undertaken by Airbnb or a representative of Airbnb regarding the use or abuse of the Airbnb Platform.

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14.3 If you feel that any Member you interact with, whether online or in person, is acting or has acted inappropriately, including but not limited to anyone who (i) engages in offensive, violent or sexually inappropriate behavior, (ii) you suspect of stealing from you, or (iii) engages in any other disturbing conduct, you should immediately report such person to the appropriate authorities and then to Airbnb by contacting us with your police station and report number (if available). You agree that any report you make will not obligate us to take any action (beyond that required by law, if any).

15. Term and Termination, Suspension and other Measures

15.1 This Agreement shall be effective for a 30-day term, at the end of which it will automatically and continuously renew for subsequent 30-day terms until such time when you or Airbnb terminate the Agreement in accordance with this provision.

15.2 You may terminate this Agreement at any time by sending us an email. If you cancel your Airbnb Account as a Host, any confirmed booking(s) will be automatically cancelled and your Guests will receive a full refund. If you cancel your Airbnb Account as a Guest, any confirmed booking(s) will be automatically cancelled and any refund will depend upon the terms of the Listing's cancellation policy.

15.3 Without limiting our rights specified below, Airbnb may terminate this Agreement for convenience at any time by giving you thirty (30) days' notice via email to your registered email address.

15.4 Airbnb may immediately, without notice, terminate this Agreement and/or stop providing access to the Airbnb Platform if (i) you have materially breached your obligations under these Terms, the Payments Terms, our Policies or Standards, (ii) you have violated applicable laws, regulations or third party rights, or (iii) Airbnb believes in good faith that such action is reasonably necessary to protect the personal safety or property of Airbnb, its Members, or third parties (for example in the case of fraudulent behavior of a Member).

15.5 In addition, Airbnb may take any of the following measures (i) to comply with applicable law, or the order or request of a court, law enforcement or other administrative agency or governmental body, or if (ii) you have breached these Terms, the Payments Terms, our Policies or Standards, applicable laws, regulations, or third party rights, (iii) you have provided inaccurate, fraudulent, outdated or incomplete information during the Airbnb Account registration, Listing process or thereafter, (iv) you and/or your Listings or Host Services at any time fail to meet any applicable quality or eligibility criteria, (v) you have repeatedly received poor Ratings or Reviews or Airbnb otherwise becomes aware of or has received complaints about your performance or conduct, (vi) you have repeatedly cancelled confirmed bookings or failed to respond to booking requests without a valid reason, or (vii) Airbnb believes in good faith that such action is reasonably necessary to protect the personal safety or property of Airbnb, its Members, or third parties, or to prevent fraud or other illegal activity:

- refuse to surface, delete or delay any Listings, Ratings, Reviews, or other Member Content;
- cancel any pending or confirmed bookings;
- limit your access to or use of the Airbnb Platform;
- temporarily or permanently revoke any special status associated with your Airbnb Account;
- temporarily or in case of severe or repeated offenses permanently suspend your Airbnb Account and stop providing access to the Airbnb Platform.

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In case of non-material breaches and where appropriate, you will be given notice of any intended measure by Airbnb and an opportunity to resolve the issue to Airbnb's reasonable satisfaction.

15.6 If we take any of the measures described above (i) we may refund your Guests in full for any and all confirmed bookings that have been cancelled, irrespective of preexisting cancellation policies, and (ii) you will not be entitled to any compensation for pending or confirmed bookings that were cancelled.

15.7 When this Agreement has been terminated, you are not entitled to a restoration of your Airbnb Account or any of your Member Content. If your access to or use of the Airbnb Platform has been limited or your Airbnb Account has been suspended or this Agreement has been terminated by us, you may not register a new Airbnb Account or access and use the Airbnb Platform through an Airbnb Account of another Member.

15.8 Sections 5 and 16 to 22 of these Terms shall survive any termination or expiration of this Agreement.

16. Disclaimers

If you choose to use the Airbnb Platform or Collective Content, you do so voluntarily and at your sole risk. The Airbnb Platform and Collective Content is provided "as is", without warranty of any kind, either express or implied.

You agree that you have had whatever opportunity you deem necessary to investigate the Airbnb Services, laws, rules, or regulations that may be applicable to your Listings and/or Host Services you are receiving and that you are not relying upon any statement of law or fact made by Airbnb relating to a Listing.

If we choose to conduct identity verification or background checks on any Member, to the extent permitted by applicable law, we disclaim warranties of any kind, either express or implied, that such checks will identify prior misconduct by a Member or guarantee that a Member will not engage in misconduct in the future.

You agree that some Experiences, Events, other Host Services, or the Group Payment Service may carry inherent risk, and by participating in such services, you choose to assume those risks voluntarily. For example, some Host Services may carry risk of illness, bodily injury, disability, or death, and you freely and willfully assume those risks by choosing to participate in those Host Services. You assume full responsibility for the choices you make before, during and after your participation in a Host Service or the Group Payment Service. If you are bringing a minor as an additional guest, you are solely responsible for the supervision of that minor throughout the duration of your Host Service and to the maximum extent permitted by law, you agree to release and hold harmless Airbnb from all liabilities and claims that arise in any way from any injury, death, loss or harm that occurs to that minor during the Host Service or in any way related to your Host Service.

The foregoing disclaimers apply to the maximum extent permitted by law. You may have other statutory rights. However, the duration of statutorily required warranties, if any, shall be limited to the maximum extent permitted by law.

17. Liability

You acknowledge and agree that, to the maximum extent permitted by law, the entire risk arising out of your access to and use of the Airbnb Platform and Collective Content, your publishing or booking of any Listing via the Airbnb Platform, your stay at any Accommodation, participation in any Experience or Event or use of any other

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Host Service, participation in the Group Payment Service, or any other interaction you have with other Members, whether in person or online remains with you. Neither Airbnb nor any other party involved in creating, producing, or delivering the Airbnb Platform or Collective Content will be liable for any incidental, special, exemplary or consequential damages, including lost profits, loss of data or loss of goodwill, service interruption, computer damage or system failure or the cost of substitute products or services, or for any damages for personal or bodily injury or emotional distress arising out of or in connection with (i) these Terms, (ii) from the use of or inability to use the Airbnb Platform or Collective Content, (iii) from any communications, interactions or meetings with other Members or other persons with whom you communicate, interact or meet with as a result of your use of the Airbnb Platform, or (iv) from your publishing or booking of a Listing, including the provision or use of a Listing's Host Services, whether based on warranty, contract, tort (including negligence), product liability or any other legal theory, and whether or not Airbnb has been informed of the possibility of such damage, even if a limited remedy set forth herein is found to have failed of its essential purpose. Except for our obligations to pay amounts to applicable Hosts pursuant to these Terms or an approved payment request under the Airbnb Host Guarantee or Japan Host Insurance, in no event will Airbnb's aggregate liability arising out of or in connection with these Terms and your use of the Airbnb Platform including, but not limited to, from your publishing or booking of any Listings via the Airbnb Platform, or from the use of or inability to use the Airbnb Platform or Collective Content and in connection with any Accommodation, Experiences, Event,other Host Service, the Group Payment Service, or interactions with any other Members, exceed the amounts you have paid or owe for bookings via the Airbnb Platform as a Guest in the twelve (12) month period prior to the event giving rise to the liability, or if you are a Host, the amounts paid by Airbnb to you in the twelve (12) month period prior to the event giving rise to the liability, or one hundred U.S. dollars (US$100), if no such payments have been made, as applicable. The limitations of damages set forth above are fundamental elements of the basis of the bargain between Airbnb and you. Some jurisdictions do not allow the exclusion or limitation of liability for consequential or incidental damages, so the above limitation may not apply to you. If you reside outside of the U.S., this does not affect Airbnb's liability for death or personal injury arising from its negligence, nor for fraudulent misrepresentation, misrepresentation as to a fundamental matter or any other liability which cannot be excluded or limited under applicable law.

18. Indemnification

To the maximum extent permitted by applicable law, you agree to release, defend (at Airbnb's option), indemnify, and hold Airbnb and its affiliates and subsidiaries, including but not limited to, Airbnb Payments, and their officers, directors, employees and agents, harmless from and against any claims, liabilities, damages, losses, and expenses, including, without limitation, reasonable legal and accounting fees, arising out of or in any way connected with (i) your breach of these Terms or our Policies or Standards, (ii) your improper use of the Airbnb Platform or any Airbnb Services, (iii) your interaction with any Member, stay at an Accommodation, participation in an Experience, Event or other Host Service, participation in the Group Payment Service, including without limitation any injuries, losses or damages (whether compensatory, direct, incidental, consequential or otherwise) of any kind arising in connection with or as a result of such interaction, stay, participation or use, (iv) Airbnb's Collection and Remittance of Occupancy Taxes, or (v) your breach of any laws, regulations or third party rights.

19. Dispute Resolution and Arbitration Agreement

19.1 This Dispute Resolution and Arbitration Agreement shall apply if your (i) country of residence or establishment is in the United States; or (ii) your country of residence or establishment is not in the United States, but bring any claim against Airbnb in the United States (to the extent not in conflict with Section 21).

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19.2 *Overview of Dispute Resolution Process*. Airbnb is committed to participating in a consumer-friendly dispute resolution process. To that end, these Terms provide for a two-part process for individuals to whom Section 19.1 applies: (1) an informal negotiation directly with Airbnb's customer service team, and (2) a binding arbitration administered by the American Arbitration Association ("**AAA**") using its specially designed Consumer Arbitration Rules (as modified by this Section 19 and except as provided in Section 19.6). Specifically, the Consumer Arbitration Rules provide:

- Claims can be filed with AAA online (www.adr.org);
- Arbitrators must be neutral and no party may unilaterally select an arbitrator;
- Arbitrators must disclose any bias, interest in the result of the arbitration, or relationship with any party;
- Parties retain the right to seek relief in small claims court for certain claims, at their option;
- The initial filing fee for the consumer is capped at $200;
- The consumer gets to elect the hearing location and can elect to participate live, by phone, video conference, or for claims under $25,000, by the submission of documents;
- The arbitrator can grant any remedy that the parties could have received in court to resolve the party's individual claim.

19.3 *Pre-Arbitration Dispute Resolution and Notification*. Prior to initiating an arbitration, you and Airbnb each agree to notify the other party of the dispute and attempt to negotiate an informal resolution to it first. We will contact you at the email address you have provided to us; you can contact Airbnb's customer service team by emailing us. If after a good faith effort to negotiate one of us feels the dispute has not and cannot be resolved informally, the party intending to pursue arbitration agrees to notify the other party via email prior to initiating the arbitration. In order to initiate arbitration, a claim must be filed with the AAA and the written Demand for Arbitration (available at www.adr.org) provided to the other party, as specified in the AAA Rules.

19.4 *Agreement to Arbitrate*. You and Airbnb mutually agree that any dispute, claim or controversy arising out of or relating to these Terms or the applicability, breach, termination, validity, enforcement or interpretation thereof, or to the use of the Airbnb Platform, the Host Services, the Group Payment Service, or the Collective Content (collectively, "Disputes") will be settled by binding individual arbitration (the "Arbitration Agreement"). If there is a dispute about whether this Arbitration Agreement can be enforced or applies to our Dispute, you and Airbnb agree that the arbitrator will decide that issue.

19.5 *Exceptions to Arbitration Agreement*. You and Airbnb each agree that the following claims are exceptions to the Arbitration Agreement and will be brought in a judicial proceeding in a court of competent jurisdiction: (i) Any claim related to actual or threatened infringement, misappropriation or violation of a party's copyrights, trademarks, trade secrets, patents, or other intellectual property rights; (ii) Any claim seeking emergency injunctive relief based on exigent circumstances (e.g., imminent danger or commission of a crime, hacking, cyber-attack).

19.6 *Arbitration Rules and Governing Law*. This Arbitration Agreement evidences a transaction in interstate commerce and thus the Federal Arbitration Act governs the interpretation and enforcement of this provision. The arbitration will be administered by AAA in accordance with the Consumer Arbitration Rules and/or other AAA arbitration rules determined to be applicable by the AAA (the "**AAA Rules**") then in effect, except as modified here. The AAA Rules are available at www.adr.org or by calling the AAA at 1–800–778–7879.

19.7 *Modification to AAA Rules - Arbitration Hearing/Location*. In order to make the arbitration most convenient to you, Airbnb agrees that any required arbitration hearing may be conducted, at your option, (a) in the county where you reside; (b) in San Francisco County; (c) in any other location to which you and Airbnb both agree; (d) via phone or video conference; or (e) for any claim or counterclaim under $25,000, by solely the submission of documents to the arbitrator.

19.8 *Modification of AAA Rules - Attorney's Fees and Costs*. You and Airbnb agree that Airbnb will be responsible for payment of the balance of any initial filing fee under the AAA Rules in excess of $200 for claims of $75,000 or less. You may be entitled to seek an award of attorney fees and expenses if you prevail in arbitration, to the extent provided under applicable law and the AAA rules. Unless the arbitrator determines that your claim was frivolous or filed for the purpose of harassment, Airbnb agrees it will not seek, and hereby waives all rights it may have under applicable law or the AAA Rules, to recover attorneys' fees and expenses if it prevails in arbitration.

19.9 *Arbitrator's Decision*. The arbitrator's decision will include the essential findings and conclusions upon which the arbitrator based the award. Judgment on the arbitration award may be entered in any court with proper jurisdiction. The arbitrator may award declaratory or injunctive relief only on an individual basis and only to the extent necessary to provide relief warranted by the claimant's individual claim.

19.10 *Jury Trial Waiver*. You and Airbnb acknowledge and agree that we are each waiving the right to a trial by jury as to all arbitrable Disputes.

19.11 *No Class Actions or Representative Proceedings*. You and Airbnb acknowledge and agree that, to the fullest extent permitted by law, we are each waiving the right to participate as a plaintiff or class member in any purported class action lawsuit, class-wide arbitration, private attorney general action, or any other representative proceeding as to all Disputes. Further, unless you and Airbnb both otherwise agree in writing, the arbitrator may not consolidate more than one party's claims and may not otherwise preside over any form of any class or representative proceeding. If the "class action lawsuit" waiver or the "class-wide arbitration" waiver in this Section 19.11 is held unenforceable with respect to any Dispute, then the entirety of the Arbitration Agreement will be deemed void with respect to such Dispute and the Dispute must proceed in court. If the "private attorney general action" waiver or the "representative proceeding" waiver in this Section 19.11 is held unenforceable with respect to any Dispute, those waivers may be severed from this Arbitration Agreement and you and Airbnb agree that any private attorney general claims and representative claims in the Dispute will be severed and stayed, pending the resolution of any arbitrable claims in the Dispute in individual arbitration.

19.12 *Severability*. Except as provided in Section 19.11, in the event that any portion of this Arbitration Agreement is deemed illegal or unenforceable, such provision shall be severed and the remainder of the Arbitration Agreement shall be given full force and effect.

19.13 *Changes*. Notwithstanding the provisions of Section 3 ("Modification of these Terms"), if Airbnb changes this Section 19 ("Dispute Resolution and Arbitration Agreement") after the date you last accepted these Terms (or accepted any subsequent changes to these Terms), you may reject any such change by sending us written notice (including by email) within thirty (30) days of the date such change became effective, as indicated in the "Last Updated" date above or in the date of Airbnb's email to you notifying you of such change. Rejecting a new change, however, does not revoke or alter your prior consent to any earlier agreements to arbitrate any Dispute between you and Airbnb (or your prior consent to any subsequent changes thereto), which will remain in effect and enforceable as to any Dispute between you and Airbnb.

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19.14 *Survival*. Except as provided in Section 19.12 and subject to Section 15.8, this Section 19 will survive any termination of these Terms and will continue to apply even if you stop using the Airbnb Platform or terminate your Airbnb Account.

20. Feedback

We welcome and encourage you to provide feedback, comments and suggestions for improvements to the Airbnb Platform ("**Feedback**"). You may submit Feedback by emailing us, through the "Contact" section of the Airbnb Platform, or by other means of communication. Any Feedback you submit to us will be considered non-confidential and non-proprietary to you. By submitting Feedback to us, you grant us a non-exclusive, worldwide, royalty-free, irrevocable, sub-licensable, perpetual license to use and publish those ideas and materials for any purpose, without compensation to you.

21. Applicable Law and Jurisdiction

21.1 If your country of residence or establishment is the United States, these Terms will be interpreted in accordance with the laws of the State of California and the United States of America, without regard to conflict-of-law provisions. Judicial proceedings (other than small claims actions) that are excluded from the Arbitration Agreement in Section 19 must be brought in state or federal court in San Francisco, California, unless we both agree to some other location. You and we both consent to venue and personal jurisdiction in San Francisco, California.

21.2 If your country of residence or establishment is China these Terms will be interpreted in accordance with the laws of China ("**China Laws**"). Any dispute arising from or in connection with this Agreement shall be submitted to the China International Economic and Trade Arbitration Commission (CIETAC) for arbitration in Beijing which shall be conducted in accordance with CIETAC's arbitration rules in effect at the time of applying for arbitration, provided that this section shall not be construed to limit any rights which Airbnb may have to apply to any court of competent jurisdiction for an order requiring you to perform or be prohibited from performing certain acts and other provisional relief permitted under China Laws or any other laws that may apply to you. The arbitration proceedings shall be conducted in English. The arbitral award rendered is final and binding upon both parties.

21.3 If your country of residence or establishment is outside of the United States and China, these Terms will be interpreted in accordance with Irish law. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded. The choice of law does not impact your rights as a consumer according to the consumer protection regulations of your country of residence. If you are acting as a consumer, you agree to submit to the non-exclusive jurisdiction of the Irish courts. Judicial proceedings that you are able to bring against us arising from or in connection with these Terms may only be brought in a court located in Ireland or a court with jurisdiction in your place of residence. If Airbnb wishes to enforce any of its rights against you as a consumer, we may do so only in the courts of the jurisdiction in which you are a resident. If you are acting as a business, you agree to submit to the exclusive jurisdiction of the Irish courts.

22. General Provisions

22.1 Except as they may be supplemented by additional terms and conditions, policies, guidelines or standards, these Terms constitute the entire Agreement between Airbnb and you pertaining to the subject matter hereof, and supersede any and all prior oral or written understandings or agreements between Airbnb and you in relation to the access to and use of the Airbnb Platform.

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22.2 No joint venture, partnership, employment, or agency relationship exists between you and Airbnb as a result of this Agreement or your use of the Airbnb Platform.

22.3 These Terms do not and are not intended to confer any rights or remedies upon any person other than the parties.

22.4 If any provision of these Terms is held to be invalid or unenforceable, such provision will be struck and will not affect the validity and enforceability of the remaining provisions.

22.5 Airbnb's failure to enforce any right or provision in these Terms will not constitute a waiver of such right or provision unless acknowledged and agreed to by us in writing. Except as expressly set forth in these Terms, the exercise by either party of any of its remedies under these Terms will be without prejudice to its other remedies under these Terms or otherwise permitted under law.

22.6 You may not assign, transfer or delegate this Agreement and your rights and obligations hereunder without Airbnb's prior written consent. Airbnb may without restriction assign, transfer or delegate this Agreement and any rights and obligations hereunder, at its sole discretion, with 30 days prior notice. Your right to terminate this Agreement at any time remains unaffected.

22.7 Unless specified otherwise, any notices or other communications to Members permitted or required under this Agreement, will be provided electronically and given by Airbnb via email, Airbnb Platform notification, or messaging service (including SMS and WeChat). If your booking is in respect of a Listing in Japan, you agree and acknowledge that such notifications via electronic means in lieu of a written statement, satisfies Airbnb's obligations under Article 59 Paragraph 1 of the Japanese Housing Accommodation Business Act.

22.8 If you have any questions about these Terms please email us.

Terms of Service for European Users

Download version

Please read these Terms of Service for European Users ("Terms") carefully as they contain important information about your legal rights, remedies and obligations. By accessing or using the Airbnb Platform, you agree to comply with and be bound by these Terms.

Please note: Section 19 of these Terms contains an arbitration clause and class action waiver that applies to all claims brought against Airbnb in the United States. It affects how disputes with Airbnb are resolved. By accepting these Terms, you agree to be bound by this arbitration clause and class action waiver. Please read it carefully.

You can access the European Commission's online dispute resolution platform here: http://ec.europa.eu/consumers/odr. Please note that Airbnb is not committed nor obliged to use an alternative dispute resolution entity to resolve disputes with consumers.

Last Updated: January 21, 2019

Thank you for using Airbnb!

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These Terms constitute a legally binding agreement ("**Agreement**") between you and Airbnb (as defined below) governing your access to and use of the Airbnb website, including any subdomains thereof, and any other websites through which Airbnb makes its services available (collectively, "**Site**"), our mobile, tablet and other smart device applications, and application program interfaces (collectively, "**Application**") and all associated services (collectively, "**Airbnb Services**"). The Site, Application and Airbnb Services together are hereinafter collectively referred to as the "**Airbnb Platform**". Our Host Guarantee Terms, Guest Refund Policy, Nondiscrimination Policy and other Policies applicable to your use of the Airbnb Platform are incorporated by reference into this Agreement.

When these Terms mention "**Airbnb**," "**we**," "**us**," or "**our**," it refers to Airbnb Ireland UC ("**Airbnb Ireland**"), The Watermarque Building, South Lotts Road, Ringsend, Dublin 4, Ireland. .

If you change your country of residence or establishment to a country outside of the EEA, the Airbnb company you contract with and the applicable Terms of Service will be determined by your new country of residence or establishment as specified in the Terms of Service for Non-European Users, from the date on which your country of residence or establishment changes.

Our collection and use of personal information in connection with your access to and use of the Airbnb Platform is described in our Privacy Policy.

Any and all payment processing services through or in connection with your use of the Airbnb Platform ("**Payment Services**") are provided to you by one or more Airbnb Payments entities (individually and collectively, as appropriate, "**Airbnb Payments**") as set out in the Payments Terms of Service ("**Payments Terms**").

Hosts alone are responsible for identifying, understanding, and complying with all laws, rules and regulations that apply to their Listings and Host Services (as defined below). For example, some cities have laws that restrict their ability to host paying guests for short periods or provide certain Host Services. In many cities, Hosts may have to register, get a permit or obtain a license before providing certain Host Services (such as preparing food, serving alcohol for sale, guiding tours or operating a vehicle). Host are alone responsible for identifying and obtaining any required licenses, permits, or registrations for any Host Services they offer. Certain types of Host Services may be prohibited altogether. Penalties may include fines or other enforcement. We provide some information in our Help Center to help you identify some of the obligations that apply to you. If you have questions about how local laws apply to your Listing(s) and Host Service(s) on Airbnb, you should always seek legal guidance.

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1. Scope of Airbnb Services

1.1 The Airbnb Platform is an online marketplace that enables registered users (“**Members**”) and certain third parties who offer services (Members and third parties who offer services are “**Hosts**” and the services they offer are “**Host Services**”) to publish such Host Services on the Airbnb Platform (“**Listings**”) and to communicate and transact directly with Members that are seeking to book such Host Services (Members using Host Services are “**Guests**”). Host Services may include the offering of vacation or other properties for use ("**Accommodations**"), single or multi-day activities in various categories (“**Experiences**”), access to unique events and locations (“**Events**”), and a variety of other travel and non-travel related services.

1.2 As the provider of the Airbnb Platform, Airbnb does not own, create, sell, resell, provide, control, manage, offer, deliver, or supply any Listings or Host Services, nor is Airbnb an organiser or retailer of travel packages under Directive (EU) 2015/2302. Hosts alone are responsible for their Listings and Host Services. When Members make or accept a booking, they are entering into a contract directly with each other. Airbnb is not and does not become a party to or other participant in any contractual relationship between Members, nor is Airbnb a real estate broker or insurer. Airbnb is not acting as an agent in any capacity for any Member, except as specified in the Payments Terms.

1.3 While we may help facilitate the resolution of disputes, Airbnb has no control over and does not guarantee (i) the existence, quality, safety, suitability, or legality of any Listings or Host Services, (ii) the truth or accuracy of any Listing descriptions, Ratings, Reviews, or other Member Content (as defined below), or (iii) the performance or conduct of any Member or third party. Airbnb does not endorse any Member, Listing or Host Services. Any references to a Member being "verified" (or similar language) only indicate that the Member has completed a relevant verification or identification process and nothing else. Any such description is not an endorsement, certification or guarantee by Airbnb about any Member, including of the Member's identity or background or whether the Member is trustworthy, safe or suitable. You should always exercise due diligence and care when deciding whether to stay in an Accommodation, participate in an Experience or Event or use other Host Services, accept a booking request from a Guest, or communicate and interact with other Members, whether online or in person. Verified Images (as defined below) are intended only to indicate a photographic representation of a Listing at the time the photograph was taken, and are therefore not an endorsement by Airbnb of any Host or Listing.

1.4 If you choose to use the Airbnb Platform as a Host or Co-Host (as defined below), your relationship with Airbnb is limited to being an independent, third-party contractor, and not an employee, agent, joint venturer or partner of Airbnb for any reason, and you act exclusively on your own behalf and for your own benefit, and not on behalf, or for the benefit, of Airbnb. Airbnb does not, and shall not be deemed to, direct or control you generally or in your

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performance under these Terms specifically, including in connection with your provision of the Host Services. You acknowledge that you have complete discretion whether to list Host Services or otherwise engage in other business or employment activities.

1.5 To promote the Airbnb Platform and to increase the exposure of Listings to potential Guests, Listings and other Member Content may be displayed on other websites, in applications, within emails, and in online and offline advertisements in accordance with Section 5. To assist Members who speak different languages, Airbnb may make automated tools available to enable Members to translate Listings and other Member Content, in whole or in part, into other languages. Members are free to use these tools at their own discretion. Airbnb cannot guarantee the accuracy or quality of such translations and Members are responsible for reviewing and verifying the accuracy of such translations.

1.6 The Airbnb Platform may contain links to third-party websites or resources ("**Third-Party Services**"). Such Third-Party Services may be subject to different terms and conditions and privacy practices. Airbnb is not responsible or liable for the availability or accuracy of such Third-Party Services, or the content, products, or services available from such Third-Party Services. Links to such Third-Party Services are not an endorsement by Airbnb of such Third-Party Services.

1.7 Airbnb is not responsible for outages or disruptions of the Internet and telecommunications infrastructure which are beyond our control and can lead to interruptions in the availability of the Airbnb Platform. Airbnb may, temporarily and under consideration of the Members' legitimate interests (e.g. by providing prior notice), restrict the availability of the Airbnb Platform or certain areas or features thereof, if this is necessary in view of capacity limits, the security or integrity of our servers, or to carry out maintenance measures that ensure the proper or improved functioning of the Airbnb Platform. Section 17 (Liability) remains unaffected. Airbnb may improve, enhance and modify the Airbnb Platform and introduce new Airbnb Services from time to time. Airbnb will provide notice to Members of any changes to the Airbnb Platform, unless such changes are of minor nature without having a material effect on the parties' contractual obligations.

2. Eligibility, Using the Airbnb Platform, Member Verification

2.1 In order to access and use the Airbnb Platform or register an Airbnb Account you must be an individual at least 18 years old or a duly organized, validly existing business, organization or other legal entity in good standing under the laws of the country you are registered and able to enter into legally binding contracts.

2.2 You will comply with any applicable export control laws in your local jurisdiction. You also represent and warrant that (i) neither you nor your Host Service(s) are located or take place in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country, and (ii) you are not listed on any U.S. Government list of prohibited or restricted parties.

2.3 Airbnb may make access to and use of the Airbnb Platform, or certain areas or features of the Airbnb Platform, subject to certain conditions or requirements, such as completing a verification process, meeting specific quality or eligibility criteria, meeting Ratings or Reviews thresholds, or a Member's booking and cancellation history.

2.4 User verification on the Internet is difficult and we do not assume any responsibility for the confirmation of any Member's identity. Notwithstanding the above, for transparency and fraud prevention purposes, and as permitted by applicable laws, we may, but have no obligation to (i) ask Members to provide a form of government identification or

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other information or undertake additional checks designed to help verify the identities or backgrounds of Members, (ii) screen Members against third party databases or other sources and request reports from service providers, and (iii) where we have sufficient information to identify a Member, obtain reports from public records of criminal convictions or sex offender registrations or an equivalent version of background or registered sex offender checks in your local jurisdiction (if available).

2.5 The access to or use of certain areas and features of the Airbnb Platform may be subject to separate policies, standards or guidelines, or may require that you accept additional terms and conditions,before you can access the relevant areas or features of the Airbnb Platform. If there is a conflict between these Terms and terms and conditions applicable to a specific area or feature of the Airbnb Platform, the latter terms and conditions will take precedence with respect to your access to or use of that area or feature, unless specified otherwise in the latter terms and conditions.

2.6 If you access or download the Application from the Apple App Store, you agree to Apple's Licensed Application End User License Agreement. Some areas of the Airbnb Platform implement Google Maps/Earth mapping services, including Google Maps API(s). Your use of Google Maps/Earth is subject to the Google Maps/Google Earth Additional Terms of Service.

3. Modification of these Terms

Airbnb reserves the right to modify these Terms at any time in accordance with this provision. If we make changes to these Terms, we will post the revised Terms on the Airbnb Platform and update the "Last Updated" date at the top of these Terms. We will also provide you with notice of the modifications by email at least thirty (30) days before the date they become effective. If you disagree with the revised Terms, you may terminate this Agreement with immediate effect. We will inform you about your right to terminate the Agreement in the notification email. If you do not terminate your Agreement before the date the revised Terms become effective, your continued access to or use of the Airbnb Platform will constitute acceptance of the revised Terms.

4. Account Registration

4.1 You must register an account ("**Airbnb Account**") to access and use certain features of the Airbnb Platform, such as publishing or booking a Listing. If you are registering an Airbnb Account for a business, organization or other legal entity, you represent and warrant that you have the authority to legally bind that entity and grant us all permissions and licenses provided in these Terms.

4.2 You can register an Airbnb Account using an email address and creating a password, or through your account with certain third-party social networking services, such as Facebook or Google ("**SNS Account**"). You have the ability to disable the connection between your Airbnb Account and your SNS Account at any time, by accessing the "Settings" section of the Airbnb Platform.

4.3 You must provide accurate, current and complete information during the registration process and keep your Airbnb Account and public Airbnb Account profile page information up-to-date at all times.

4.4 You may not register more than one (1) Airbnb Account unless Airbnb authorizes you to do so. You may not assign or otherwise transfer your Airbnb Account to another party.

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4.5 You are responsible for maintaining the confidentiality and security of your Airbnb Account credentials and may not disclose your credentials to any third party. You must immediately notify Airbnb if you know or have any reason to suspect that your credentials have been lost, stolen, misappropriated, or otherwise compromised or in case of any actual or suspected unauthorized use of your Airbnb Account. You are liable for any and all activities conducted through your Airbnb Account, unless such activities are not authorized by you and you are not otherwise negligent (such as failing to report the unauthorized use or loss of your credentials).

4.6 Airbnb may enable features that allow you to authorize other Members or certain third parties to take certain actions that affect your Airbnb Account. For example, we may enable Members to link their Airbnb Accounts to businesses and take actions for those businesses, we may enable eligible Members or certain third parties to book Listings on behalf of other Members, or we may enable Hosts to add other Members as Co-Hosts (as defined below) to help manage their Listings. These features do not require that you share your credentials with any other person. No third party is authorized by Airbnb to ask for your credentials, and you shall not request the credentials of another Member.

5. Content

5.1 Airbnb may enable Members to (i) create, upload, post, send, receive and store content, such as text, photos, audio, video, or other materials and information on or through the Airbnb Platform ("**Member Content**"); and (ii) access and view Member Content and any content that Airbnb itself makes available on or through the Airbnb Platform, including proprietary Airbnb content and any content licensed or authorized for use by or through Airbnb from a third party ("**Airbnb Content**" and together with Member Content, "**Collective Content**").

5.2 The Airbnb Platform, Airbnb Content, and Member Content may in its entirety or in part be protected by copyright, trademark, and/or other laws of the United States and other countries. You acknowledge and agree that the Airbnb Platform and Airbnb Content, including all associated intellectual property rights, are the exclusive property of Airbnb and/or its licensors or authorizing third-parties. You will not remove, alter or obscure any copyright, trademark, service mark or other proprietary rights notices incorporated in or accompanying the Airbnb Platform, Airbnb Content or Member Content. All trademarks, service marks, logos, trade names, and any other source identifiers of Airbnb used on or in connection with the Airbnb Platform and Airbnb Content are trademarks or registered trademarks of Airbnb in the United States and abroad. Trademarks, service marks, logos, trade names and any other proprietary designations of third parties used on or in connection with the Airbnb Platform, Airbnb Content, and/or Collective Content are used for identification purposes only and may be the property of their respective owners.

5.3 You will not use, copy, adapt, modify, prepare derivative works of, distribute, license, sell, transfer, publicly display, publicly perform, transmit, broadcast or otherwise exploit the Airbnb Platform or Collective Content, except to the extent you are the legal owner of certain Member Content or as expressly permitted in these Terms. No licenses or rights are granted to you by implication or otherwise under any intellectual property rights owned or controlled by Airbnb or its licensors, except for the licenses and rights expressly granted in these Terms.

5.4 Subject to your compliance with these Terms, Airbnb grants you a limited, non-exclusive, non-sublicensable, revocable, non-transferable license to (i) download and use the Application on your personal device(s); and (ii) access and view any Collective Content made available on or through the Airbnb Platform and accessible to you, solely for your personal and non-commercial use.

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5.5 By uploading, posting or otherwise making available any Member Content on or through the Airbnb Platform, you grant to Airbnb a non-exclusive, worldwide, royalty-free, irrevocable, perpetual (or for the term of the protection), sub-licensable and transferable license to such Member Content to access, use, store, copy, modify, prepare derivative works of, distribute, publish, transmit, stream, broadcast, and otherwise exploit in any manner such Member Content to provide and/or promote the Airbnb Platform, in any media or platform. Insofar as Member Content (including Verified Images) includes personal information, such Member Content will only be used for these purposes if such use complies with applicable data protection laws in accordance with our Privacy Policy. Unless you provide specific consent, Airbnb does not claim any ownership rights in any Member Content and nothing in these Terms will be deemed to restrict any rights that you may have to use or exploit your Member Content.

5.6 Airbnb may offer Hosts the option of having professional photographers take photographs of their Host Services which are made available by the photographer to Hosts to include in their Listings with or without a watermark or tag bearing the words "Airbnb.com Verified Photo" or similar wording ("**Verified Images**"). You are responsible for ensuring that your Host Service is accurately represented in the Verified Images and you will stop using the Verified Images on or through the Airbnb Platform if they no longer accurately represent your Listing, if you stop hosting the Host Service featured, or if your Airbnb Account is terminated or suspended for any reason. You acknowledge and agree that Airbnb shall have the right to use any Verified Images in accordance with Section 5.5 for advertising, marketing or publicity purposes, including limited use by permitted third parties, in any media or platform. Where Airbnb is not the exclusive owner of Verified Images, by using such Verified Images on or through the Airbnb Platform, you grant to Airbnb an exclusive, worldwide, royalty-free, irrevocable, perpetual (or for the term of the protection), sub-licensable and transferable license to use such Verified Images for advertising, marketing or publicity purposes in any media or platform. Airbnb in turn grants you a limited, non-exclusive, non-sublicensable, revocable, non-transferable license to use Verified Images outside of the Airbnb Platform solely for your personal and non-commercial use.

5.7 You are solely responsible for all Member Content that you make available on or through the Airbnb Platform. Accordingly, you represent and warrant that: (i) you either are the sole and exclusive owner of all Member Content that you make available on or through the Airbnb Platform or you have all rights, licenses, consents and releases that are necessary to grant to Airbnb the rights in and to such Member Content, as contemplated under these Terms; and (ii) neither the Member Content nor your posting, uploading, publication, submission or transmittal of the Member Content or Airbnb's use of the Member Content (or any portion thereof) as contemplated under these Terms will infringe, misappropriate or violate a third party's patent, copyright, trademark, trade secret, moral rights or other proprietary or intellectual property rights, or rights of publicity or privacy, or result in the violation of any applicable law or regulation.

5.8 You will not post, upload, publish, submit or transmit any Member Content that: (i) is fraudulent, false, misleading (directly or by omission or failure to update information) or deceptive; (ii) is defamatory, libelous, obscene, pornographic, vulgar or offensive; (iii) promotes discrimination, bigotry, racism, hatred, harassment or harm against any individual or group; (iv) is violent or threatening or promotes violence or actions that are threatening to any other person or animal; (v) promotes illegal or harmful activities or substances; or (vi) violates Airbnb’s Content Policy or any other Airbnb policy. Airbnb may remove or disable access to any Member Content that is in violation of applicable law, these Terms or Airbnb’s then-current Policies or Standards, or otherwise may be harmful or objectionable to Airbnb, its Members, third parties, or property. Where Airbnb removes or disables Member Content, Airbnb will notify a Member and provide the reasons for such a measure, unless such notification would (i) prevent or impede the detection or prevention of fraud or other illegal activities, (ii) harm the legitimate interests of other Members or third parties, or (ii) contravene applicable laws. You may appeal such a decision by contacting customer service.

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5.9 Airbnb respects copyright law and expects its Members to do the same. If you believe that any content on the Airbnb Platform infringes copyrights you own, please notify us in accordance with our Copyright Policy.

6. Service Fees

6.1 Airbnb may charge fees to Hosts ("**Host Fees**") and/or Guests ("**Guest Fees**") (collectively, "**Service Fees**") in consideration for the use of the Airbnb Platform. More information about when Service Fees apply and how they are calculated can be found on our Service Fees page.

6.2 Any applicable Service Fees (including any applicable Taxes) will be displayed to a Host or Guest prior to publishing or booking a Listing. Airbnb reserves the right to change the Service Fees at any time, and will provide Members adequate notice of any fee changes before they become effective. Such fee changes will not affect any bookings made prior to the effective date of the fee change.

6.3 You are responsible for paying any Service Fees that you owe to Airbnb. The applicable Service Fees (including any applicable Taxes) are collected by Airbnb Payments. Airbnb Payments will deduct any Host Fees from the Listing Fee before remitting the payout to the Host. Any Guest Fees are included in the Total Fees collected by Airbnb Payments. Except as otherwise provided on the Airbnb Platform, Service Fees are non-refundable.

7. Terms specific for Hosts

7.1 Terms applicable to all Listings

7.1.1 When creating a Listing through the Airbnb Platform you must (i) provide complete and accurate information about your Host Service (such as listing description, location, and calendar availability), (ii) disclose any deficiencies, restrictions (such as house rules) and requirements that apply (such as any minimum age, proficiency or fitness requirements for an Experience) and (iii) provide any other pertinent information requested by Airbnb. You are responsible for keeping your Listing information (including calendar availability) up-to-date at all times.

7.1.2 You are solely responsible for setting a price (including any Taxes if applicable, or charges such as cleaning fees) for your Listing ("**Listing Fee**"). Once a Guest requests a booking of your Listing, you may not request that the Guest pays a higher price than in the booking request.

7.1.3 Any terms and conditions included in your Listing, in particular in relation to cancellations, must not conflict with these Terms or the relevant cancellation policy for your Listing.

7.1.4 Airbnb may enable certain Hosts to participate in its "**Open Homes Program**." The Open Homes Program enables Hosts to provide Listings to certain Guests, such as refugees or evacuees, for free. You acknowledge that if you choose to participate in the Open Homes Program, your ability to restrict your Listing to certain Guests, such as Guests with previous positive Reviews, may be limited.

7.1.5 Pictures, animations or videos (collectively, "**Images**") used in your Listings must accurately reflect the quality and condition of your Host Services. Airbnb reserves the right to require that Listings have a minimum number of Images of a certain format, size and resolution.

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7.1.6 The placement and ranking of Listings in search results on the Airbnb Platform may vary and depend on a variety of factors, such as Guest search parameters and preferences, Host requirements, price and calendar availability, number and quality of Images, customer service and cancellation history, Reviews and Ratings, type of Host Service, and/or ease of booking. More information about the factors that determine how your Listing appears in search results can be found on our help center.

7.1.7 When you accept or have pre-approved a booking request by a Guest, you are entering into a legally binding agreement with the Guest and are required to provide your Host Service(s) to the Guest as described in your Listing when the booking request is made. You also agree to pay the applicable Host Fee and any applicable Taxes.

7.1.8 Airbnb recommends that Hosts obtain appropriate insurance for their Host Services. Please review any respective insurance policy carefully, and in particular make sure that you are familiar with and understand any exclusions to, and any deductibles that may apply for, such insurance policy, including, but not limited to, whether or not your insurance policy will cover the actions or inactions of Guests (and the individuals the Guest has booked for, if applicable) while staying at your Accommodation or participating in your Experience, Event or other Host Service.

7.2 Listing Accommodations

7.2.1 Unless expressly allowed by Airbnb, you may not list more than one Accommodation per Listing.

7.2.2 If you choose to require a security deposit for your Accommodation, you must specify this in your Listing ("**Security Deposit**"). Hosts are not allowed to ask for a Security Deposit (i) after a booking has been confirmed or (ii) outside of the Airbnb Platform.

7.2.3 Any Listing you post and the booking of, or a Guest's stay at, an Accommodation shall (i) not breach any agreements you have entered into with any third parties, such as homeowners association, condominium, or other agreements, and (ii) comply with all applicable laws (such as zoning laws), Tax requirements, and other rules and regulations (including having all required permits, licenses and registrations).

7.3 Listing Experiences, Events and other Host Services

Hosts who list Experiences, Events and Host Services other than Accommodations agree to and are subject to the Additional Terms for Experience Hosts.

7.4 Co-Hosts

7.4.1 Airbnb may enable Hosts to authorize other Members ("**Co-Hosts**") to administer the Host's Listing(s), and to bind the Host and take certain actions in relation to the Listing(s) as permitted by the Host, such as accepting booking requests, messaging and welcoming Guests, and updating the Listing Fee and calendar availability (collectively, "**Co-Host Services**"). Any agreement formed between Host and Co-Host may not conflict with these Terms, the Payments Terms, or any other Policies applicable to your Host Service(s). Co-Hosts may only act in an individual capacity and not on behalf of a company or other organization, unless expressly authorized by Airbnb. Airbnb reserves the right, in our sole discretion, to limit the number of Co-Hosts a Host may invite for each Listing and to limit the number of Listings a Co-Host may manage.

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7.4.2 Hosts should exercise due diligence and care when deciding who to add as a Co-Host to their Listing(s). Hosts are responsible and liable for any and all Listings and Member Content published on the Airbnb Platform created by a Co-Host on their behalf. Further, Hosts remain responsible and liable for their own acts and omissions, including, but not limited to, conduct that causes harm or damage to the Co-Host(s). Co-Hosts remain responsible and liable for their own acts and omissions when engaging in their roles and responsibilities as a Co-Host, including, but not limited to, conduct that causes harm or damage to the Host. In addition, both Host and Co-Host are jointly responsible and severally liable for third party claims, including Guest claims, arising from the acts and omissions of the other person as related to hosting activities, communications with Guests, and the provision of any Co-Host Services.

7.4.3 Unless agreed otherwise by Host and Co-Host, Host and Co-Host may terminate the Co-Host agreement at any time. In addition, both Host and Co-Host acknowledge that their Co-hosting relationship will terminate in the event that Airbnb (i) terminates the Co-Host service or (ii) terminates either party's participation in the Co-Host service. When the Co-Host agreement is terminated, the Host will remain responsible for all of the Co-Host's actions prior to the termination, including the responsibility to fulfill any pending or future bookings initiated prior to the termination, except in the event of gross misconduct or malicious behavior of the Co-Host. When a Member is removed as a Co-Host, that Member will no longer have access to any Host or Guest information related to the applicable Host's Listing(s).

7.4.4 As a Co-Host, you will not be reviewed by Guests, meaning that your Co-Host activities will not affect your Reviews or Ratings for other Listings for which you are a Host. Instead, the Host of such Listing(s) will be reviewed by Guests (including potentially on the basis of the Co-Host's conduct and performance). Hosts acknowledge that Reviews and Ratings from Guests for their Listing(s) may be impacted by a Co-Host's conduct and performance.

8. Terms specific for Guests

8.1 Terms applicable to all bookings

8.1.1 Subject to meeting any requirements (such as completing any verification processes) set by Airbnb and/or the Host, you can book a Listing available on the Airbnb Platform by following the respective booking process. All applicable fees, including the Listing Fee, Security Deposit (if applicable), Guest Fee and any applicable Taxes (collectively, "**Total Fees**") will be presented to you prior to booking a Listing. You agree to pay the Total Fees for any booking requested in connection with your Airbnb Account.

8.1.2 Upon receipt of a booking confirmation from Airbnb, a legally binding agreement is formed between you and your Host, subject to any additional terms and conditions of the Host that apply, including in particular the applicable cancellation policy and any rules and restrictions specified in the Listing. Airbnb Payments will collect the Total Fees at the time of the booking request or upon the Host's confirmation pursuant to the Payments Terms. For certain bookings, Guests may be required to pay or have the option to pay in multiple installments.

8.1.3 If you book a Host Service on behalf of additional guests, you are required to ensure that every additional guest meets any requirements set by the Host, and is made aware of and agrees to these Terms and any terms and conditions, rules and restrictions set by the Host. If you are booking for an additional guest who is a minor, you represent and warrant that you are legally authorized to act on behalf of the minor. Minors may only participate in an Experience, Event or other Host Service if accompanied by an adult who is responsible for them.

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8.1.4 Airbnb may enable a Guest who is booking a Listing on behalf of one or more additional guests (the "**Organizer**") to split the payment of the Total Fees for an eligible booking on a pro-rata basis between the Organizer and at least one other additional guest (each a "**Co-Payer**") (the "**Group Payment Service**"). In order to participate in the Group Payment Service, each Co-Payer must have or register an Airbnb Account prior to making a payment. All payments via the Group Payment Service are handled by Airbnb Payments and are subject to the Group Payment Terms of Service.

8.2 Booking Accommodations

8.2.1 You understand that a confirmed booking of an Accommodation ("**Accommodation Booking**") is a limited license granted to you by the Host to enter, occupy and use the Accommodation for the duration of your stay, during which time the Host (only where and to the extent permitted by applicable law) retains the right to re-enter the Accommodation, in accordance with your agreement with the Host.

8.2.2 You agree to leave the Accommodation no later than the checkout time that the Host specifies in the Listing or such other time as mutually agreed upon between you and the Host. If you stay past the agreed upon checkout time without the Host's consent ("**Overstay**"), you no longer have a license to stay in the Accommodation and the Host is entitled to make you leave in a manner consistent with applicable law. In addition, you agree to pay, if requested by the Host, for each twenty-four (24) hour period (or any portion thereof) that you Overstay, an additional nightly fee of up to two (2) times the average nightly Listing Fee originally paid by you to cover the inconvenience suffered by the Host, plus all applicable Guest Fees, Taxes, and any legal expenses incurred by the Host to make you leave (collectively, "**Overstay Fees**"). Overstay Fees for late checkouts on the checkout date that do not impact upcoming bookings may be limited to the additional costs incurred by the Host as a result of such Overstay. If you Overstay at an Accommodation, you authorize Airbnb (via Airbnb Payments) to charge you to collect Overstay Fees. A Security Deposit, if required by a Host, may be applied to any Overstay Fees due for a Guest's Overstay.

8.3 Booking Experiences, Events and other Host Services

8.3.1 You should carefully review the description of any Experience, Event or other Host Service you intend to book to ensure you (and any additional guests you are booking for) meet any minimum age, proficiency, fitness or other requirements which the Host has specified in their Listing. At your sole discretion you may want to inform the Host of any medical or physical conditions, or other circumstances that may impact your and any additional guest's ability to participate in any Experience, Event or other Host Service. In addition, certain laws, like the minimum legal drinking age in the location of the Experience, Event or other Host Service, may also apply.

8.3.2 Before and during an Experience, Event or other Host Service you must at all times adhere to the Hosts' instructions.

8.3.3 You may not bring any additional individuals to an Experience, Event or other Host Service unless such an individual was added by you as an additional guest during the booking process on the Airbnb Platform.

8.4 Airbnb Travel Credits

Airbnb Travel Credits may be redeemed for eligible bookings via the Airbnb Platform as specified in the terms and conditions provided with the Travel Credit. You may only redeem Airbnb Travel Credits after the Airbnb Travel Credits are reflected in your Airbnb Account.

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9. Booking Modifications, Cancellations and Refunds, Resolution Center

9.1 Hosts and Guests are responsible for any modifications to a booking that they make via the Airbnb Platform or direct Airbnb customer service to make ("**Booking Modifications**"), and agree to pay any additional Listing Fees, Host Fees or Guest Fees and/or Taxes associated with such Booking Modifications.

9.2 Guests can cancel a confirmed booking at any time pursuant to the Listing's cancellation policy set by the Host, and Airbnb Payments will refund the amount of the Total Fees due to the Guest in accordance with such cancellation policy. Unless extenuating circumstances exist, any portion of the Total Fees due to the Host under the applicable cancellation policy will be remitted to the Host by Airbnb Payments pursuant to the Payments Terms.

9.3 If a Host cancels a confirmed booking, the Guest will receive a full refund of the Total Fees for such booking. In some instances, Airbnb may allow the Guest to apply the refund to a new booking, in which case Airbnb Payments will credit the amount against the Guest's subsequent booking at the Guest's direction. Further, Airbnb may publish an automated review on the Listing cancelled by the Host indicating that a booking was cancelled. In addition, Airbnb may (i) keep the calendar for the Listing unavailable or blocked for the dates of the cancelled booking, and/or (ii) impose a cancellation fee, unless the Host has a valid reason for cancelling the booking pursuant to Airbnb's Extenuating Circumstances Policy or has legitimate concerns about the Guest's behavior.

9.4 For Experiences, Events and other Host Services, if weather poses a safety risk to Guests, or if it prevents a Host from carrying out a Host Service that takes place primarily outdoors, Hosts may cancel the Host Service. Hosts may also cancel the Host Service if other conditions exist that would prevent the Host from offering the Host Service safely.

9.5 In certain circumstances, Airbnb may cancel a pending or confirmed booking on behalf of a Host or Guest and initiate corresponding refunds and payouts. This may be for reasons set forth in Airbnb's Extenuating Circumstances Policy or for the reasons set out in Section 15 of these Terms. Where Airbnb cancels a booking, Airbnb will, notify Members and provide the reasons for such a measure, unless such notification would (i) prevent or impede the detection or prevention of fraud or other illegal activities, (ii) harm the legitimate interests of other Members or third parties, or (iii) contravene applicable laws. You may appeal a cancellation by contacting customer service.

9.6 If a Guest who books an Accommodation suffers a Travel Issue as defined in the Guest Refund Policy, Airbnb may determine to refund the Guest part or all of the Total Fees in accordance with the Guest Refund Policy. If a Guest who books an Experience, Event or other Host Service suffers a Travel Issue as defined in the Experiences Guest Refund Policy, Airbnb may determine, in its sole discretion, to refund the Guest part or all of the Total Fees in accordance with the Experiences Guest Refund Policy.

9.7 If a Guest or Airbnb cancels a confirmed booking, and the Guest receives a refund in accordance with the Guest Refund Policy, Experiences Guest Refund Policy, Extenuating Circumstances Policy, or the applicable cancellation policy set by the Host and mentioned in the Listing, after the Host has already been paid, Airbnb Payments will be entitled to recover the amount of any such refund from the Host, including by subtracting such refund amount out from any future Payouts due to the Host.

9.8 Except as otherwise set out in these Terms, Members may use the Resolution Center to send or request money for refunds, additional Host Services, Co-Host Services or Damage Claims related to bookings. You agree to pay all amounts sent through the Resolution Center in connection with your Airbnb Account, and Airbnb Payments will handle all such payments.

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10. Ratings and Reviews

10.1 Within a certain timeframe after completing a booking, Guests and Hosts can leave a public review ("**Review**") and submit a star rating ("**Rating**") about each other. Ratings or Reviews reflect the opinions of individual Members and do not reflect the opinion of Airbnb. Ratings and Reviews are not verified by Airbnb for accuracy and may be incorrect or misleading.

10.2 Ratings and Reviews by Guests and Hosts must be accurate and may not contain any offensive or defamatory language. Ratings and Reviews are subject to Section 5 and must comply with Airbnb's Content Policy and Extortion Policy.

10.3 Members are prohibited from manipulating the Ratings and Reviews system in any manner, such as instructing a third party to write a positive or negative Review about another Member.

10.4 Ratings and Reviews are part of a Member's public profile and may also be surfaced elsewhere on the Airbnb Platform (such as the Listing page) together with other relevant information such as number of bookings, number of cancellations, average response time and other information.

11. Damage to Accommodations, Disputes between Members

11.1 As a Guest, you are responsible for leaving the Accommodation (including any personal or other property located at the Accommodation) in the condition it was in when you arrived. You are responsible for your own acts and omissions and are also responsible for the acts and omissions of any individuals whom you invite to, or otherwise provide access to, the Accommodation, excluding the Host (and the individuals the Host invites to the Accommodation, if applicable).

11.2 If a Host claims and provides evidence that you as a Guest have culpably damaged an Accommodation or any personal or other property at an Accommodation ("**Damage Claim**"), the Host can seek payment from you through the Resolution Center. If a Host escalates a Damage Claim to Airbnb, you will be given an opportunity to respond. If you agree to pay the Host, or Airbnb determines under consideration of any applicable statutory rules on the burden of proof that you are responsible for the Damage Claim, Airbnb via Airbnb Payments will, after the end of your stay, collect any such sums from you and/or against the Security Deposit (if applicable) required to cover the Damage Claim pursuant to the Payments Terms. Airbnb also reserves the right to otherwise collect payment from you and pursue any remedies available to Airbnb in this regard in situations in which you are responsible for a Damage Claim, including, but not limited to, in relation to any payment requests made by Hosts under the Airbnb Host Guarantee. You may appeal a decision taken by Airbnb on the basis of this Section 11.2 by contacting customer support. Any decisions made by Airbnb in relation to a Damage Claim do not affect your contractual or statutory rights. Your right to take legal action before a court of law remains unaffected.

11.3 Members agree to cooperate with and assist Airbnb in good faith, and to provide Airbnb with such information and take such actions as may be reasonably requested by Airbnb, in connection with any Damage Claims or other complaints or claims made by Members relating to (i) Accommodations or any personal or other property located at an Accommodation (including, without limitation, payment requests made under the Airbnb Host Guarantee), (ii) Experiences, (iii) Co-Host agreements, or (iv) a Group Payment Booking. A Member shall, upon Airbnb's reasonable request and at no cost to the Member, participate in mediation or a similar resolution process with another Member, which process will be conducted by Airbnb or a third party selected by Airbnb or its insurer, with respect to losses for

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which a Member is requesting payment from Airbnb (including but not limited to payments under the Airbnb Host Guarantee). Members are entitled to terminate their participation in the mediation or similar resolution process at any time. A Member's right to take legal action before a court of law remains unaffected.

12. Rounding off

Airbnb generally supports payment amounts that are payable from or to Guests or Hosts to the smallest unit supported by a given currency (i.e., U.S. cents, Euro cents or other supported currencies). Where Airbnb's third-party payment services provider does not support payments in the smaller unit supported by a given currency, Airbnb may, in its sole discretion, round up or round down the displayed amounts that are payable from or to Guests or Hosts to the nearest whole functional base unit in which the currency is denominated (i.e. to the nearest dollar, Euro or other supported currency); for example, Airbnb may round up an amount of $101.50 to $102.00, and round down an amount of $101.49 to $101.00.

13. Taxes

13.1 As a Host you are solely responsible for determining your obligations to report, collect, remit or include in your Listing Fees any applicable VAT or other indirect sales taxes, occupancy tax, tourist or other visitor taxes or income taxes ("**Taxes**").

13.2 Tax regulations may require us to collect appropriate Tax information from Hosts, or to withhold Taxes from payouts to Hosts, or both. If a Host fails to provide us with the required documentation under applicable law (e.g. a tax number) to alleviate our obligation (if any) to withhold Taxes from payouts to you, we reserve the right to withhold payouts up to the tax-relevant amount as required by law until resolution.

13.3 You understand that any appropriate governmental agency, department and/or authority ("**Tax Authority**") where your Accommodation is located may require Taxes to be collected from Guests or Hosts on Listing Fees, and to be remitted to the respective Tax Authority. The laws in jurisdictions may vary, but these Taxes may be required to be collected and remitted as a percentage of the Listing Fees set by Hosts, a set amount per day, or other variations, and are sometimes called "transient occupancy taxes," "hotel taxes," "lodging taxes," "city taxes," "room taxes" or "tourist taxes" ("**Occupancy Taxes**").

13.4 In certain jurisdictions, Airbnb may decide in its sole discretion to facilitate collection and remittance of Occupancy Taxes from or on behalf of Guests or Hosts, in accordance with these Terms ("**Collection and Remittance**") if such jurisdiction asserts Airbnb or Hosts have an Occupancy Tax collection and remittance obligation. In any jurisdiction in which we decide to facilitate direct Collection and Remittance, you hereby instruct and authorize Airbnb (via Airbnb Payments) to collect Occupancy Taxes from Guests on the Host's behalf at the time Listing Fees are collected, and to remit such Occupancy Taxes to the Tax Authority. In other jurisdictions Airbnb may decide in its sole discretion to collect Occupancy Taxes and remit such Taxes to eligible and qualifying Hosts, based on tax information supplied by the Host, for ultimate reporting and remittance by such Host to the Tax Authority ("**Pass-Through Tax Feature**"). Such Hosts using the Pass-Through Tax Feature will be solely responsible for informing Airbnb about the correct Occupancy Tax amount to be collected from the Guest in accordance with applicable law and directly remitting the Occupancy Taxes to the relevant Tax Authority. Airbnb does not assume any liability for the failure of a participating Host to comply with any applicable tax reporting or remittance obligations.The amount of Occupancy Taxes, if any, collected and remitted by Airbnb will be visible to and separately stated to both Guests and Hosts on

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their respective transaction documents. Where Airbnb is facilitating Collection and Remittance, Hosts are not permitted to collect any Occupancy Taxes being collected by Airbnb relating to their Accommodations in that jurisdiction.

13.5 Guests and Hosts agree that we may seek additional amounts from you in the event that the Taxes collected and/or remitted are insufficient to fully discharge your obligations to the Tax Authority, and agree that your sole remedy for Occupancy Taxes collected is a refund of Occupancy Taxes collected by Airbnb from the applicable Tax Authority in accordance with applicable procedures set by that Tax Authority.

13.6 Airbnb reserves the right, with prior notice to Hosts, to cease the Collection and Remittance in any jurisdiction for any reason at which point Hosts and Guests are once again solely responsible and liable for the collection and/or remittance of any and all Occupancy Taxes that may apply to Accommodations in that jurisdiction.

14. Prohibited Activities

14.1 You are solely responsible for compliance with any and all laws, rules, regulations, and Tax obligations that may apply to your use of the Airbnb Platform. In connection with your use of the Airbnb Platform, you will not and will not assist or enable others to:

- breach or circumvent any applicable laws or regulations, agreements with third-parties, third-party rights, or our Terms, Policies or Standards;
- use the Airbnb Platform or Collective Content for any commercial or other purposes that are not expressly permitted by these Terms or in a manner that falsely implies Airbnb endorsement, partnership or otherwise misleads others as to your affiliation with Airbnb;
- copy, store or otherwise access or use any information, including personally identifiable information about any other Member, contained on the Airbnb Platform in any way that is inconsistent with Airbnb's Privacy Policy or these Terms or that otherwise violates the privacy rights of Members or third parties;
- use the Airbnb Platform in connection with the distribution of unsolicited commercial messages ("spam");
- offer, as a Host, any Accommodation that you do not yourself own or have permission to make available as a residential or other property through the Airbnb Platform;
- unless Airbnb explicitly permits otherwise, book any Listing if you will not actually be using the Host Services yourself;
- contact another Member for any purpose other than asking a question related to your own booking, Listing, or the Member's use of the Airbnb Platform, including, but not limited to, recruiting or otherwise soliciting any Member to join third-party services, applications or websites, without our prior written approval;
- use the Airbnb Platform to request, make or accept a booking independent of the Airbnb Platform, to circumvent any Service Fees or for any other reason;
- request, accept or make any payment for Listing Fees outside of the Airbnb Platform or Airbnb Payments. If you do so, you: (i) accept all risks and responsibility for such payment, and (ii) hold Airbnb harmless from any liability for such payment;
- discriminate against or harass anyone on the basis of race, national origin, religion, gender, gender identity, physical or mental disability, medical condition, marital status, age or sexual orientation, or otherwise engage in any violent, harmful, abusive or disruptive behavior;
- misuse or abuse any Listings or services associated with the Airbnb Open Homes program;
- use, display, mirror or frame the Airbnb Platform or Collective Content, or any individual element within the Airbnb Platform, Airbnb's name, any Airbnb trademark, logo or other proprietary information, or the layout and design of

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any page or form contained on a page in the Airbnb Platform, without Airbnb's express written consent;
- dilute, tarnish or otherwise harm the Airbnb brand in any way, including through unauthorized use of Collective Content, registering and/or using Airbnb or derivative terms in domain names, trade names, trademarks or other source identifiers, or registering and/or using domains names, trade names, trademarks or other source identifiers that closely imitate or are confusingly similar to Airbnb domains, trademarks, taglines, promotional campaigns or Collective Content;
- use any robots, spider, crawler, scraper or other automated means or processes to access, collect data or other content from or otherwise interact with the Airbnb Platform for any purpose;
- avoid, bypass, remove, deactivate, impair, descramble, or otherwise attempt to circumvent any technological measure implemented by Airbnb or any of Airbnb's providers or any other third party to protect the Airbnb Platform;
- attempt to decipher, decompile, disassemble or reverse engineer any of the software used to provide the Airbnb Platform;
- take any action that damages or adversely affects, or could damage or adversely affect the performance or proper functioning of the Airbnb Platform;
- export, re-export, import, or transfer the Application except as authorized by United States law, the export control laws of your jurisdiction, and any other applicable laws; or
- violate or infringe anyone else's rights or otherwise cause harm to anyone.

14.2 You acknowledge that Airbnb has no general obligation to monitor Member Content nor to actively seek facts or circumstances indicating illegal activity, but has the right to review, disable access to, or edit any Member Content, in order to (i) operate, secure and improve the security of the Airbnb Platform (including without limitation for fraud prevention, risk assessment, investigation and customer support purposes); (ii) ensure Members' compliance with these Terms; (iii) comply with applicable law or the order or requirement of a court, law enforcement or other administrative agency or governmental body; (iv) respond to Member Content that it determines is harmful or objectionable; or (v) as otherwise set forth in these Terms. Members agree to cooperate with and assist Airbnb in good faith, and to provide Airbnb with such information and take such actions as may be reasonably requested by Airbnb with respect to any investigation undertaken by Airbnb or a representative of Airbnb regarding the use or abuse of the Airbnb Platform.

14.3 If you feel that any Member you interact with, whether online or in person, is acting or has acted inappropriately, including but not limited to anyone who (i) engages in offensive, violent or sexually inappropriate behavior, (ii) you suspect of stealing from you, or (iii) engages in any other disturbing conduct, you should immediately report such person to the appropriate authorities and then to Airbnb by contacting us with your police station and report number (if available). You agree that any report you make will not obligate us to take any action (beyond that required by law, if any).

15. Term and Termination, Suspension and other Measures

15.1 This Agreement shall be effective until such time when you or Airbnb terminate the Agreement in accordance with this provision.

15.2 You may terminate this Agreement at any time by sending us an email. If you cancel your Airbnb Account as a Host, any confirmed booking(s) will be automatically cancelled and your Guests will receive a full refund. If you cancel your Airbnb Account as a Guest, any confirmed booking(s) will be automatically cancelled and any refund will depend upon the terms of the Listing's cancellation policy.

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15.3 Without limiting our rights specified below, Airbnb may terminate this Agreement for convenience at any time by giving you thirty (30) days' notice via email to your registered email address.

15.4 Airbnb may immediately, without notice, terminate this Agreement and/or stop providing access to the Airbnb Platform if (i) you have materially breached your obligations under these Terms, the Payments Terms, our Policies or Standards, (ii) you have violated applicable laws, regulations or third party rights, or (iii) such action is necessary to protect the personal safety or property of Airbnb, its Members, or third parties (for example in the case of fraudulent behavior of a Member).

15.5 In addition, Airbnb may take any of the following measures (i) to comply with applicable law, or the order or request of a court, law enforcement or other administrative agency or governmental body, or if (ii) you have breached these Terms, the Payments Terms, our Policies or Standards, applicable laws, regulations, or third party rights, (iii) you have provided inaccurate, fraudulent, outdated or incomplete information during the Airbnb Account registration, Listing process or thereafter, (iv) you and/or your Listings or Host Services at any time fail to meet any applicable quality or eligibility criteria, (v) you have repeatedly received poor Ratings or Reviews or Airbnb otherwise becomes aware of or has received complaints about your performance or conduct, (vi) you have repeatedly cancelled confirmed bookings or failed to respond to booking requests without a valid reason, or (vii) such action is necessary to protect the personal safety or property of Airbnb, its Members, or third parties, or to prevent fraud or other illegal activity:

- refuse to surface, delete or delay any Listings, Ratings, Reviews, or other Member Content;
- cancel any pending or confirmed bookings;
- limit your access to or use of the Airbnb Platform;
- temporarily or permanently revoke any special status associated with your Airbnb Account;
- temporarily or in case of severe or repeated offenses permanently suspend your Airbnb Account and stop providing access to the Airbnb Platform.

In case of non-material breaches and where appropriate, you will be given notice of any intended measure by Airbnb and an opportunity to resolve the issue to Airbnb's reasonable satisfaction.

15.6 If we take any of the measures described above (i) we may refund your Guests in full for any and all confirmed bookings that have been cancelled, irrespective of preexisting cancellation policies, and (ii) you will not be entitled to any compensation for pending or confirmed bookings that were cancelled.

15.7 When this Agreement has been terminated, you are not entitled to a restoration of your Airbnb Account or any of your Member Content. If your access to or use of the Airbnb Platform has been limited or your Airbnb Account has been suspended or this Agreement has been terminated by us, you may not register a new Airbnb Account or access and use the Airbnb Platform through an Airbnb Account of another Member.

15.8 If Airbnb takes any of the measures described in this Section 15 you may appeal such a decision by contacting our customer service.

16. Disclaimers

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17. Liability

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Airbnb is liable under statutory provisions for intent and gross negligence by us, our legal representatives, directors, or other vicarious agents. The same applies to the assumption of guarantees or any other strict liability, or in case of a culpable injury to life, limb, or health. Airbnb is liable for any negligent breaches of essential contractual obligations by us, our legal representatives, directors, or other vicarious agents; such liability is limited to the typically occurring foreseeable damages. Essential contractual obligations are such duties of Airbnb in whose proper fulfilment you regularly trust and must trust for the proper execution of the contract. Any additional liability of Airbnb is excluded.

18. Indemnification

To the maximum extent permitted by applicable law, you agree to release, defend (at Airbnb's option), indemnify, and hold Airbnb and its affiliates and subsidiaries, including but not limited to, Airbnb Payments, and their officers, directors, employees and agents, harmless from and against any claims, liabilities, damages, losses, and expenses, including, without limitation, reasonable legal and accounting fees, arising out of or in any way connected with (i) your breach of these Terms or our Policies or Standards, (ii) your improper use of the Airbnb Platform or any Airbnb Services, (iii) your interaction with any Member, stay at an Accommodation, participation in an Experience, Event or other Host Service, participation in the Group Payment Service, including without limitation any injuries, losses or damages (whether compensatory, direct, incidental, consequential or otherwise) of any kind arising in connection with or as a result of such interaction, stay, participation or use, or (iv) your breach of any laws, regulations or third party rights. The indemnification obligation according to this Section 18 only applies if and to the extent that the claims, liabilities, damages, losses, and expenses have been adequately caused by your culpable breach of a contractual obligation.

19. Dispute Resolution and Arbitration Agreement

19.1 This Dispute Resolution and Arbitration Agreement shall apply if you bring any claim against Airbnb in the United States (to the extent not in conflict with Section 21).

19.2 *Overview of Dispute Resolution Process*. Airbnb is committed to participating in a consumer-friendly dispute resolution process. To that end, these Terms provide for a two-part process for individuals to whom Section 19.1 applies: (1) an informal negotiation directly with Airbnb's customer service team, and (2) a binding arbitration administered by the American Arbitration Association ("**AAA**") using its specially designed Consumer Arbitration Rules (as modified by this Section 19 and except as provided in Section 19.6). Specifically, the Consumer Arbitration Rules provide:

- Claims can be filed with AAA online (www.adr.org);
- Arbitrators must be neutral and no party may unilaterally select an arbitrator;
- Arbitrators must disclose any bias, interest in the result of the arbitration, or relationship with any party;
- Parties retain the right to seek relief in small claims court for certain claims, at their option;
- The initial filing fee for the consumer is capped at $200;
- The consumer gets to elect the hearing location and can elect to participate live, by phone, video conference, or, for claims under $25,000, by the submission of documents;
- The arbitrator can grant any remedy that the parties could have received in court to resolve the party's individual claim.

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19.3 *Pre-Arbitration Dispute Resolution and Notification*. Prior to initiating an arbitration, you and Airbnb each agree to notify the other party of the dispute and attempt to negotiate an informal resolution to it first. We will contact you at the email address you have provided to us; you can contact Airbnb's customer service team by emailing us. If after a good faith effort to negotiate one of us feels the dispute has not and cannot be resolved informally, the party intending to pursue arbitration agrees to notify the other party via email prior to initiating the arbitration. In order to initiate arbitration, a claim must be filed with the AAA and the written Demand for Arbitration (available at www.adr.org) provided to the other party, as specified in the AAA Rules.

19.4 *Agreement to Arbitrate*. You and Airbnb mutually agree that any dispute, claim or controversy arising out of or relating to these Terms or the applicability, breach, termination, validity, enforcement or interpretation thereof, or to the use of the Airbnb Platform, the Host Services, the Group Payment Service, or the Collective Content (collectively, "Disputes") will be settled by binding individual arbitration (the "Arbitration Agreement"). If there is a dispute about whether this Arbitration Agreement can be enforced or applies to our Dispute, you and Airbnb agree that the arbitrator will decide that issue.

19.5 *Exceptions to Arbitration Agreement*. You and Airbnb each agree that the following claims are exceptions to the Arbitration Agreement and will be brought in a judicial proceeding in a court of competent jurisdiction: (i) Any claim related to actual or threatened infringement, misappropriation or violation of a party's copyrights, trademarks, trade secrets, patents, or other intellectual property rights; (ii) Any claim seeking emergency injunctive relief based on exigent circumstances (e.g., imminent danger or commission of a crime, hacking, cyber-attack).

19.6 *Arbitration Rules and Governing Law*. This Arbitration Agreement evidences a transaction in interstate commerce and thus the Federal Arbitration Act governs the interpretation and enforcement of this provision. The arbitration will be administered by AAA in accordance with the Consumer Arbitration Rules and/or other AAA arbitration rules determined to be applicable by the AAA (the "**AAA Rules**") then in effect, except as modified here. The AAA Rules are available at www.adr.org or by calling the AAA at 1–800–778–7879.

19.7 *Modification to AAA Rules - Arbitration Hearing/Location*. In order to make the arbitration most convenient to you, Airbnb agrees that any required arbitration hearing may be conducted, at your option, (a) in the county where you reside; (b) in San Francisco County; (c) in any other location to which you and Airbnb both agree; (d) via phone or video conference; or (e) for any claim or counterclaim under $25,000, by solely the submission of documents to the arbitrator.

19.8 *Modification of AAA Rules - Attorney's Fees and Costs*. You and Airbnb agree that Airbnb will be responsible for payment of the balance of any initial filing fee under the AAA Rules in excess of $200 for claims of $75,000 or less. You may be entitled to seek an award of attorney fees and expenses if you prevail in arbitration, to the extent provided under applicable law and the AAA rules. Unless the arbitrator determines that your claim was frivolous or filed for the purpose of harassment, Airbnb agrees it will not seek, and hereby waives all rights it may have under applicable law or the AAA Rules, to recover attorneys' fees and expenses if it prevails in arbitration.

19.9 *Arbitrator's Decision*. The arbitrator's decision will include the essential findings and conclusions upon which the arbitrator based the award. Judgment on the arbitration award may be entered in any court with proper jurisdiction. The arbitrator may award declaratory or injunctive relief only on an individual basis and only to the extent necessary to provide relief warranted by the claimant's individual claim.

19.10 *Jury Trial Waiver*. You and Airbnb acknowledge and agree that we are each waiving the right to a trial by jury as to all arbitrable Disputes.

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19.11 *No Class Actions or Representative Proceedings*. You and Airbnb acknowledge and agree that, to the fullest extent permitted by law, we are each waiving the right to participate as a plaintiff or class member in any purported class action lawsuit, class-wide arbitration, private attorney-general action, or any other representative proceeding as to all Disputes. Further, unless you and Airbnb both otherwise agree in writing, the arbitrator may not consolidate more than one party's claims and may not otherwise preside over any form of any class or representative proceeding. If the "class action lawsuit" waiver or the "class-wide arbitration" waiver in this Section 19.11 is held unenforceable with respect to any Dispute, then the entirety of the Arbitration Agreement will be deemed void with respect to such Dispute and the Dispute must proceed in court. If the "private attorney general action" waiver or the "representative proceeding" waiver in this Section 19.11 is held unenforceable with respect to any Dispute, those waivers may be severed from this Arbitration Agreement and you and Airbnb agree that any private attorney general claims and representative claims in the Dispute will be severed and stayed, pending the resolution of any arbitrable claims in the Dispute in individual arbitration.

19.12 *Severability*. Except as provided in Section 19.11, in the event that any portion of this Arbitration Agreement is deemed illegal or unenforceable, such provision shall be severed and the remainder of the Arbitration Agreement shall be given full force and effect.

19.13 *Changes*. Notwithstanding the provisions of Section 3 ("Modification of these Terms"), if Airbnb changes this Section 19 ("Dispute Resolution and Arbitration Agreement") after the date you last accepted these Terms (or accepted any subsequent changes to these Terms), you may reject any such change by sending us written notice (including by email) within thirty (30) days of the date such change became effective, as indicated in the "Last Updated" date above or in the date of Airbnb's email to you notifying you of such change. Rejecting a new change, however, does not revoke or alter your prior consent to any earlier agreements to arbitrate any Dispute between you and Airbnb (or your prior consent to any subsequent changes thereto), which will remain in effect and enforceable as to any Dispute between you and Airbnb.

19.14 *Survival*. Except as provided in Section 19.12, this Section 19 will survive any termination of these Terms and will continue to apply even if you stop using the Airbnb Platform or terminate your Airbnb Account.

20. Feedback

We welcome and encourage you to provide feedback, comments and suggestions for improvements to the Airbnb Platform ("**Feedback**"). You may submit Feedback by emailing us, through the "Contact" section of the Airbnb Platform, or by other means of communication. Any Feedback you submit to us will be considered non-confidential and non-proprietary to you. By submitting Feedback to us, you grant us a non-exclusive, worldwide, royalty-free, irrevocable, sub-licensable, perpetual license to use and publish those ideas and materials for any purpose, without compensation to you.

21. Applicable Law and Jurisdiction

These Terms will be interpreted in accordance with Irish law. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded. The choice of law does not impact your rights as a consumer according to the consumer protection regulations of your country of residence. If you are acting as a consumer, judicial proceedings that you are able to bring against us arising from or in connection with these Terms may only be brought in a court with jurisdiction according to the laws of your country of residence or the Irish courts. If

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Airbnb wishes to enforce any of its rights against you as a consumer, we may do so only in the courts of the jurisdiction in which you are a resident. If you are acting as a business, you agree to submit to the exclusive jurisdiction of the Irish courts.

22. General Provisions

22.1 Except as they may be supplemented by additional terms and conditions, policies, guidelines or standards, these Terms constitute the entire Agreement between Airbnb and you pertaining to the subject matter hereof, and supersede any and all prior oral or written understandings or agreements between Airbnb and you in relation to the access to and use of the Airbnb Platform.

22.2 No joint venture, partnership, employment, or agency relationship exists between you and Airbnb as a result of this Agreement or your use of the Airbnb Platform.

22.3 These Terms do not and are not intended to confer any rights or remedies upon any person other than the parties.

22.4 If any provision of these Terms is held to be invalid or unenforceable, such provision will be struck and will not affect the validity and enforceability of the remaining provisions.

22.5 Airbnb's failure to enforce any right or provision in these Terms will not constitute a waiver of such right or provision unless acknowledged and agreed to by us in writing. Except as expressly set forth in these Terms, the exercise by either party of any of its remedies under these Terms will be without prejudice to its other remedies under these Terms or otherwise permitted under law.

22.6 You may not assign, transfer or delegate this Agreement and your rights and obligations hereunder without Airbnb's prior written consent. Airbnb may without restriction assign, transfer or delegate this Agreement and any rights and obligations hereunder, at its sole discretion, with 30 days prior notice. Your right to terminate this Agreement at any time remains unaffected.

22.7 Unless specified otherwise, any notices or other communications to Members permitted or required under this Agreement, will be provided electronically and given by Airbnb via email, Airbnb Platform notification, or messaging service (including SMS and WeChat). If your booking is in respect of a Listing in Japan, you agree and acknowledge that such notifications via electronic means in lieu of a written statement, satisfies Airbnb's obligations under Article 59 Paragraph 1 of the Japanese Housing Accommodation Business Act.

22.8 If you have any questions about these Terms please email us.

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STATE OF SOUTHCAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

JULIANNE FOSTER,

Plaintiff,

v.

RHETT RIVIERE, KATHERINE A. THOMAS, CHASE ENTERPRISES, LLC OF SOUTH CAROLINA, AND AIRBNB, INC,

Defendants.

C/A No. 2021-CP-02-00889

RESPONSE IN OPPOSITION TO DEFENDANT AIRBNB'S MOTION TO COMPEL ARBITRATION

After two years of stonewalling during the discovery process and being ordered by the Circuit Court to produce discovery it still has not produced, Defendant Airbnb, Inc. ("Airbnb") has filed a Motion to Compel Arbitration, pursuant to Rules 12(b)(1), (3), and (6) of the South Carolina Rules of Civil Procedure and 9 U.S.C. §§ 3 and 4 of the Federal Arbitration Act ("FAA"). Despite the fact that Plaintiff has never entered into an arbitration agreement with Airbnb, it now asks the Court to compel arbitration and dismiss this entire action with prejudice or, in the alternative, without prejudice. In a second alternative, Airbnb asks the Court to stay this action pending the completion of arbitration. The Court should deny the motion as to Plaintiff's claims because Plaintiff has never entered into any arbitration agreement with Airbnb and, in any event, Airbnb waived any right it allegedly had to arbitration by extensively litigating this case for over two years.

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I. BACKGROUND

This action stems from Plaintiff's stay at an Airbnb in Aiken from May 17-18, 2019. During the stay, Defendant Rhett Riviere surreptitiously recorded Plaintiff in various states of undress in the bedroom of the Airbnb rental. Plaintiff's friend, Michelle Jain, booked the Airbnb rental owned and/or hosted by Defendants Riviere and Kathryn Thomas.

Airbnb's Terms of Service ("TOS") in effect at the time of the rental allegedly provided:

> **Please note: Section 19 of these Terms contains an arbitration clause and class action waiver that applies to all Airbnb Members. If your country of residence is the United States, this provision applies to all disputes with Airbnb. If your country of residence is outside of the United States, this provision applies to any action you bring against Airbnb in the United States. It affects how disputes with Airbnb are resolved. By accepting these Terms, you agree to be bound by this arbitration clause and class action waiver. Please read it carefully.**

(Mot. to Compel, Ex. A, Terms of Service at 272) (emphasis in original). Section 19, "Dispute Resolution and Arbitration Agreement," is a delegations clause that provides:

> **Agreement to Arbitrate. You and Airbnb mutually agree that any dispute, claim or controversy arising out of or relating to these Terms or the applicability, breach, termination, validity, enforcement or interpretation thereof, or to the use of the Airbnb Platform, the Host Services, the Group Payment Service, or the Collective Content (collectively, "Disputes") will be settled by binding individual arbitration (the "Arbitration Agreement"). If there is a dispute about whether this Arbitration Agreement can be enforced or applies to our Dispute, you and Airbnb agree that the arbitrator will decide that issue.**

Id. at 291 (emphasis in original). As Airbnb implicitly acknowledges, Plaintiff did not agree to the TOS or its arbitration provision. (Mot. to Compel at 7) (arguing under a direct benefits estoppel theory that Plaintiff is bound to the TOS, including the arbitration provision). Indeed, under Airbnb's novel theory anyone who stays in an Airbnb is bound to arbitration with Airbnb - which is not the law.

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Soon after Plaintiff filed this action on April 28, 2021, Airbnb informed Plaintiff's counsel several times that it would be filing a motion to compel arbitration. (Exhibit A - Email from Airbnb's counsel, dated July 14, 2021, stating, "we plan on filing a Motion to Compel Arbitration …"). Plaintiff's counsel implored Airbnb's counsel to produce an arbitration agreement between Plaintiff and Airbnb. It soon came to light that an arbitration agreement did not exist and subsequently, Airbnb did not file a motion to compel arbitration. Instead, it has been aggressively litigating this action in court for the past two years –objecting to extensive discovery propounded by Plaintiff; participating in mediation; filing two motions to dismiss based on the merits; and engaging in endless discovery disputes. Airbnb filed this motion to compel arbitration after the Court recently denied its second motion to dismiss; granted multiple motions to compel and ordering Airbnb to retake the Rule 30(b)(6) deposition because its designee was woefully unprepared and obstructive.

II. APPLICABLE LAW

"Because the core of the FAA is consent, arbitration may be compelled only when the parties have agreed to it." *Lampo v. Amedisys Holding, LLC*, 437 S.C. 236, 242, 877 S.E.2d 486, 489 (Ct. App. 2022) (citing *Volt Info. Scis., Inc. v. Bd. of Trustees of Leland Stanford Junior Univ.*, 489 U.S. 468, 478 (1989)). *See also Towles v. United HealthCare Corp.*, 338 S.C. 29, 37, 524 S.E.2d 839, 843-44 (Ct. App. 1999) ("Arbitration is available only when the parties involved contractually agree to arbitrate."). Moreover, it is always up to the court to determine if the parties have an agreement to arbitrate. *Lampo*, 437 S.C. at 242, 877 S.E.2d at 489 (citing *Granite Rock Co. v. Int'l Bhd. of Teamsters*, 561 U.S. 287, 296 (2010)). *See also Rent–A–Ctr.*, 561 U.S. at 71 ("If a party challenges the validity under § 2 of the precise agreement to arbitrate at issue, the

federal court must consider the challenge before ordering compliance with that agreement under § 4.").

Contracts for a transaction involving interstate commerce are governed by the FAA. *See* 9 U.S.C. § 2. However, whether the parties have formed an agreement to arbitrate is determined by applying South Carolina contract law. *Wilson v. Willis*, 426 S.C. 326, 336, 827 S.E.2d 167, 173 (2019). "The presumption in favor of arbitration applies to the scope of an arbitration agreement; it does not apply to the existence of such an agreement or to the identity of the parties who may be bound to such an agreement." *Id.* (cleaned up)). "[B]ecause arbitration, while favored, exists solely by agreement of the parties, a presumption against arbitration arises where the party resisting arbitration is a nonsignatory to the written agreement to arbitrate." *Id.* at 337-38, 827 S.E.2d at 173 (emphasis omitted). While federal law governs the arbitrability of disputes, state law governs issues regarding contract formation. *Am. Gen. Life & Accident Ins. Co. v. Wood*, 429 F.3d 83, 87 (4th Cir. 2005).

"South Carolina has recognized several theories that could bind nonsignatories to arbitration agreements under general principles of contract and agency law, including (1) incorporation by reference, (2) assumption, (3) agency, (4) veil piercing/alter ego, and (5) estoppel." *Wilson*, 426 S.C. at 338, 827 S.E.2d at 174. Under equitable estoppel, "[a] nonsignatory is estopped from refusing to comply with an arbitration clause 'when it receives a direct benefit from a contract containing an arbitration clause.' " *Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 290, 733 S.E.2d 597, 601 (Ct. App. 2012) (quoting *Int'l Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH*, 206 F.3d 411, 418 (4th Cir. 2000)). "In the arbitration context, the doctrine recognizes that a party may be estopped from asserting that the lack of his signature on a written contract precludes enforcement of the contract's arbitration clause when he has consistently

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maintained that other provisions of the same contract should be enforced to benefit him." *Id.* (emphasis omitted).

III. ARGUMENT

As an initial matter, the Court, not the arbitrator, should determine whether there is a binding arbitration agreement between Airbnb and Plaintiff. In doing so, the Court should find that Plaintiff has not entered into any arbitration agreement with Airbnb let alone a binding agreement. Further, the Court should find that Plaintiff is not subject to the application of direct benefits estoppel as a non-signatory because she is not attempting to enforce any provisions of any contract containing an arbitration provision, and Airbnb has not produced any evidence that Ms. Jain ever agreed to arbitration. Moreover, even if there was an arbitration agreement, Airbnb has waived any right it may have had to arbitrate by actively litigating this case in court for over two years. Accordingly, the Court should deny Airbnb's Motion to Compel Arbitration

A. The Court, not the arbitrator, should decide the initial issue of whether there is a valid agreement to arbitrate.

Airbnb contends that the Court should compel these claims in this case to arbitration without determining if there is an arbitration agreement because the issue of arbitrability is for the arbitrator to decide. (Mot. to Compel Arb. at 5). Airbnb is conflating two separate determinations. The Court is to make the initial determination of whether there is a valid agreement to arbitrate, and the arbitrator is to decide what issues or claims are subject to arbitration when there is a delegation clause.

Airbnb contends that the dispute must be decided by the arbitrator because the delegation clause in the arbitration agreement reserves to the arbitrator "any dispute" concerning the "validity, enforceability, or scope" of the arbitration agreements. (Mot. to Compel Arb. at 6). Here, however,

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Plaintiff is challenging both the formation and validity of the arbitration agreement and the delegation clause, not simply whether some issues are subject to arbitration. [1]

Arbitration is a matter of consent, not coercion.'" *Stolt-Nielsen,* S.*A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 681 (2010). "[P]arties may agree to have an arbitrator decide not only the merits of a particular dispute but also 'gateway' questions of 'arbitrability,' such as whether the parties have agreed to arbitrate or whether their agreement covers a particular controversy." *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 139 S. Ct. 524, 529 (2019) (cleaned up) (quoting *Rent-A-Ctr.*, 561 U.S. at 68-69). Delegation clauses allow arbitrators to exercise exclusive authority over disputes relating to an agreement's enforceability. *Rent-A-Ctr.*, 561 U.S. 63.

"A delegation clause is merely a specialized type of arbitration agreement." *New Prime, Inc. v. Oliveira*, 139 S. Ct. 532, 539, 586 U.S. __ (2019) (citing *Rent-A-Ctr.*, 561 U.S. at 70). And as with any arbitration agreement, "before referring a dispute to an arbitrator, the court determines whether a valid arbitration agreement exists." *Henry Schein*, 139 S. Ct. at 530 (citing 9 U.S.C. § 2). "[C]ourts should order arbitration of a dispute only where the court is satisfied that neither the formation of the parties' arbitration agreement nor (absent a valid provision specifically committing such disputes to an arbitrator) its enforceability or applicability to the dispute is in issue." *Granite Rock Co. v. Int'l Bd. of Teamsters*, 561 U.S. 287, 299 (2010); *see also Granite*

[1] "A party may oppose a motion to compel arbitration by challenging the validity of the arbitration provision, including whether it delegates in 'clear and unmistakable' terms the power to an arbitrator to decide issues of arbitrability." *Novic v. Credit One Bank, Nat'l Asss'n.*, 757 Fed. App'x 263 (4th Cir. 2019) *(citing Rent-A-Ctr.*, 561 U.S. at 70-71 & n.1 "[A]bsent a parties (sic) challenge to the validity of such delegation, courts will not intervene in interpreting the parties' agreement." *Id.* Thus, a challenge to a different contract provision, or to the contract as a whole, will not prevent a court from submitting to the arbitrator the question of arbitrability. *Rent-A Ctr.*, 561 U.S. at 71. To be clear, Plaintiff never agreed to Airbnb's TOS or its delegation clause and, in fact, never entered into any agreement with Airbnb; she is specifically challenging both the arbitration agreement and the delegation clause under § 2.

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Rock, 561 U.S. at 297 (articulating the issues a "court must resolve," which "always include whether the clause was agreed to, and may include when that agreement was formed"). As the Supreme Court held in *Schein* "[t]o be sure, before referring a dispute to an arbitrator, the court determines whether a valid arbitration agreement exists." *Henry Schein*, 139 S. Ct. at 530 (emphasis added) (citing 9 U.S.C. § 2). Accordingly, it is the Court which must first determine whether Plaintiff agreed to arbitrate her claims.

B. The Court should deny Airbnb's motion to compel arbitration because there is no evidence that Plaintiff entered into an arbitration agreement with Airbnb, and further Plaintiff cannot be subject to arbitration through the application of estoppel.

Airbnb contends that Defendants Riviere and Thomas agreed to arbitrate any disputes by agreeing to its TOS, and Ms. Jain "expressly agreed to the terms in booking the rental." (Mot. to Compel at 2-3).[2] It is undisputed Plaintiff did not enter into an arbitration agreement with Airbnb. However, Airbnb seeks to force Plaintiff, a non-signatory, into arbitration based on estoppel. The evidence does not support the application of estoppel in this case. Moreover, Airbnb has not overcome the presumption against arbitration which arises when the party resisting arbitration is a nonsignatory to the written agreement to arbitrate like Plaintiff.

i. Airbnb has failed to establish that Ms. Jain agreed to arbitrate.

Airbnb incorrectly represents to the Court that Ms. Jain expressly agreed to the TOS. (Mot. to Compel Arb. at 2, 7, 10) ("[i]t is undisputed that Plaintiff's friend expressly agreed to the Terms of Service in booking the rental."). However, Airbnb does not cite to any support for this statement. In other cases, Airbnb has presented affidavits and business records establishing a person's consent to arbitration. *See, e.g., Shaw v. Airbnb, Inc.*, No. 2:20-cv-00214-DCN-MGB (D.S.C.) (ECF No.

[2] As discussed herein, there is no evidence Ms. Jain expressly agreed to the TOS.

6, Mot. to Compel Arbitration, at 2 and Exs.) (attached as Exhibit B). In *Estate of Royston by and Through McCoig v. Hunt Valley Holdings, LLC*, the South Carolina Court of Appeals affirmed the circuit court's denial of the defendant's motion to compel noting that "[t]he absence of the Arbitration Agreement from the Facility's files create[s] an inference that [the plaintiff] never accepted the Arbitration Agreement." No. 2022-UP-203, 2022 WL 1567001 (Ct. App. May 18, 2022).

In *Shaw*, Airbnb stated in it Motion to Compel Arbitration that "Airbnb captures and records the date upon which each user accepts the TOS in its business records." *Id.* at 4. Accordingly, Airbnb included its business records for Mr. Shaw showing the date he had agreed to the TOS and a sworn declaration from a records custodian as exhibits. *Id.* In the instant case, however, Airbnb does not attach or cite to any records showing that Ms. Jain agreed to arbitration, and it has also not produced any records showing an agreement to arbitrate in discovery. Previously, in granting Plaintiff's Motion to Compel filed March 3, 2022, the Court specifically ordered Airbnb to produce "all documents related to Michelle Jain being an Airbnb guest." June 6, 2022 Order at 3. In its Response, Airbnb stated it "does not have any records of any communications between Airbnb and Jain" and that it was producing the "information Michelle Jain provided at sign-up." (Exhibit C at pp. 5-6 – Airbnb's Responses to Nos. 4-5). Airbnb included a sworn affidavit from Darien Shepherd, Airbnb's Legal Investigations Supervisor, verifying that the responses were accurate and complete. *Id.* at 7.

Additionally, even if Ms. Jain agreed to arbitrate when she first signed up with Airbnb, Airbnb amended its Arbitration Agreement in 2017 to include a delegation clause. There is no evidence Ms. Jain agreed to the amended version of the Arbitration Agreement containing the delegation clause.

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ii. Airbnb cannot establish that Plaintiff as a nonsignatory received any direct benefits from the TOS.

It is undisputed that Plaintiff is a nonsignatory to arbitration agreement, including the delegation provision. (Mot. to Compel at 7). Airbnb argues under a direct benefits estoppel theory that Plaintiff is bound to the TOS, including the arbitration provision. *Id.*

"Whether an arbitration agreement may be enforced against nonsignatories, and under what circumstances, is an issue controlled by state law." *Wilson*, 426 S.C. at 338, 426 S.E.2d at 173 (citing *Arthur Andersen LLP v. Carlisle*, 556 U.S. 624, 630–31, 630 n.5 (2009)). "Under direct benefits estoppel, a nonsignatory is estopped from refusing to comply with an arbitration clause 'when it receives a direct benefit from a contract containing an arbitration clause." *Wilson*, 426 S.C. at 340, 426 S.E.2d at 173 (citation and internal quotation marks omitted). In the context of arbitration, the doctrine applies when one party attempts "to hold [another party] to the terms of [an] agreement" while simultaneously trying to avoid the agreement's arbitration clause. *Hughes Masonry Co., Inc. v. Greater Clark County Sch. Bldg. Corp.*, 659 F.2d 836, 838 (7th Cir.1981). "A nonsignatory is estopped from refusing to comply with an arbitration clause when it [is seeking or] receives a direct benefit from a contract containing an arbitration clause." *Int'l Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH*, 206 F.3d 411, 418 (4th Cir. 2000) (quotation marks and citations omitted). "This legal principle rests on a simple proposition: it is unfair for a party to 'rely on [a] contract when it works to its advantage, and repudiate it when it works to its disadvantage.' " *Wachovia Bank, N.A. v. Schmidt*, 445 F.3d 762, 769 (4th Cir. 2006) (citation omitted).

However, "direct benefits estoppel is not implicated simply because a claim relates to or would not have arisen 'but for' a contract's existence." *Wilson*, 426 at 176, 426 S.E.2d at 343. "[W]hen the substance of the claim arises from general obligations imposed by state law, including

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statutes, torts and other common law duties, or federal law," direct-benefits estoppel is not implicated even if the claim refers to or relates to the contract or would not have arisen 'but for' the contract's existence." *Id.* (citation omitted); *see also Int'l Underwriters v. Triple I: Int'l Inv. Inc.*, 533 F.3d 1342, 1347 (11th Cir. 2008) (holding that a dispute does not arise out of or in connection with a contract for the purposes of arbitration "just because the dispute would not have arisen if the contract had never existed.")."Equitable estoppel is, ultimately, a theory designed to prevent injustice, and it should be used sparingly." *Wilson*, 426 S.C. at 345, 827 S.E.2d at 177 (*citing Hirsch v. Amper Fin. Servs., LLC*, 215 N.J. 174, 71 A.3d 849, 852 (2013) (observing equitable estoppel should be used sparingly to compel arbitration and noting it "is more properly viewed as a shield to prevent injustice rather than a sword to compel arbitration")).

Here, Plaintiff has not sued Airbnb under any provision of the TOS, and she has not exploited an agreement to any degree, let alone to the degree which would warrant the application of estoppel. Rather, Plaintiff is bringing claims imposed by statute or common law. " '[W]hen the substance of the claim arises from general obligations imposed by state law, including statutes, torts and other common law duties, or federal law," direct-benefits estoppel is not implicated even if the claim refers to or relates to the contract or would not have arisen "but for" the contract's existence.'" *Wilson*, 426 S.C. at 343, 827 S.E.2d at 176 (citing *Jody James Farms, JV v. Altman Grp., Inc.*, 547 S.W.3d 624, 637 (Tex. 2018); *see also Smith Jamison Constr. v. APAC-Atlantic, Inc.*, 811 S.E.2d 635 (N.C. Ct. App. 2018) (holding that although the existence of the contract provided part of the factual foundation for the plaintiff's claims, the claims were dependent upon legal duties imposed by statutory or common law rather than contract law).

In *Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, the court declined to apply equitable estoppel against nonsignatories to an arbitration agreement between a nursing home and

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a decedent because "[t]he only agreement from which Respondents even arguably received a benefit was the Admission Agreement because [plaintiff] was admitted to the Facility as a result of it. However, because the Facility allegedly caused [plaintiff's] injuries that later led to her death, we find it difficult to find she benefited even from being admitted." 422 S.C. 544, 563, 813 S.E.2d 292, 302 (Ct. App. 2018). Likewise, it would be difficult to find Plaintiff received a benefit from staying at the Airbnb in Aiken when Airbnb caused her injuries and her privacy rights to be violated. Based on the foregoing, the Court should deny Airbnb's Motion to Compel because Plaintiff, a non-signatory, did not agree to arbitration, and the direct benefits estoppel does not apply because she is not seeking to enforce the contract.

E. Airbnb has waived any right to compel arbitration by acting inconsistently to arbitration and actively litigating this case for almost two years before raising the issue of arbitration to the Court.

Although Airbnb does not have a right to compel arbitration of Plaintiff's claims, even if it did, Airbnb waived that right by acting inconsistently to an arbitration agreement. Airbnb has been litigating this matter in court for over two years—answering the Complaint and the Amended Complaint, participating in extensive discovery and mediation, and filing numerous motions with the Court, including two dispositive motions, which the Court denied. Further, Airbnb filed Cross-Claims against Defendant Thomas and a Third-Party Complaint against defendant Riviere. Put simply, for over two years, Airbnb has acted as if no arbitration agreement existed.

Airbnb has avoided public scrutiny over claims about the safety of Airbnb rentals for years by vigorously enforcing the arbitration clause it includes in its TOS.[3] Airbnb is clearly aware of

[3] On August 13, 2021, Airbnb announced that it would no longer force cases involving sexual assault or sexual harassment claims by Hosts or Guests into arbitration. "Supporting and Empowering Survivors," Aug. 13, 2021 (https://news.airbnb.com/supporting-and-empowering-survivors/).

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its standard arbitration clause and knows how to enforce it when it can. Further, Airbnb has actively participated in this litigation for over two years now participating in numerous depositions and other discovery without moving to compel arbitration. Additionally, Airbnb has twice moved to have this case dismissed without raising any argument that arbitration should be compelled. Airbnb cannot actively litigate this matter in court for over two years and, once it loses a motion to compel, move to compel arbitration.

Waiver "is the intentional relinquishment or abandonment of a known right"; a party "knowingly relinquish[es] the right to arbitrate by acting inconsistently with that right." *Morgan v. Sundance, Inc.*, 142 S. Ct. 1708, 1713-14, __ U.S. __ (2022) (internal quotation marks omitted); see also *Eason v. Eason*, 384 S.C. 473, 480, 682 S.E.2d 804, 807 (2009) ("Waiver is a voluntary and intentional abandonment or relinquishment of a known right.") (quoting *Parker v. Parker*, 313 S.C. 482, 487, 443 S.E.2d 388, 391 (1994)). A party may waive its contractual right to arbitration if it knew of the right and acted inconsistently with that right. *In re Mercury Const. Corp.*, 656 F.2d 933, 939 (4th Cir. 1981), aff'd sub nom. *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1 (1983)). "There is no set rule as to what constitutes a waiver of the right to arbitrate; the question depends on the facts of each case." *Liberty Builders, Inc. v. Horton*, 336 S.C. 658, 665, 521 S.E.2d 749, 753 (Ct. App. 1999) (quoting *Hyload, Inc. v. Pre–Engineered Prods., Inc.*, 308 S.C. 277, 280, 417 S.E.2d 622, 624 (Ct. App. 1992)).[4]

[4] Generally, the factors our courts consider to determine if a party waived its right to compel arbitration are: (1) whether a substantial length of time transpired between the commencement of the action and the commencement of the motion to compel arbitration; (2) whether the party requesting arbitration engaged in extensive discovery before moving to compel arbitration; and (3) whether the non-moving party was prejudiced by the delay in seeking arbitration. These factors, of course, are not mutually exclusive, as one factor may be inextricably connected to, and influenced by, the others.

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In *Liberty Builders*, the Court of Appeals affirmed the circuit court's order denying a motion to compel arbitration. 336 S.C. 658, 521 S.E.2d 749. The circuit court found that the homebuilder had waived its right to compel arbitration. *Id.* at 753. In reaching its decision, the Court of Appeals, citing prior case law, explained "there is no set rule as to what constitutes a waiver of the right to arbitrate; the question depends on the facts of the case." *Id.* The brought an action seeking the foreclosure of its mechanic's lien. After two years, the builder amended the lawsuit to add a claim for breach of contract, and then moved to compel arbitration. The Court of Appeals found it significant that the party seeking arbitration had instituted the litigation, conducted extensive discovery, and filed or defended motions to amend, compel, dismiss, add parties, and restore. The parties had sought the assistance of the court on approximately forty occasions. According to the Court of Appeals, the builder's delay in asserting its right to arbitration "until the litigation was nearly complete" prejudiced its opponent by enabling the builder to "test the water before taking the swim." *Id.*

"[A] party's extended silence and delay in moving for arbitration may indicate a conscious decision to continue to seek judicial judgment on the merits of the arbitrable claims, which would be inconsistent with a right to arbitrate." *Martin*, 829 F.3d at 1125 (internal quotation marks omitted). In *Liberty Builders*, the court found the defendant had waived its right to arbitration where the parties sought the court's assistance numerous times on matters such as motions to amend, compel, dismiss, add parties, and restore under Rule 40(j), SCRCP. 336 S.C. at 666, 521 S.E.2d at 753; s*ee also Morgan Stanley & Co., LLC v. Couch,* 134 F. Supp. 3d 1215, 1230 (E.D.

Rhodes v. Benson Chrysler-Plymouth, Inc., 374 S.C. 122, 126, 647 S.E.2d 249, 251 (Ct. App. 2007). However, the United States Supreme Court recently resolved a circuit split and held the party opposing arbitration does not need to show any prejudice to establish waiver of arbitration. *Morgan v. Sundance, Inc.*, 142 S. Ct. 1708, 1714 (2022).

Cal. 2015), aff'd, 659 F. App'x 402 (9th Cir. 2016) (finding waiver where the parties "engaged in extensive discovery for almost a year" and participated in a private mediation before the defendant pursued arbitration under an arbitration agreement); *Soriano v. Experian Info. Sols., Inc.*, No. 2:22-cv-197-SPC-KCD, 2022 WL 6734860, at *3 (M.D. Fla. Oct. 11, 2022) (finding waiver where the defendant litigated for nearly six months, including filing answers, exchanging written discovery, and attending mediation).

Airbnb has knowingly and intentionally relinquished any right it may have had to arbitrate. Airbnb was obviously aware of its arbitration provision in its TOS. And, at the beginning of this action, as is standard practice for Airbnb when facing any potential claims, Airbnb stated its unequivocal intention to file a Motion to Compel Arbitration based upon its TOS Agreement. (Exhibit A – Email chain with Airbnb's prior counsel, stating, *inter alia*, "I expect I may be filing a Motion to Compel Arbitration" (May 27, 2021); "my client intends to file a Motion to Compel Arbitration" (July 7, 2021); and finally, "we plan on filing a Motion to Compel Arbitration with our Answer" (July 14, 2021)). Despite planning and promising to do so for months in 2021, Airbnb did not file any such motion, not until two years of "testing the waters" of litigation.

Airbnb's actions are inconsistent with its alleged right to arbitration. Airbnb moved to dismiss the Complaint on the merits (MTD filed August 3, 2021), which the Court denied (Order dated Dec. 30, 2021). Plaintiff subsequently moved to file an Amended Complaint (Mot. to Amend filed Sept. 2, 2022), which Airbnb vigorously opposed (Opp. to Mot to Amend filed Oct. 13, 2022). In its memorandum in opposition, Airbnb argued that Plaintiff's delay in seeking to amend would prejudice it because the action had been pending for eighteen months, and the parties had "engaged in extensive discovery" with Airbnb producing 1,300 pages of discovery and six depositions had been taken. *Id.* at 6.

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The Court granted the Motion to Amend (Order filed Nov. 30, 2022), and Plaintiff thereafter filed her Amended Complaint (Am. Compl. filed Nov. 30, 2022). Airbnb again moved to dismiss the Amended Complain on the merits (Airbnb's MTD Am. Compl. filed January 20, 2023), which the Court denied. On April 20, 2023, Airbnb filed its Answer to the Amended Complaint and asserted cross-claims against Katherine Thomas. Despite extensive briefing and numerous hearings, Airbnb did not raise the issue of arbitration in either motion to dismiss or in its opposition to Plaintiff's Motion to Amend. Now, Airbnb has decided it is time to move to compel arbitration. "A party may not use a motion to dismiss to see how the case is going in federal district court, while holding arbitration in reserve for a second chance in another forum." *Solo v. United Parcel Servc. Co.*, 947 F.3d 968, 974 (6th Cir. 2020) (internal quotation marks and citation omitted).

Airbnb argues that it has not waived its rights to the compel arbitration of the Amended Complaint; it reserved its rights to arbitration in its Answer; and there is an express non-waiver provision in the TOS. (Mot. to Compel at 14). In the cases Airbnb cites, the defendants asserted arbitration as an affirmative defense. *Id.* Here, while Airbnb asserted Nineteen Affirmative Defenses in its Answer to the initial complaint, none included an arbitration demand. (Answer filed Feb, 4, 2022, 28-32). Instead, Airbnb asserted in its introductory paragraph that it was responding to "the allegations contained in the Plaintiff's Complaint, [] while reserving all rights to compel mandatory contractual arbitration, and without waiving such rights . . . " *Id.* at 1. Further, in its Answer to the Amended Complaint, Airbnb again did not plead or raise arbitration in any of its twenty-five affirmative defenses. (Answer to Am. Compl. ¶¶ 115-122). Instead, Airbnb again stated in the introductory paragraph that it "expressly reserves and does not waive all rights to compel mandatory contractual arbitration." (Answer to Am. Compl. filed April 20, 2023 at 1).

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"A statement by a party that it has a right to arbitration in pleadings or motions is not enough to defeat a claim of waiver." *Martin v. Yasuda*, 829 F.3d 1118, 1125 (9th Cir. 2016). *See also Hooper v. Advance Am., Cash Advance Ctrs. of Missouri, Inc.*, 589 F.3d 917, 923 (8th Cir. 2009) ("A reservation of rights is not an assertion of rights."). *Bombardier Trans. (Holdings) USA, Inc. v. HDR Engineering, Inc.*, No. CV-21-01460-PHX-SPL, 2022 WL 17811661, * 3 (D. Ariz. Dec. 19, 2022). Moreover, Airbnb cannot "reserve" its purported arbitration rights while taking inconsistent actions for almost two years. *In Re Mirant Corp. v. Castex Energy, Inc.*, 613 F.3d 584, 591 (5th Cir. 2010) ("A party cannot keep its right to demand arbitration in reserve indefinitely while it pursues a decision on the merits before the district court."). Further, as the court held in *Liberty Builders* "the right to arbitrate can be waived even in the face of a no-waiver provision." 336 S.C. at 667, 521 S.E.2d at 754.

Finally, Airbnb contends that it is now moving for arbitration because of the Amended Complaint, and, in particular, the claim for a violation of South Carolina's Unfair Trade Practices Act ("SCUTPA"). (Mot. at 15). However, Plaintiff's SCUTPA claim does not expand the scope of this litigation in a way which would revive Airbnb's alleged right to arbitration. In *Krinsk v. Sun Trust Banks*, 654 F.3d 1194 (11th Cir. 2011), the Eleventh Circuit noted that "**in limited circumstances**, fairness dictates that a waiver of arbitration be nullified by the filing of an amended complaint." *Id.* at 1202 (emphasis added). The Eleventh Circuit found that, even though the amended complaint asserted new claims based on the same operative facts as the claims in the original complaint, because the amended complaint's new class definition "greatly broadened the potential scope of this litigation by opening the door to thousands—if not tens of thousands—of new class plaintiffs not contemplated in the original class definition. . . ." *Id.* at 1204.

Plaintiff has not broadened the scope of this litigation in her Amended Complaint so as to revive Airbnb's waiver. This case has always been about Plaintiff and the harm caused to her during her stay at an Airbnb rental, and the Amended Complaint did not alter the scope in such a way as to revive Airbnb's alleged right to arbitration. *See Manasher v. NECC Telecom*, 310 F. App'x 804, 807 (6th Cir. 2009) ("[W]e hold that the additional claims contained in the amended complaint did not substantially alter the scope or theory of this matter in such a way as to revive the defendant's right to compel arbitration . . . .").

IV. CONCLUSION

Airbnb litigated for two years, which constitutes a waiver of any right to arbitrate. Moreover, even if the Court declines to find waiver, Plaintiff never agreed to arbitration, and she is not subject to the application of direct benefits estoppel because she is not attempting to enforce provisions of the contract. Based on the foregoing, the Court should deny Airbnb's Motion to Compel Arbitration. Alternatively, Plaintiff contends that there are genuine issues of material fact as to whether Plaintiff is bound to arbitrate, and, thus, she requests a jury trial on this issue. Section 4 of the FAA makes clear that "[i]f the making of the arbitration agreement or the failure, neglect, or refusal to perform the same be in issue, the court shall proceed summarily to the trial thereof." 9 U.S.C. § 4. Once a district court concludes that there are genuine disputes of material fact as to whether the parties formed an arbitration agreement, the court must proceed without delay to a trial on arbitrability and hold any motion to compel arbitration in abeyance until the factual issues have been resolved. *See Berkeley Cnty. Sch. Dist. v. Hub Int'l Ltd.*, 944 F.3d 225, 242 (4th Cir.

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2019). If the Court grants Airbnb's Motion to Compel, Plaintiff requests that this action be dismissed, rather than stayed, so that she may immediately appeal.[5]

Respectfully submitted,

/s/Wesley D. Few__
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ATTORNEYS FOR PLAINTIFF

June 6, 2023
Greenville, South Carolina

[5] Recently, in *Huskins v. Mungo Homes, LLC*, the South Carolina Court of Appeals held:

> Ordinarily, an order granting a motion to compel arbitration is not immediately appealable. *See* § 15-48-200(a) (providing that "[a]n appeal may be taken from: (1) An order denying an application to compel arbitration . . . ; (2) An order granting an application to stay arbitration . . . ; (3) An order confirming or denying confirmation of an award; (4) An order modifying or correcting an award; (5) An order vacating an award without directing a rehearing; or (6) A judgment or decree entered pursuant to the provisions of th[e UAA]"). However, the "[d]ismissal of an action pursuant to Rule 12(b)(6) is appealable." *Williams v. Condon*, 347 S.C. 227, 233, 553 S.E.2d 496, 500 (Ct. App. 2001).

2023 WL 2071173, *3 (S.C. Ct. App. Feb. 15, 2023).

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EXHIBIT A

RE: Julianne Foster v. Airbnb et al.

1 message

Andrew Watson <awatson@butler.legal> Wed, Jul 14, 2021 at 4:30 PM
To: Ryan Duffy <rduffy@butler.legal>, Deborah Barbier <dbb@deborahbarbier.com>, "wes@wesleyfew.com" <wes@wesleyfew.com>, "rlb@ryanbeasleylaw.com" <rlb@ryanbeasleylaw.com>
Cc: Julie D'Aeth <jdaeth@butler.legal>, Whitney Hill <whill@butler.legal>

Debbie – I'm interjecting so our intentions are transparent here – we plan on filing a Motion to Compel Arbitration with our Answer in response to the Complaint on 8/3. It will include a motion to stay discovery as to Airbnb until the motion is ruled upon.

Given that the hearing on our Motions is not likely to be heard imminently after we file it, we will need some additional time after that Motion is filed to prepare objections to the discovery in order to preserve them. They won't be ready on 8/3. Whatever number of days you can give us is appreciated, whether 30, 45, or 60 as Ryan requested. Thanks.

Thanks

Andy

L. Andrew Watson | Partner | Licensed in NC, SC, FL & GA

BUTLER Community House Craig LLP

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From: Ryan Duffy <rduffy@butler.legal>
Sent: Wednesday, July 14, 2021 4:15 PM
To: 'Deborah Barbier' <dbb@deborahbarbier.com>; Andrew Watson <awatson@butler.legal>; 'wes@wesleyfew.com' <wes@wesleyfew.com>; 'rlb@ryanbeasleylaw.com' <rlb@ryanbeasleylaw.com> **Cc:** Julie D'Aeth <jdaeth@butler.legal>; Whitney Hill <whill@butler.legal> **Subject:** RE: Julianne Foster v. Airbnb et al.

Hi Debbie,

We appreciate your providing us with 14 additional days to respond to the Complaint / file the Motion to Compel by 8/3/21. With regard to the discovery that was served along with the Complaint, we understand you cannot agree to suspend it until the Motion to Compel is decided. However, are you able to provide us with additional time to respond to the discovery such that responses would be due on October 4, 2021? As I'm sure you can understand, Andy is currently in trial and our client needs time to review its records when it responds to discovery.

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Thank you,

Ryan

Ryan P. Duffy | Attorney at Law

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From: Deborah Barbier <dbb@deborahbarbier.com> **Sent:** Friday, July 9, 2021 4:42 PM
To: Andrew Watson <awatson@butler.legal>; 'wes@wesleyfew.com' <wes@wesleyfew.com>; 'rlb@ryanbeasleylaw.com' <rlb@ryanbeasleylaw.com>
Cc: Julie D'Aeth <jdaeth@butler.legal>; Whitney Hill <whill@butler.legal>; Ryan Duffy <rduffy@butler.legal> **Subject:** RE: Julianne Foster v. Airbnb et al.

Andrew – We certainly understand the demands of trial, so we are pleased to give you an additional extension of 14 days through August 3, 2021. As to your other requests, we cannot agree to suspend discovery until the arbitration motion is ruled upon. We intend to start taking discovery very soon. We also do not agree to a dismissal without prejudice or that we are bound by an arbitration provision. We look forward to working with you on this matter – Good luck on your trial!

Best regards,

Debbie

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From: Andrew Watson <awatson@butler.legal> **Sent:** Wednesday, July 7, 2021 9:16 AM
To: 'wes@wesleyfew.com' <wes@wesleyfew.com>; Deborah Barbier <dbb@deborahbarbier.com>; 'rlb@ryanbeasleylaw.com' <rlb@ryanbeasleylaw.com>
Cc: Julie D'Aeth <jdaeth@butler.legal>; Whitney Hill <whill@butler.legal>; Ryan Duffy <rduffy@butler.legal>
Subject: RE: Julianne Foster v. Airbnb et al. **Importance:** High

Ryan, Wes and Deborah,

Following up on my e-mail below and on recent call / e-mail on 6/16 with Ryan about the Airbnb role in this case.

My client intends to file a Motion to Compel Arbitration, per the below extension which Wes was kind enough to give us, currently through 7/19. However, due to a trial I have in federal court in the next 2 weeks, may I request an additional extension of 14 days, through Tuesday 8/3/21?

Similarly, given that we intend to file this Motion, and intend to ask discovery to be stayed as to Airbnb, may we agree that the obligation to respond to the discovery is stayed until the Motion is ruled upon, rather than being required to prepare formal objections to the discovery based on the arbitration demand?

Lastly and most importantly, as I have mentioned to Ryan directly already, if there is any way for a dismissal without prejudice as to Airbnb, that would seem the most sensible approach, given that there was no criminal record known to Airbnb from its background check – the only history for Mr. Riviere was apparently expunged, making it self-evident that a background check would not have revealed it. I am happy to try and secure discovery materials from Airbnb on an informal basis, even after dismissal, if you are concerned about having a clear avenue to gather discovery materials.

Please let me know if the extension on the MTC is OK, if we can stay the discovery, and if there is any response re: dismissal without prejudice for Airbnb at your first opportunity. Happy to jump on a call with you as needed also.

Thanks

Andy

L. Andrew Watson | Partner | Licensed in NC, SC, FL & GA

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From: Andrew Watson
Sent: Thursday, May 27, 2021 10:13 AM
To: 'wes@wesleyfew.com' <wes@wesleyfew.com>; 'dbb@deborahbarbier.com' <dbb@deborahbarbier.com>; 'rlb@ryanbeasleylaw.com' <rlb@ryanbeasleylaw.com>
Cc: Julie D'Aeth <jdaeth@butler.legal>; Whitney Hill <whill@butler.legal>; Ryan Duffy <rduffy@butler.legal> **Subject:** Julianne Foster v. Airbnb et al.

Good morning everyone.

My law firm and I have been retained by Airbnb, Inc. to represent them in this new Foster litigation in Aiken County, SC. I look forward to working with you. I am getting up to speed on the facts of the case.

My first order of business is to inquire whether Plaintiff would consider dismissing Airbnb without prejudice from this action. Your allegations make clear that the non-Airbnb Defendants were the ones responsible for the presence of these cameras and their own conduct in using them. While the allegations are obviously distasteful to read, Airbnb was not on any sort of notice that such activity was occurring or in a position to prevent it, as it was only providing the platform for the Guest/Host transaction for rental of the property. Given the other cases I have seen filed against these same individuals (Riviere, Thomas, Chase Enterprises) there appears to have been a pattern on their part, having nothing to do with Airbnb.

Also, Airbnb has an arbitration provision in its Terms of Service Agreement. I expect I may be filing a Motion to Compel Arbitration to take the Airbnb part of the dispute out of state court. If you dismiss Airbnb, that avoids the potential for fighting multiple battles in different venues. If you are willing to dismiss Airbnb without prejudice, I will recommend to Airbnb to cooperate informally to share any pertinent materials with you, with sufficient protective orders in place as to proprietary or confidential information.

Lastly, I've been alerted that service may have been made on Airbnb Inc. on May 20th. May we have 30 additional days to respond past the existing deadline, making a new response deadline Monday July 19th?

I am in the office all day today if any of you wish to discuss the case. I've copied my associate (Ryan Duffy), paralegal (Whitney Hill) and assistant (Julie D'Aeth) here for future reference. Please copy the four of us on any case-related e-mails whenever possible. Please also let us know who we should be including on future e-mail communications.

Thanks,

Andy

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L. Andrew Watson | Partner | Licensed in NC, SC, FL & GA

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EXHIBIT B

ELECTRONICALLY FILED - 2023-Jul-06 7:50 PM - AIKEN - COMMON PLEAS - CASE#2021CP0200886

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF SOUTH CAROLINA

CHARLESTON DIVISION

CIVIL ACTION NO. 2:20-CV-00214-DCN-MGB

SCOTT PHILLIP SHAW,

Plaintiff,

v.

AIRBNB, INC., AIRBNB PAYMENTS, INC.,

Defendants.

DEFENDANTS AIRBNB, INC.'S AND AIRBNB PAYMENTS, INC.'S MOTION TO COMPEL ARBITRATION AND DISMISS OR STAY PROCEEDING

I. INTRODUCTION

This lawsuit cannot proceed in this forum because the claims at issue here are subject to mandatory, individual contractual arbitration.

Plaintiff Scott Shaw ("Shaw"); alleges that, Airbnb's marketing and policies regarding its "Host Guarantee" violate the South Carolina Unfair Trade Practices Act. Additionally, Shaw alleges that Airbnb negligently misrepresented the coverage provided to Hosts under the "Host Guarantee." Both claims stem from Mr. Shaw's use of the Airbnb platform to rent his home on Isle of Palms, South Carolina. In particular, the claims arise from damages caused by one such

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tenant, Darius Shepard, during a stay in July, 2019. Thus, Plaintiff concedes that his claims against Airbnb arise expressly out of Plaintiff's use of Airbnb's website and services. The relationship between Airbnb and Plaintiff is contractual, and is governed by Airbnb's Terms of Service ("TOS"), to which Plaintiff agreed on *multiple occasions*. The TOS includes an arbitration provision that requires individual arbitration of all disputes against Airbnb.

On a motion to compel arbitration, this Court's inquiry is limited to two questions: (1) whether Plaintiff assented to the arbitration provision and, if so, (2) whether Plaintiff's claims fall within its scope. Assent is unquestionably established here. Plaintiff admits that his claims arise out of an Airbnb booking, and that he has an Airbnb account. Airbnb's records (filed herewith) confirm this fact, and unambiguously show that Plaintiff assented to Airbnb's TOS, and the arbitration agreement contained therein, when he created his Airbnb account. In fact, Airbnb's records further show that Plaintiff confirmed his agreement to arbitrate when he consented to Version 8 and Version 10 updated version of the TOS, which included substantially the same binding arbitration provisions.

Plaintiff's assent to the TOS ends the Court's inquiry because the arbitration provision delegates all threshold issues regarding the arbitrability of Plaintiff's claims to the arbitrator. The Supreme Court, the Ninth Circuit, California state courts, and South Carolina courts agree that "clear and unmistakable" delegation clauses are enforceable and, when present, all questions of arbitrability must be resolved by the arbitrator, not the court.[1] The delegation clause here is plainly "clear and unmistakable": the TOS expressly authorizes the arbitrator to resolve all issues pertaining to the "breach, termination, enforcement, interpretation or validity" of the TOS, including the arbitration provision. *See Exhibit 1* Declaration of Kyle Miller ("Miller Decl.) Ex. F. Accordingly, whether Plaintiff's particular claims fall within the scope

[1] The Supreme Court recently reaffirmed this rule, holding that "[w]hen the parties' contract delegates the arbitrability question to an arbitrator, the courts must respect the parties' decision as embodied in the contract"—even in cases where one party asserts that the other party's argument that the arbitration agreement applies to their particular dispute is "wholly groundless". See *Henry Schein, Inc., v. Archer & White Sales, Inc.*, 139 S.Ct. 524, 528 (Jan. 8, 2019).

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of the TOS and whether any defense to arbitration exists are questions that must be resolved by the arbitrator, not this Court.

Courts have routinely enforced Airbnb's arbitration provision and compelled claims against Airbnb to arbitration. There are no facts here that would dictate a different result. Because assent is easily established and the delegation clause is "clear and unmistakable," this Court must stay the litigation and compel arbitration.

II. STATEMENT OF FACTS

A. Plaintiff's Allegations

Plaintiff has brought two causes of action against Airbnb. The first cause of action is a violation of the South Carolina Unfair Trade Practices Act and the second cause of action is for negligent misrepresentation. Cpt. ¶¶ 13-17, 18-23. Both causes of action arise from Plaintiff's use of the Airbnb platform to list his property for rent to other Airbnb users. In particular, the actions stem from a dispute over the amount of payments made by Airbnb to Plaintiff to compensate for damages caused by a guest during his stay.

Plaintiff contends that during a stay in July, 2019 a guest caused substantial damages to his home requiring him to perform extensive repairs and cancel subsequent bookings. Cpt. ¶¶ 9 – 10. Once the damages were discovered, Plaintiff began the process of requesting compensation for his damages under Airbnb's Host Guarantee. The Host Guarantee provides protection to hosts for damages caused by guests. In order to receive the benefits provided by the Host Guarantee, Hosts must provide documentation of the damages sustained during the guest's stay. In his Complaint, Plaintiff states that he provided photos, representations of cash payments, and some receipts. Cpt. ¶12. However, Plaintiff never provided estimates, nor proof of payment for the full extent of the required repairs. Cpt. ¶ 12. As a result of his inability to provide proof of the full extent of the necessary repairs, Plaintiff was paid $650.00 by Airbnb and his claim was closed. Cpt. ¶ 12.

B. The Terms of Service (TOS)

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1. The Airbnb Platform

Airbnb provides an online platform that connects third-parties who wish to offer their unique accommodations (called "Hosts") with third-party travelers seeking to book accommodations (called "Guests"). Miller Decl. ¶ 2. As the TOS makes clear, Airbnb is not a party to these booking agreements, which are made directly between Hosts and Guests. *Id.* The Hosts alone are responsible for listing their accommodations on Airbnb's platform. *Id.* Airbnb does not own or control the accommodations that Hosts list; nor does it operate, manage, or otherwise have or grant any interest in such accommodations. *Id.* Simply put, Airbnb is not the owner, operator, innkeeper, or proprietor of any of the accommodations offered by Hosts on its platform.

2. Plaintiff Assented to the TOS

The relationship between Airbnb and those who use its services and site is contractual and governed by the TOS. Before a user can book an accommodation through Airbnb's online platform, he must first consent to the TOS, which is presented via hyperlink during the account registration process; users must affirmatively click a checkbox next to the hyperlink that reads: "By signing up I agree to Airbnb's Terms of Service…." Miller Decl. ¶ 10, Exs. C and D. Airbnb captures and records the date upon which each user accepts the TOS in its business records. Airbnb's records confirm that Plaintiff created an Airbnb account on July 12, 2017 and consented to the TOS on that date. *Id.* ¶ 10.

Airbnb updates the TOS from time to time. When the TOS is updated, existing account holders must accept the updated TOS before they can access their existing accounts and/or book accommodations. Specifically, the first time that existing account holders access the Airbnb website after a TOS update, they are presented with that updated TOS, either in a scroll-box or via a hyperlink. Miller Decl. ¶ 7. Account holders must click a checkbox next to a statement confirming that they were accepting the updated Terms of Service and then click a button (located under the checkbox) indicating acceptance of the updated TOS in order to continue with

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their search. *Id.* Airbnb's records confirm that, in addition to consenting to the TOS when he created her account on July 12, 2017 Plaintiff subsequently assented to the TOS two additional times. *Id.* at ¶ 14.

3. The TOS Requires Individual Arbitration of All Disputes

The TOS applies broadly to any and all uses of Airbnb's online platform, content, and services. The very first paragraph of the version of Airbnb's TOS to which Plaintiff consented prior to listing his property (the "operative TOS") expressly notified Plaintiff in **bold** that Section 19 includes an agreement to arbitrate all disputes. Miller Decl. ¶ 6, Ex. F (TOS) p. 1. The paragraph states:

> **Please note: Section 19 of these Terms of Service contains an arbitration clause and class action waiver that applies to all Airbnb Members. If your Country of Residence (as defined below) is the United States, this provision applies to all disputes with Airbnb. If your Country of Residence is outside of the United States, the provision applies to any action you bring against Airbnb in the United States. It affects how disputes with Airbnb are resolved. By accepting these Terms of Service, you agree to be bound by this arbitration clause and class action waiver. Please read it carefully.**

TOS, p. 1.

The dispute resolution provision in Section 19 unequivocally requires arbitration, stating:

> "You and Airbnb mutually agree that any dispute, claim or controversy arising out of or relating to these Terms or the breach, termination, enforcement or interpretation thereof, or to the use of the Airbnb Platform, the Host Services, the Group Payment Service or Collective Content (collectively, "Disputes") will be settled by binding arbitration (the "Arbitration Agreement"). If there is a dispute about whether this Arbitration Agreement can be enforced or applies to our Dispute, you and Airbnb agree that the arbitrator will decide that issue."

TOS, p. 20.

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In relevant part, the TOS also specifies that the Federal Arbitration Act governs the interpretation and enforcement of the arbitration clause, and that "This Arbitration Agreement evidences a transaction in interstate commerce and thus the Federal Arbitration Act governs the interpretation and enforcement of this provision." *Id.*, p. 20.

III. ARGUMENT

A. The Federal Arbitration Act Governs

The arbitration provision in the TOS expressly states that it is governed by the Federal Arbitration Act ("FAA"): "The Federal Arbitration Act governs the interpretation and enforcement of this provision." TOS, p. 20. As the United States Supreme Court recently made clear, the FAA—and the body of federal law developed pursuant to it—governs the interpretation and application of an arbitration provision that is made expressly subject to its provisions. *DirecTV, Inc. v. Imburgia*, 577 U.S. --, 136 S. Ct. 463, 468 (2015) (confirming parties can contractually agree to designate FAA as governing law). As the Supreme Court has further held, the FAA preempts any inconsistent state law. *Id.* (holding that the Supremacy Clause forbids state courts from dissociating themselves from federal law, and that as the law of the United States, "the judges of every State must follow" the FAA). Accordingly, the FAA and the body of federal law developed pursuant to it applies here.

B. The Court Must Compel Arbitration of Plaintiff's Claims Because Plaintiff Agreed to Arbitrate Her Claims Against Airbnb.

Section 2 of the FAA codifies a strong federal policy favoring arbitration, making arbitration provisions "valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2; *see AT&T Mobility v. Concepcion*, 563 U.S. 333, 339 (2011) (federal policy requires rigorous enforcement of arbitration agreements). Section 2 creates a heavy presumption in favor of arbitrability that requires courts to resolve all doubt as to the scope of arbitrable issues in favor of arbitration.

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Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 24 (1983) ("questions of arbitrability [must] be addressed with a healthy regard for the federal policy favoring arbitration," and "any doubts concerning the scope of arbitral issues should be resolved in favor of arbitration . . ."); *Volt Info. Sciences, Inc. v. Bd. of Trustees of Leland Stanford Jr. Univ.*, 489 U.S. 468, 475-76 (1989) ("settled" rule that questions of arbitrability in contracts subject to the FAA "must be resolved with a healthy regard for the federal policy favoring arbitration"); *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 626 (1985) (while the parties' intentions control interpretation of a contract subject to the FAA, "those intentions are generously construed as to issues of arbitrability").[2]

The strong presumption in favor of arbitration limits the court's analysis on a motion to compel arbitration to two questions: (1) whether the parties agreed to arbitrate (i.e., whether they assented to the arbitration contract); and (2) if so, whether the agreement encompasses the asserted claims (i.e., whether the claims asserted are within the scope of the arbitration contract). *Chiron Corp. v. Ortho Diagnostics Sys., Inc.*, 207 F.3d 1126, 1130 (9th Cir. 2000); *Bruni v. Didion*, 160 Cal. App. 4th 1272, 1283 (2008); *Zabinski v. Bright Acres Associates*. 346 S.C. 580, 596-597 (2001) (Finding that the scope of an arbitration agreement is determined by the terms of the agreement). In short, the two considerations are mutual assent and scope, and once the court finds that both are satisfied (as they are here), it must compel arbitration. *Chiron Corp.*, 2017 F.3d at 1130 (the FAA "'leaves no place for the exercise of discretion by a district court, but instead mandates that district courts *shall* direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed.'") (quoting *Dean Witter Reynolds Inc. v. Byrd*, 470 U.S. 213, 218 (1985) (emphasis in original)); *Zabinski*, 346 S.C. at

[2] Although the question here is one of federal law, California state law, which controls the rest of the TOS, (*see* TOS at 22), also favors enforcement of the arbitration agreement. Cal. Code Civ. Proc. §§ 1281-1294; *Trujillo v Gomez*, 2015 WL 1757870, at *3 (S.D. Cal 2015). California has a strong public policy in favor of arbitration. *Sanchez v. Valencia Holding Co., LLC*, 61 Cal. 4th 899, 935 (Cal. 2015); *Larkin v. Williams, Woolley, Cogswell, Nakazawa & Russell*, 76 Cal. App. 4th 227, 229 (1999) ("It is well established that under California law there is a strong public policy in favor of arbitration.").

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597, 553 S.E.2d at 118 ("[U]nless the court can say with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the dispute, arbitration should be ordered.")

Airbnb's burden of establishing assent is not a heavy one, and it is easily satisfied here. Because arbitration agreements are contracts, assent is analyzed under ordinary principles of state contract law. *First Options of Chi., Inc. v. Kaplan*, 514 U.S. 938, 943–45 (1995) (arbitration is a matter of contract law, and analysis turns on whether an agreement was formed). The TOS contains a California choice of law provision.[3] And, under California law, assent is determined under an objective standard applied to the outward manifestations or expressions of the parties. *Serafin v. Balco Properties Ltd.*, LLC, 235 Cal. App. 4th 165, 173 (2015) (finding arbitration agreement enforceable where employee was on notice). Online contracts are no different than other contracts, and Courts applying California law regularly enforce "clickwrap" or "scroll-wrap" agreements—such as the TOS—because they require users to manifest their assent by clicking "Agree" or an equivalent button. *See* Exs. C and D *Loewn v. Lyft, Inc.*, 129 F. Supp. 3d 945, 957–58 (N.D. Cal. 2015) (enforcing an arbitration provision within a TOS where Plaintiffs had the opportunity to scroll through the terms prior to assent and then clicked "I agree" to assent to the terms of the TOS); *Tompkins v. 23andMe, Inc.*, Case No. 5:13-CV-05682-LHK, 2014 WL 2903752, at *8 (N.D. Cal. June 25, 2014) *aff'd* 840 F.3d 1016 (9th Cir. 2016) (holding that Plaintiffs received adequate notice and consented to the TOS—and the arbitration provision contained therein—where they clicked a button "during the account creation and registration process . . . that appeared near a hyperlink to the TOS to indicate acceptance of the TOS"); *Swift v. Zynga Game Network, Inc.*, 805 F. Supp. 2d

[3] *See* TOS, p. 22. Applying South Carolina law, the result is the same. South Carolina courts routinely enforce choice-of-law provisions. See *Nucor Corp. v. Bell*, 482 F.Supp.2d at 728 (D. S.C. 2007) ("Generally, under South Carolina choice of law principles, if the parties to a contract specify the law under which the contract shall be governed, the court will honor this choice of law."); *Team IA, Inc. v. Lucas*, 395 S.C. 237, 249 (2011) ([T]raditional choice of law rules apply only in the absence of an express provision regarding the applicable law to govern the contract.)

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904, 910–11 (N.D. Cal. 2011) (same); *Zynga Game Network, Inc.*, 805 F. Supp. 2d 904, 911–12 (N.D. Cal. 2011) (under California law, click-through agreements require acknowledgment of assent by click); *United States v. Drew*, 259 F.R.D. 449, 462 n.22 (C.D. Cal. 2009) ("Clickwrap agreements have been routinely upheld by circuit and district courts."). [4]

Multiple courts in various jurisdictions throughout the United States have already considered Airbnb's sign-up procedure and have compelled arbitration upon finding that the process adequately notifies users that they are agreeing to arbitrate their disputes with Airbnb.[5] *See e.g. Clayton v. Stachel, et. al.*, Supreme Court of the State of New York, Index No. 153540/2019 (Sept. 19, 2019); *Studio 3 v. Best, et. al.*, Circuit Court for the State of Oregon, Multinomah County, Case No. 19CV03807 (Sept. 4, 2019); *Grady v. Airbnb, Inc. and Airbnb Payments, Inc.*, Superior Court of Gwinnett County, Georgia Case No. 19-A-05309-1 (granting motion to compel arbitration and dismiss with prejudice); *Does v. Natt, et al.*, Circuit Court for Manatee County Florida Case No. 2018-CA-2203 (Mar. 7, 2019) (holding that "Plaintiff's

[4] Again, South Carolina law is aligned with California, and South Carolina courts routinely enforce "clickwrap" or "scrollwrap" agreements. See *Kraft Real Estate Investments, LLC v. HomeAway.com, Inc.*, No. 4:08-CV-3788, 2012 WL 220271, at *7 (D. S.C. Jan. 24, 2012) (Most courts have concluded that clickwrap agreements are valid, enforceable contracts.)

[5] *See e.g., Enos v. Mata, et al.*, Los Angeles County California Superior Court Case No. BC693940 (July 3, 2019) (compelling arbitration of non-booking guest under principle of equitable estoppel); *Benkert v. Pleas, et al.*, Missouri Circuit Court, 22nd Circuit Case No. 1822-CC11403 (June 18, 2019) (finding Airbnb's "valid and enforceable" TOS "clearly and unmistakably evidences the parties' intent to delegate threshold issues of arbitrability to the arbitrator" and compelling non-booking Airbnb user to arbitration); *Johnson v. Airbnb, et al.*, Circuit Court for Lauderdale County, Alabama Case No. CV-2019-900084.00 (May 20, 2019); *Lee v. Airbnb, et al.*, Circuit Court for Charlotte County Florida Case No. 2019-CA-00086 (May 13, 2019); *Hunt v. Unitan, et al.*, Los Angeles County California Superior Court Case No. 18STCV07616 (April 19, 2019) ("Airbnb met its burden to show the parties have a binding agreement to submit all disputes to binding arbitration"); *Hernandez v. Airbnb Inc., et al.*, Los Angeles County California Superior Court Case No. BC706648 (Mar. 7, 2019) (holding that Airbnb's TOS and arbitration clause are not substantively nor procedurally unconscionable, including the arbitration provision's limitation on discovery); *\Krivickas v. Airbnb*, Circuit Court of Cook County, Illinois Case No. 18M112834 (Dec. 19, 2018); *Du Ju v. Lacombe, et al.*, Case No. 3:18-cv-05309-BHS (W.D. Wash. Dec. 5, 2018); *McCluskey v. Henry, et al.*, San Francisco Superior Court Case No. CGC-18-567741 (Nov. 7, 2018); *Senders v. Airbnb, Inc. et al.*, San Francisco County Superior Court Case No. CGC-17-561710 (March 14, 2018); *Plazza, et al. v. Airbnb, Inc., et al.*, Case No. 1:16-cv-01085-VSB (S.D.N.Y Jan. 26, 2018); *Mazaheri et al. v. Bob, et al.*, Los Angeles Superior Court Case No. BC658417 (Sep. 21, 2017); *Fogel v. Hacker, et al.*, Los Angeles County Superior Court Case No. BC651607 (August 20, 2017);

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theory of recovery can affect only whether an arbitrable issue exists, and does not affect the existence or non-existence of a written agreement."); *McCluskey v. Airbnb, Inc.*, San Francisco Superior Court Case No. CGC-18-563528 (May 30, 2018) (the delegation clauses in versions 6 and 7 of the TOS require that the arbitrator, not the court, decide whether the arbitration agreement is enforceable); *Flynn v. Sutcliffe, et al.*, Circuit Court for Broward County, Florida Case No. CACE 17009259 (Aug. 15, 2017); *Stutland v. Airbnb, Inc.*, Los Angeles County Superior Court Case No. BC581681 (March 22, 2017) (compelling arbitration and noting that Versions 2 through 6 of the TOS "are substantively the same"); *Selden v. Airbnb, Inc.*, 2016 WL 6476934 (D.C. Cir. Nov. 1, 2016); *Hollywood v. Airbnb, Inc.*, Los Angeles County Superior Court Case No. BC601165 (April 20, 2016); .

As the court in *Selden* explained:

> The Court must grant Airbnb's motion [to compel arbitration] . . . the applicable law is clear: Mutual arbitration provisions in electronic contracts—so long as their existence is made reasonably known to consumers—are enforceable, in commercial disputes and discrimination cases alike. And Airbnb's sign-up procedures were sufficiently clear to place Mr. Selden on notice that he was agreeing to the company's Terms of Service when he created an account.

Selden, 2016 WL 6476934 at *2.

The result can be no different here. Plaintiff assented to Airbnb's TOS through the same sign-up process and after being presented with screens that were substantially similar, if not identical, to those presented to the users in *Hollywood*, *Stutland*, *Fogel*, *Mazaheri*, *Plazza*, *Senders*, *McCluskey*, and *Selden*. *See, e.g.*, *Selden*, 2016 WL 6476934, at *5 (describing sign-up process and confirming TOS was adequately disclosed); Miller Decl. ¶¶ 10 – 14 (describing Plaintiff's sign-up process here). As the court in *Selden* noted, the hyperlinked language located under the sign-up box ("By signing up, I agree to Airbnb's Terms of Service") was conspicuous and, therefore, sufficient to put the plaintiff there on notice of the TOS. *Selden*,

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2016 WL 6476934, at *2. In other words, by "choosing to sign up for Airbnb, Selden manifested his assent to the Terms of Service." *Id.* at *2, 5. So, too, did Plaintiff here. In fact, Airbnb's business records confirm that Plaintiff agreed to the TOS on three separate occasions—each time assenting to the arbitration provision therein. Miller Decl., ¶14; *id.*, Exs. A and B.

C. The Delegation Clause is "Clear and Unmistakable" and Thus Compels Arbitration of All Gateway Issues Including Scope

Because assent is established, the only question remaining is whether the delegation clause in the TOS is enforceable. It is well established that parties to an arbitration agreement can delegate gateway issues of arbitrability, such as validity, enforceability, and scope to the arbitrator. *First Options of Chicago*, 514 U.S. at 943; *Rent-A-Center, West. Inc. v. Jackson*, 561 U.S. 63, 71-74 (2010) (upholding enforceability of an "agreement to arbitrate threshold issues" regarding the arbitrability of the dispute); *Sandquist v. Lebo Automotive*, 1 Cal. 5th 233, 243 (2016) ("'who decides' [issues of arbitrability] is a matter of party agreement"); *Dream Theater, Inc. v. Dream Theater*, 124 Cal. App. 4th 547, 551 (2004) (noting that who decides arbitrability depends on the parties' contract, and compelling arbitration of gateway issues); *Zabinski v. Bright Acres Associates*, 346 S.C. 580, 597 (2001) ("Any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration. Furthermore, unless the court can say with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the dispute, arbitration should be ordered" (citations omitted)). As the Supreme Court just recently and unanimously held, when a contract delegates threshold questions of arbitrability to the arbitrator, a court must honor the parties' contractual decision and refer the matter to arbitration without exception, and without making its own determinations about arbitrability. *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. --, 2019 WL 122164, at *4-5 (Jan. 8, 2019) ("When the parties' contract delegates the

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arbitrability question to an arbitrator, a court may not override the contract. In those circumstances, a court possesses no power to decide the arbitrability issue. That is true even if the court thinks that the argument that the arbitration agreement applies to a particular dispute is wholly groundless.").

Delegation clauses are enforceable if they are "clear and unmistakable." *Rent-A-Center., W., Inc.*, 561 U.S. at 79–80; *Momot v. Mastro*, 652 F.3d 982, 988 (9th Cir. 2010); *Portland Gen. Elec. Co. v. Liberty Mut. Ins. Co.*, 862 F.3d 981, 985 (9th Cir. 2017), *as amended* (Aug. 28, 2017) (parties may delegate the adjudication of gateway issues to the arbitrator if they "clearly and unmistakably" agree to do so); *Dream Theater*, 124 Cal App. 4th at 552 (when parties "clearly and unmistakably" delegate issues of arbitrability to the arbitrator, the arbitrator, not the court, decides gateway issues of arbitrability); *Peabody Holding Co., LLC v. United Mine Workers of America, Intern. Union*, 655 F.3d 96, 102 (4th Cir. 2012) ([T]o submit the arbitrability determination to an arbitrator, a court must find clear and unmistakable evidence that the parties agreed to arbitrate arbitrability.) Courts agree that express delegation language in the arbitration agreement satisfies the "clear and unmistakable" standard. *Rent-A-Center., W., Inc.*, 561 U.S. at 79–80; *Mohamed v. Uber Techs., Inc.*, 848 F.3d 1201, 1208–09 (9th Cir. 2016) (*en banc*) (evidence of a "clear and unmistakable" delegation includes ". . . an express agreement to do so"); *Novic v. Credit One Bank, National Association*, 757 Fed.Appx. 263, 264 (4th Cir. 2019) (In *Novic*, the Fourth Circuit found that a delegation clause stating the following met the clear and unmistakable standard set by the Supreme Court in *Rent-A-Center W. Inc.* "You and we agree that either you or we may, without the other's consent, require that any controversy or dispute between you and us ..., be submitted to mandatory, binding arbitration. This arbitration provision is ... governed by, and enforceable under, the Federal Arbitration Act (the "FAA"), 9 U.S.C. § 1 *et seq.*").

The delegation language in the arbitration provision here is "clear and unmistakable." It states that "any dispute . . . arising out of or relating to these Terms or the applicability, breach,

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termination, validity, enforcement, or interpretation, thereof, or to the use of the Airbnb Platform, the Host Services, the Group Payment Service . . . will be settled by binding arbitration." TOS, p. 20. Accordingly, the parties have expressly delegated all disputes concerning the validity, enforceability, or interpretation of the arbitration provision to the arbitrator, and the Court's inquiry must end.[6]

Indeed, courts have repeatedly interpreted language more ambiguous than Airbnb's TOS as meeting the "clear and unmistakable" threshold constituting valid delegation. In *Mohamed v. Uber Techs., Inc.*, for example, the court did not hesitate to find that the phrase "the enforceability, revocability or validity" was sufficiently "clear and unmistakable" to delegate all issues pertaining to arbitrability to the arbitrator. 836 F.3d at 1106–08. Likewise, in *Momot*, the Ninth Circuit affirmed the arbitrability of gateway issues where the contract language was similar to that at issue here, and stated: "If a dispute arises out of or relates to this Agreement, the relationships that result from this Agreement, the breach of this Agreement *or the validity or application of any of the provisions of this Section 4* [the arbitration provision] . . . the dispute shall be resolved exclusively by binding arbitration." *Momot*, 652 F.3d at 988 (emphasis added); *Carson v. Giant Food, Inc.*, 175 F.3d 325, 330-331 (4th Cir. 1999) (Those who wish to let an arbitrator decide which issues are arbitrable need only state that "all disputes concerning the arbitrability of particular disputes under this contract are hereby committed

[6] Additionally, the arbitration provision incorporates the American Arbitration Association ("AAA") Consumer Arbitration Rules, which give the arbitrator the authority to rule on his or her own jurisdiction. TOS, p. 23; see also AAA Commercial Arbitration Rule 7 available at www.adr.org, under "Rules" tab ("The arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope, or validity of the arbitration agreement or to the arbitrability of any claim or counterclaim."). *Oracle America Inc. v. Myriad Group A. G.*, 724 F.3d 1069, 1075 (9th Cir. 2013) (Virtually every circuit to have considered the issue has determined that incorporation of the American Arbitration Association's (AAA) arbitration rules constitutes clear and unmistakable evidence that the parties agreed to arbitrate arbitrability.); *Fallo v. High–Tech Inst.*, 559 F.3d 874, 878 (8th Cir.2009) ("[W]e conclude that the arbitration provision's incorporation of the AAA Rules ... constitutes a clear and unmistakable expression of the parties' intent to leave the question of arbitrability to an arbitrator."); *Qualcomm Inc. v. Nokia Corp.*, 466 F.3d 1366, 1372–73 (Fed.Cir.2006); *Terminix Int'l Co., LP v. Palmer Ranch Ltd. P'ship*,432 F.3d 1327, 1332–33 (11th Cir.2005) (same); *Contec Corp. v. Remote Solution Co.*, 398 F.3d 205, 208 (2d Cir.2005) (same)

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to arbitration," or words to that clear effect.)

The language of the TOS is substantively indistinguishable from the sufficiently "clear and unmistakable" delegation clauses consistently enforced by the Ninth Circuit. As such, the parties have authorized the arbitrator to rule on his or her own jurisdiction—by interpreting the contract to determine whether Plaintiffs' claims fall within its scope. Accordingly, the elements of assent and scope are both satisfied here, and this Court must compel arbitration.

D. The Litigation Must Be Stayed or Dismissed Pending Arbitration

Section 3 of the FAA requires courts to stay or dismiss litigation upon referring a dispute to arbitration. 9 U.S.C. § 3. Here, a dismissal is appropriate because Plaintiff agreed to arbitrate all claims as well as any gateway issues of enforceability, scope, and validity. *MediVas, LLC v. Marubeni Corp.*, 741 F.3d 4, 9 (9th Cir. 2014) (adopting rebuttable presumption that actions are stayed pending arbitration if not expressly dismissed); *Grear v. Comcast Corp.*, No. C 14-05333 JSW, 2015 WL 926576, at *2 (N.D. Cal. Mar. 3, 2015) (staying litigation under FAA § 3 upon referring dispute to arbitration); *Weckesser v. Knight Enterprises S.E., LLC*, 228 F.Supp3d. 561, 564 (D. S.C. 2017) (At present, in this Circuit a district court *must* stay an action pending arbitration of any arbitrable claims, with the exception that it *may* instead dismiss an action if all claims asserted are arbitrable.); *Fleetwood Transportation Corp. and Transportation Consultants Inc. v. Packaging Corp. of America*, 2012 WL 761737, at *5 (D. S.C. Mar. 8, 2012) (dismissing the suit without prejudice upon a finding that all claims are subject to arbitration and Plaintiff did not offer arguments as to why a stay would be more appropriate.)

IV. CONCLUSION

The arbitration provision is clear, and so is federal, California, and South Carolina law: this case cannot proceed in this Court because Plaintiff assented to the arbitration provision and Plaintiff's claims fall squarely within its scope. This Court should issue an order compelling Plaintiff to arbitrate her claims pursuant to Airbnb's Terms of Service, and stay or dismiss the

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litigation pursuant to section 3 of the FAA.

DATED this 29th day of January, 2020.

BUTLER WEIHMULLER KATZ CRAIG LLP

By /s/ L. Andrew Watson

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion to Compel Arbitration has been served by enclosing the same in a postage pre-paid envelope and depositing the same in the U.S. Mail this 29th day of January, 2020 to the following:

Scott P. Shaw, Esquire, Pro Se Plaintiff
5 20th Avenue
Isle of Palms, South Carolina 29451
SShaw@calljensen.com

_/s/ L. Andrew Watson_____
L. Andrew Watson

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EXHIBIT C

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STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT
CASE NO.: 2021-CP-02-00889

JULIANNE FOSTER,

Plaintiff,

v.

RHETT RIVIERE, KATHERINE A. THOMAS, CHASE ENTERPRISES, LLC OF SOUTH CAROLINA, and AIRBNB, INC.,

Defendants.

AIRBNB, INC.'S RESPONSE TO THE JUNE 6, 2022 ORDER GRANTING PLAINTIFF'S MOTION TO COMPEL

COMES NOW the Defendant Airbnb, Inc., pursuant to the South Carolina Rules of Civil Procedure and applicable law, and responds to the June 6, 2022 Order Granting Plaintiff's Motion to Compel:

1. Identify all AirBnb employees involved in any background checks run on Rhett Riviere and/or Katherine Thomas and or Chase Enterprises. Produce all documents srelated to any background checks performed.

RESPONSE: After a reasonable search, Airbnb has identified no background checks performed on Chase Enterprises. Airbnb produced on April 8 the background checks performed on Rhett Riviere and Katherine Thomas through May 2019 that Airbnb located after a reasonable search. At the time those background checks were performed, the process was automated unless certain red flags were returned in the background check, in which case they would be reviewed by an employee. No red flags were returned in the background checks run on Rhett

Riviere or Katherine Thomas, so no Airbnb employees were involved in any background checks performed on them.

Nevertheless, should the topic be within the scope of a deposition under SCRP Rule 30(b)(6), Airbnb can on request identify a corporate representative who is knowledgeable about the background check process in effect at the time background checks were run on Rhett Riviere and Katherine Thomas.

2. Identify all Airbnb employees who have any knowledge of the facts related to Katherine Thomas serving as an Airbnb host. Produce all documents related to Katherine Thomas serving as an AirBnb host, including but not limited to all data requested from her at the time of her application / registration with Airbnb to become a host, and all data submitted by her.

RESPONSE: See Response to No. 1 above for information regarding background checks run on Katherine Thomas. After a reasonable search, Airbnb has identified no employees who have knowledge of facts related to Katherine Thomas serving as an Airbnb host through May 2019. Again, should the topic be within the scope of a deposition under SCRP Rule 30(b)(6), Airbnb can on request identify a corporate representative who is knowledgeable about the background check process in effect at the time background checks were run on Rhett Riviere and Katherine Thomas through May 2019. Airbnb already produced in April user information from Thomas' Airbnb account. Airbnb now produces a copy of the screen that Airbnb used to request information from users on July 17, 2016, as captured by the Wayback Machine. Thomas signed up using the "continue with

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Facebook option," and therefore Airbnb did not request additional information from her through the sign-up screen. Airbnb is also producing the following documents and information that it located after a reasonable search: (i) the information Thomas provided during account registration; (ii) the information Thomas provided in creating and managing her listings; (iii) communications between community support agents at partner organizations (who are not Airbnb employees) and Thomas through May 2019 (there were no communications directly between Airbnb employees and Thomas); and (iv) a list of all of Thomas' reservations through May 2019 and associated payment data. Airbnb does not understand the Court's order to require it to produce any communications Thomas may have had with third parties, the production of which would violate the federal Stored Communications Act.

3. Identify all Airbnb employees who performed any review of the information submitted by Katherine Thomas to serve as an Airbnb host. Produce all documents related to any review of the information submitted by Katherine Thomas to serve as an Airbnb host..

RESPONSE: After a reasonable search, Airbnb has not identified any Airbnb employee who reviewed information submitted by Katherine Thomas to serve as an Airbnb host. Airbnb does not perform a manual review of information for every user who creates an account. Airbnb produced on April 8 the background checks Airbnb ran on Thomas through May 2019 and that it located after a reasonable search, and after a further reasonable search has not identified any additional

documents related to any review of the information submitted by Thomas to be an Airbnb host. Nevertheless, should the topic be within the scope of a deposition under SCRP Rule 30(b)(6), Airbnb can on request identify a corporate representative who is knowledgeable about the background check process in effect at the time background checks were run on Rhett Riviere and Katherine Thomas through May 2019.

4. Identify all AirBnb employees that were responsible for guest safety during the time period of April 2019 through the present.

RESPONSE: As set forth in Airbnb's terms of service, "Airbnb has no control over and does not guarantee . . . [the] safety, suitability, or legality of any Listings or Host Services [or] . . . the performance or conduct of any Member," including hosts. (AIRBNB-000003.) There are thus no employees "responsible" for "guest safety." Nonetheless, Airbnb conducts background checks for hosts and guests in the United States to help promote guest safety. As noted above, no Airbnb employees were involved in any background checks performed on Foster or Riviere. Should the topic be within the scope of a deposition under SCRP Rule 30(b)(6), Airbnb can on request identify a corporate representative who is knowledgeable about the background check process in effect at the time background checks were run on Rhett Riviere and Katherine Thomas through May 2019.

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5. Identify all Airbnb employees who have any knowledge of the facts related to Michelle Jain being an AirBnb guest. Produce all documents related to Michelle Jain being an Airbnb guest.

RESPONSE: After a reasonable search, Airbnb has identified no employees who, as of May 2019, had knowledge of facts related to Michelle Jain being an Airbnb guest. Along with this response, Airbnb is producing (i) the information Michelle Jain provided at sign-up; and (ii) information related to Jain's reservation with Thomas and associated payment data. Airbnb does not have any records of any communications between Airbnb and Jain. Airbnb does not understand this request to require it to produce any communications Jain may have had with third parties, the production of which would violate the federal Stored Communications Act.

6. Identify all AirBnb employees who took any actions to determine whether Katherine Thomas and/or Rhett Riviere videotaped AirBnb guests. Produce all documents related to any actions taken to determine whether Katherine Thomas and/or Rhett Riviere videotaped AirBnb guests.

RESPONSE: After a reasonable search, Airbnb has identified no reports it received of any videorecording by Katherine Thomas or Rhett Riviere through May 2019, and so no Airbnb employees could have taken any actions to confirm whether Thomas or Riviere did so through May 2019, nor has Airbnb identified any related documents.

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7. Identify all AirBnb employees who took any actions to determine the actual owners of the properties for which Katherine Thomas served as an Airbnb host. Produce all documents related to any actions taken to determine the actual owners of the properties for which Katherine Thomas served as an Airbnb host.

RESPONSE: After a reasonable search, Airbnb has not identified any actions by any Airbnb employees to determine the owner of the properties that Katherine Thomas listed on Airbnb's web platform through May 2019, nor has it identified any related documents.

8. Produce a privilege log for any documents or information withheld based on a claim of an applicable privilege.

RESPONSE: Airbnb has not withheld any responsive documents, as described above, as privileged.

BUTLER WEIHMULLER KATZ CRAIG LLP

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Affidavit

I, Darien Shepherd, being duly sworn, depose and state: I am a Legal Investigations Supervisor, at Airbnb Inc. I have read Defendant Airbnb's July 6, 2022 Response to the June 6, 2022 Order Granting Plaintiff's Motion to Compel and verify that the information Airbnb, Inc. provided is, based on my knowledge and belief, accurate and complete.

Darien Shepherd
Legal Investigations Supervisor
Airbnb, Inc.

Sworn to before me this
6th day of July 2022

State of Oregon
County of Multnomah

Subscribed and sworn/affirmed to before me this 6 day of July 2022, by Darien Lemar Shepherd

Notary Public

OFFICIAL STAMP
OMAR VALENCIA-ORTIZ
NOTARY PUBLIC - OREGON
COMMISSION NO. 1025481
MY COMMISSION EXPIRES JUNE 14, 2026

ELECTRONICALLY FILED - 2023 Jun 12 2:49 PM - AIKEN - COMMON PLEAS - CASE#2021CP0200889

STATE OF SOUTH CAROLINA COUNTY OF AIKEN	)))	IN THE COURT OF COMMON PLEAS SECOND JUDICIAL CIRCUIT
Julianne Foster, Plaintiff, vs. Rhett Riviere, Katherine A. Thomas, Chase Enterprises, LLC of South Carolina, and Airbnb, Inc. Defendants.	)	Civil Action No. 2021-CP-02-00889 **Airbnb, Inc.'s Reply in Support of its Motion to Compel Arbitration**

Airbnb submits this reply in support of its motion to compel arbitration. As detailed in Airbnb's motion and herein: (1) Plaintiff is bound by the arbitration agreement in the Airbnb's terms of service, (2) arbitrability of her claims should be determined by the arbitrator, and (3) Airbnb has not waived its right to arbitration.

I. Plaintiff is bound by the arbitration agreement.

As an initial matter, Plaintiff points to what Airbnb has done in other, unrelated matters in asserting the applicability of its arbitration agreement to the claims at issue in those cases. This does not have import as whether Airbnb has satisfied ***this*** Court that the standard for compelling arbitration is met in ***this*** case.

Plaintiff also cites a voluntary decision by Airbnb announced in 2021 to not seek to compel arbitration of sexual ***assault*** or sexual ***harassment*** claims. *See* Airbnb, *Supporting and Empowering Survivors*, https://bit.ly/42CvRdx (Aug. 13, 2021). This lawsuit was filed in April 2021, predating this announcement, and thus, this discretionary policy decision would not apply to this case. Moreover, Plaintiff does not state a claim for sexual assault or harassment in any event. Plaintiff has also added a claim for violation of the Unfair Trade Practices Act to her case,

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which involves her assertion of what she claims to be various business practices allegedly violative of that statute. For all of these reasons, Airbnb has taken no action to restrain itself from moving to compel arbitration as to this matter.

Plaintiff's primary argument in response to Airbnb's motion is that she is not bound by the terms of the arbitration agreement in the Terms of Service. However, her friend, Michele Jain, expressly agreed to the Airbnb Terms of Service and Plaintiff was a direct beneficiary of the Airbnb rental transaction governed by the Terms. Therefore, Plaintiff is bound by the Terms, including the arbitration agreement.

First, despite no party disputing that this property was booked through Airbnb by Plaintiff's friend, (*see* Pltf. Resp. at 2 (stating that "Plaintiff's friend, Michelle Jain, booked the Airbnb")), Plaintiff argues that Airbnb attached no evidence supporting that Jain ever agreed to the Terms of Service and has "not produced any records showing an agreement to arbitrate in discovery." (Pltf. Resp. at 8.) However, Airbnb ***has*** produced user information for Jain's account in discovery supporting that she assented to the Terms of Service. (*See* User Information, attached as **Exhibit A**.) Moreover, Airbnb's corporate representative also testified in her deposition that Jain's user data supported that she agreed to the Terms. (*See* Airbnb Dep. Tr. 263:25–264:22, attached as **Exhibit B**.) Plaintiff even used the user information as an exhibit during this examination. Therefore, Airbnb was under the impression that this was not a disputed fact and stated as much in its motion to compel arbitration. Nevertheless, Airbnb has attached the relevant documents supporting that Michele Jain agreed to the operative version of the Terms of Service.[1] Plaintiff is

[1] Plaintiff cites to the submissions of Airbnb in support of its motion to compel arbitration in *Shaw v. Airbnb, Inc.*, No. 2:20-cv-00214-DCN-MGB (D.S.C.) in her discussion of what Airbnb has done in other matters. As noted, what Airbnb did in that case has no bearing on whether arbitration should be compelled in this case. Regardless, the affidavit attached to Airbnb's motion in that matter further contradicts Plaintiff's argument. As it explained, all users are required to agree to

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simply wrong in contending that "there is no evidence Ms. Jain expressly agreed to the TOS." (Pltf. Resp. at 7 n.2.)

Plaintiff then argues that regardless of whether Jain agreed to the Terms of Service, she is not bound by them. Plaintiff concedes that South Carolina law recognizes several situations where a non-signatory can be bound to arbitration agreements, including estoppel. *See Wilson v. Willis*, 426 S.C. 326, 338, 827 S.E.2d 167, 174 (2019). As Airbnb contended in its motion, directs benefit estoppel applies under these facts because Plaintiff directly benefitted from use of the rental property booked pursuant to Airbnb's Terms of Service. Plaintiff contends that this is negated by the fact that she later learned about Riviere's actions during her stay and has brought tort claims. However, the ***only*** relationship between Plaintiff and Airbnb is through the rental transaction booked pursuant to the Terms of Service, and Plaintiff ***relies*** on that relationship to contend that Airbnb owed her a duty. (*See* Am. Compl. ¶ 140 ("Airbnb owed a duty to Plaintiff because Plaintiff has a special relationship with Airbnb, by virtue of their staying at an accommodation rented through Airbnb . . . .").) As a result, direct benefits estoppel should apply.

Hofer v. Emley, No. 19-CV-02205-JSC, 2019 WL 4575389, at *6 (N.D. Cal. Sept. 20, 2019) addressed an analogous situation in finding that direct benefits estoppel applied. *Hofer* involved a passenger in a rental car subjected to a traffic stop who brought civil rights and tort claims arising out of the incident. The rental company contended that the vehicle rental agreement between it and the driver, which contained an arbitration provision, applied to the passenger under

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the Airbnb Terms of Service prior to creating an account and, if the Terms of Service are updated, agree to the new version in order to continue using the platform. *See* Mot. to Compel Arbitration, Ex. A – Affidavit, *Shaw v. Airbnb, Inc.*, No. 2:20-cv-00214-DCN-MGB (D.S.C. Jan. 29, 2020), ECF No. 6-1 (attached hereto as **Exhibit C**). The Court may take judicial notice of this affidavit. *Witthohn v. Fed. Ins. Co.*, 164 F. App'x 395, 396 (4th Cir. 2006) ("A court may consider official public records, documents central to plaintiff's claim, and documents sufficiently referred to in the complaint so long as the authenticity of these documents is not disputed.").

direct benefits estoppel. *Id.* The court agreed with the company's assertion that the arbitration agreement applied because the passenger "received direct and substantial benefits" from the driver's rental through the company's application and the driver's "required consent to the Agreement's terms." *Id.* As the court explained, the complaint suggested that the passenger was an active participant in the rental and "at the very least aware that his brother rented the car." *Id.* He "knowingly received a direct benefit as a result of the Agreement—the ability to travel as a passenger in a rental car," and the benefit conferred was the "exact benefit conferred on the signatory." *Id.* Thus, the nonsignatory "knowingly received benefits flowing directly from the Agreement." *Id.*

The same logic applies here. Plaintiff knew that her friend rented a property for in which to stay for them for an event, and Plaintiff knowingly obtained the exact same direct benefits as the signatory friend, flowing directly from the Agreement.

The *Hodge* case cited by Plaintiff is distinguishable. *See Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, 422 S.C. 544, 556, 813 S.E.2d 292, 299 (Ct. App. 2018). In that case, the decedent and her husband signed an admission agreement with a nursing facility along with a separate, standalone arbitration agreement. After she passed, her son brought claims on behalf of the estate as personal representative and her husband individually. As the court noted, the facility's direct benefits estoppel argument necessitated finding that the two separate agreements merged since the alleged benefits (receipt of medical care and treatment) emanated from the admission agreement, not the standalone arbitration provision. *Id.* at 561, 813 S.E.2d at 301. The estate and husband received no benefit ***from the standalone arbitration agreement***, and thus estoppel did not apply. *Id.* at 563, 813 S.E.2d at 302. The *Hodge* facts are not present here.

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Finally, in the conclusion section of her response brief, Plaintiff requests that if the Court finds any genuine issues of material fact as to whether Plaintiff is bound to arbitrate, it should hold a jury trial on this issue. *See* 9 U.S.C. § 4 (provision of the FAA stating that if "making of the arbitration agreement be in issue," then "the court shall proceed summarily to the trial thereof"). The Court is obligated to conduct a trial on this issue "only 'when a party unequivocally denies 'that an arbitration agreement exists,' and 'show[s] sufficient facts in support thereof,' under a summary judgment standard." *Harris v. Piedmont Fin. CNAC*, No. 5:20-CV-00669-M, 2021 WL 2459797, at *2 (E.D.N.C. June 16, 2021) (quoting *Chorley Enters., Inc. v. Dickey's Barbecue Rests., Inc.*, 807 F.3d 553, 564 (4th Cir. 2015)). Plaintiff has not met this burden for the reasons detailed herein.

Therefore, for the reasons stated in Airbnb's motion and herein, Jain expressly agreed to the Airbnb Terms of Service and Plaintiff is bound by the same pursuant to direct benefits estoppel.

II. The arbitrator should decide the issue of arbitrability.

Having established the threshold question of whether there is an applicable agreement to arbitrate, the issue of arbitrability is properly reserved for the Arbitrator under the Terms of Service.

The Airbnb arbitration agreement provides that "[i]f there is a dispute about whether this Arbitration Agreement can be enforced or applies to our Dispute, you and Airbnb agree that the arbitrator will decide that issue." (Terms of Service at 291, § 19.4.) Therefore, the matter must be compelled to arbitration to resolve the issue of arbitrability. *See Palmetto Wildlife Extractors, LLC v. Ludy*, 435 S.C. 690, 699–700, 869 S.E.2d 859, 864 (Ct. App. 2022) ("As long as the parties' agreement delegates the arbitrability question to an arbitrator 'by clear and unmistakable

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evidence,' a court may not override the contract and decide the arbitrability question." (quoting *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 139 S. Ct. 524, 529–30 (2019))).

Plaintiff's response does not dispute that the Airbnb Terms of Service contain a delegation clause. Instead, she contends that the Terms of Service were amended in 2017 to add the delegation clause and there is no evidence that Jain signed the version with the clause. However, the user information attached as is dispositive on this point since it reflects that Jain accepted the operative terms of service on April 11, 2019. (*See* Exhibit A.)

III. Airbnb did not waive the right to arbitrate.

Contrary to Plaintiff's assertion, Airbnb has not acted inconsistently with its arbitration right such that waiver should result. As Plaintiff acknowledges, Airbnb has consistently noted in its pleadings that it was reserving the right to compel arbitration and it indicated at the outset of the case that it may seek to compel arbitration.[2]

Additionally, Plaintiff cannot avoid the plain fact that she knowingly and voluntarily amended her pleading to add 174 new paragraphs and state five new claims, significantly expanding the scope of this lawsuit as a result. A considerable portion of Plaintiff's amended pleading is devoted to allegations made against Airbnb by strangers to this matter and Plaintiff has telegraphed that she intends to explore and present those matters in this action through her claim for violation of the S.C. Unfair Trade Practices Act. For example, just six paragraphs into her Amended Complaint, Plaintiff adds a new paragraph alleging:

[2] Plaintiff takes issue with Airbnb not listing the applicability of an arbitration agreement as an "affirmative defense," but Airbnb's preservation of the right was clearly delineated in the first paragraph of its Answer. To the extent the Court finds that it was also required to plead it again in the "Affirmative Defenses" section of the Answer, Airbnb respectfully requests leave to amend its answer accordingly. Airbnb does not believe this is required in the Answer to raise the defense. *See* Rule 8, SCRCP.

> ***As a result of numerous instances involving hidden cameras in Airbnb properties that precede this events giving rise to this lawsuit occurring in May 2019***, Airbnb has been on notice for many years that their properties are not safe and have been used by sexual predators to video record people of all ages while nude and also while engaged in sexual acts.

(Plft. Am. Compl. ¶ 6.) Plaintiff's Amended Complaint then proceeds to add new discussion about incidents wholly unrelated to this matter that took place in California, Florida, Maine, and Texas. (*Id.* ¶¶ 7–10, 79–82.) Plaintiff presumably intends to introduce evidence about other matters in support of her claim for violation of SCUTPA, noting "[b]ecause Defendants' unfair and deceptive acts or practices ***have affected and continue to affect other consumers and have the potential of repetition***, Defendants' unlawful trade practices have an adverse impact on the public. (*Id.* ¶¶ 7–10.) As noted in Airbnb's motion to compel arbitration, such amendments provide new points in time to choose to compel arbitration rights.

Finally, Plaintiff ignores the effect of the non-waiver provision, which provides that "Airbnb's failure to enforce any right or provision in these Terms will not constitute a waiver of such right or provision unless acknowledged and agreed to by us in writing." (*See* Terms of Service at 294.) Although she correctly notes that *Liberty Builders* stated that a non-waiver term is not dispositive on the issue of waiver, that case does not stand for the proposition that it has ***no import at all***. *See* 336 S.C. at 665, 521 S.E.2d at 753.

Therefore, Airbnb has not waived its right to enforce the arbitration agreement and, as the case law detailed in Airbnb's motion supports, even if a waiver occurred in response the initial pleading, Plaintiff's decision to greatly expand the scope of her lawsuit revived Airbnb's right.[3]

[3] The *Liberty Builders* case cited by Plaintiff is further distinguishable for two reasons. First, the moving party sought to compel the matter to arbitration when the litigation was "nearly complete," and the court's holding was premised on the prejudice to the non-moving party (which can no longer factor into the analysis under the United States Supreme Court decision in *Morgan v.*

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Conclusion

For the reasons stated above and in Airbnb's motion, the Court should grant Airbnb's motion and compel the parties to arbitrate the entire dispute, including Plaintiff's claims against Airbnb and the crossclaims and counterclaims that Airbnb asserted against Thomas and Riviere, respectively.

If the Court grants this motion, Airbnb also requests the Court to dismiss this action with prejudice, or in the alternative, dismiss this action without prejudice. In the second alternative, Airbnb requests the Court stay this action, including further discovery, pending the completion of the arbitration.

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Sundance). *Liberty Builders, Inc. v. Horton*, 336 S.C. 658, 665, 521 S.E.2d 749, 753 (Ct. App. 1999). Second, although the nonmoving party in *Liberty Builder*s had recently amended its complaint, the moving party did not argue that the amended pleading expanded the scope of the suit such that the right to compel arbitration was revived even if waived initially. *See generally id.* at 666–68, 521 S.E.2d at 754–55.

Exhibit A

User Information

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user_id	first_name	last_ name	country	market	acct_created_at	email	phone	native_currency	tos_version	tos_accepted_at	hometown	employer	about	current_city
255245518	Michele	Jain	US	Other (Domestic)	2019-04-11 22:18:51	Mbjain5@gmail.com	18645510802	USD	10	2019-04-11 22:19:03				Greenville, South Carolina, United States

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id_user	first_name	last_name	email	dim_language	dim_locale	ds_account_created	dim_signup_method	dim_platform	dim_user_agent
255245518	Michele	Jain	Mbjain5@gmail.com	EN	EN	04/11/2019	EMAIL	WEB_DESKTOP	Mozilla/5.0 (Windows NT 10.0; Win64; x64) AppleWebKit/537.36 (KHTML, like Gecko) Chrome/73.0.3683.103 Safari/537.36

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id	first_name	last_name	email	tos_version	tos_accepted_at
255245518	Michele	Jain	Mbjain5@gmail.com	10	2019-04-11 22:19:03.0

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guest_id	listing_id	listing_name	apt	street	city	state	zipcode	country	reso_created_at	confirmation_code	reservation_id	start_date	nights
255245518	31993856	Relax House		115 3rd Avenue Southwest	Aiken	SC	29801	US	2019-04-12 15:41:47	HMANNSHZ8D	1261135241	2019-05-17	3

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number_of_guests	base_price	guest_fee	security_price	extras_price	coupon_savings	coupon_id	canceled_at	cancellation_policy	host_currency	guest_currency
2	495	64	0	0	40	143019233		strict14WithGracePeriod	USD	USD

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ds_event	id_product	dim_product_type	dim_product_sub_type	dim_event_type	dim_status	m_amount_native	dim_native_currency
2019-04-13	1261135241	STAY	Reservation	PAYIN_RESPONSE	SUCCEEDED	339.39	USD
2019-05-02	1261135241	STAY	Reservation	PAYIN_RESPONSE	SUCCEEDED	229.77	USD
2019-05-26	12538219	Resolution::Resolution	RESOLUTION_HOST_TO_GUEST	REFUND_RESPONSE	SUCCEEDED	-250.23	USD
2019-05-26	12538219	Resolution::Resolution	RESOLUTION_HOST_TO_GUEST	PAYIN_SETTLEMENT	SUCCEEDED	480.00	USD
2019-05-26	12538219	Resolution::Resolution	RESOLUTION_HOST_TO_GUEST	REFUND_RESPONSE	SUCCEEDED	-229.77	USD

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Exhibit B

Airbnb Deposition Transcript Excerpt

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MS. TAYLOR: Objection.

Q: --- if safety is the number one priority?

MS. TAYLOR: Objection.

A: Again, I don't know that asking a host questions ahead of time would prevent a host, or any user, or any individual who's determined to engage in behavior that would violate the Community Standards or, in this case, a guest's privacy, I don't think asking them whether or not they'll do that ahead of time would prevent them from doing it, since they've already agreed not to do that when they created their user account.

Q: So, that's why they don't do it, 'cause you don't think it would work?

MS. TAYLOR: Obje- ---

Q: Is that right?

MS. TAYLOR: Objection.

A: No, that's not what I said. I said, users have already agreed that they will abide by the Community Standard for, for guest privacy during a reservation when they, when they created their account and for continued use of their account.

Q: I'm gonna show you Exhibit 10.

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(Plaintiff's Exhibit Number 10 was introduced into the record at this time.)

Q: Are these records related to the user information of Michele Jane?

MS. TAYLOR: (Whispering.) Take a moment ...

COURT REPORTER: Ms. Taylor, did you say something?

MS. TAYLOR: Yeah. I said take a moment and take a look at it.

COURT REPORTER: Thank you.

A: Yes. They are records related to user account information for Ms. Jane and the reservation in question.

Q: So, these are recu- -- records that confirm that Ms. Jane rented the property located at 113 Third Avenue in Aiken, South Carolina?

A: One -- 115 or 113?

Q: 113. 115, I'm sorry.

A: Okay.

Q: Is that right?

A: These documents show that Ms. Jane was the booking guest for -- yes, a reservation a 115 Third Avenue.

Q: Uh-huh. That was started on May 17, 2019, is that right?

A: Yes.

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Q: And the final page, where it says guest payments ...
A: Yes.
Q: Do you know what the three entries mean that say resolution, host to guest, refund response, paying settlement? What does that indicate?
A: My understanding is that, Ms. Thomas provided a refund to Ms. Jane and that's what that -- those lines are showing, is the refund amount.
Q: Do you know why a refund was requested?
A: My understanding is that there were, like, cleanliness, cleanliness issues, issues involving the quality of, like, furniture and linens.
Q: But at this time, that it was rented, Ms. Thomas was considered superhost, right?
A: I don't believe so. Sorry, let me just look at this third page really fast. (Reviews documents.)

At this time -- when this reservation was booked, Ms. Thomas did not have the superhost designation.

Q: Okay. And, looking at -- now, at Exhibit 11 -- -

(Plaintiff's Exhibit Number 11 was introduced into

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Exhibit C

Shaw v. Airbnb, Inc., No. 2:20-cv-00214-DCN-MGB
(D.S.C. Jan. 29, 2020), ECF No. 6-1

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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF SOUTH CAROLINA

CHARLESTON DIVISION

CIVIL ACTION NO. 2:20-CV-00214-DCN-MGB

Scott Phillip Shaw,

Plaintiff,

v.

AIRBNB, a Delaware Corporation; and AIRBNB Payments, Inc.,

Defendants.

DECLARATION OF KYLE MILLER IN SUPPORT OF DEFENDANT AIRBNB'S MOTION TO COMPEL ARBITRATION

I, KYLE MILLER, hereby declare as follows:

1. I am over the age of 18 and am not a party to this litigation. I am currently employed by Airbnb Inc. ("Airbnb") as a Product Manager, and I maintain an office at 888 Brannan Street, San Francisco, California 94103. As an Airbnb Product Manager, I work with, and am familiar with, the computer code that generates the Platform and website pages maintained by Airbnb including, but not limited to, the parts of the code that display Airbnb's account sign-up screens and the subsequent events that require user assent or consent ("Consent Events") on both computer and mobile devices (the "Code"). I am also familiar with the

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manner in which Airbnb maintains its records of user assent and account creation in the ordinary course of its business, as well as the manner in which Airbnb regularly maintains records pertaining to bookings made through the Airbnb online platform. I have personal knowledge of the facts set forth below except those facts set forth upon information and belief. As to those facts, I believe them to be true. If called as a witness, I could and would testify competently to the facts herein. I am authorized to provide this Declaration on Airbnb's behalf, and I submit this Declaration in support of Airbnb's Motion to Compel Arbitration and Stay Proceeding.

The Airbnb Platform

2. Airbnb provides an online platform that connects third-parties who wish to offer their unique accommodations (called "Hosts") with third-party travelers seeking to book accommodations (called "Guests"). The platform is accessible online at http://www.airbnb.com and via mobile applications. As the Terms of Service explain, Hosts are responsible for listing their accommodations on the platform, and they alone decide whether, to whom, when, and on what material terms they will offer or book their accommodations. Agreements for bookings are between Hosts and Guests directly, and Airbnb is not a party to the booking transactions or any agreements between Hosts and Guests. Airbnb does not own or control the accommodations that Hosts list on the platform, and Airbnb does not operate, manage or otherwise have any interest in, or grant any interest in, properties that Hosts list on the platform.

3. Airbnb operates a global platform and has users in all fifty states. Users can access the Airbnb platform through the internet from anywhere in the United States. Guests can make reservations with Hosts offering accommodations in all fifty states. For example, a Host in Arlington, Virginia, can decide to offer an accommodation for booking on the Airbnb platform to a Guest visiting from Kansas City, Missouri.

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4. I am familiar with Airbnb's policies and procedures for the maintenance of its Code, which determines the user interface presentation and the behavior of the Airbnb Platform. The Code is primarily written in a combination of HTML, CSS, JavaScript and Ruby on Rails, each of which are programming languages with which I am familiar. The Code controls the format of the screens presented to users when they assent to Airbnb's Terms of Service. The Code also causes the dates and times of users' initial assent to each version of the Terms of Service to be recorded automatically in Airbnb's database in the ordinary course of business at or near the time of the assent. I have personally reviewed archived and live portions of the Code relating to the sign-up screens and Consent Events Airbnb uses, as discussed below. I have also reviewed Airbnb's business records pertaining to the account associated with the user name Scott Shaw associated with the email addresses sshaw@calljensen.com and scottshaw2_2@hotmail.com ("Mr. Shaw"). I have confirmed that Mr. Shaw consented to multiple versions of Airbnb's Terms of Service.

Consent to the Terms of Service

5. At all times relevant to this litigation, Airbnb users, including Mr. Shaw, were required to agree to the then-current Terms of Service (among other agreements) before they could create an Airbnb account, list or book an accommodation via the Airbnb platform, or send messages via the Airbnb platform.

6. Prospective users who sought to transact using the Airbnb platform were first required to proceed through Airbnb's account creation process. At all times relevant to this litigation, when a user signed up for an Airbnb account, that user was required to press a button to affirmatively indicate her agreement to the Airbnb Terms of Service and, depending on the time of sign-up, certain other policies. The Terms of Service and other applicable policies were visibly hyperlinked, and the user was given an opportunity to review the terms before agreeing to create an account. Thus, prospective users were notified about the Terms of Service; had the

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opportunity to review the Terms of Service; and indicated their agreement to be bound by the Terms of Service for as long as they continued using Airbnb's platform, website, and services in the process of signing up for an Airbnb account.

7. Thereafter, when Airbnb updated its Terms of Service, it required its account holders to affirmatively indicate their agreement to the updated Terms of Service as a condition of their continued use of the Airbnb platform, website, and services. In order to inform users of an update before the update became effective, Airbnb sent an email to the email address associated with each of its current account holders to notify them of the impending update and provide them with an opportunity to preview the updated Terms of Service by clicking on a hyperlink in the email. Then, as I have confirmed based on the archived Code, the first time account holders logged in to their Airbnb accounts after the effective date of the updated Terms of Service, they were presented with that updated Terms of Service, either in a scroll-box or via a hyperlink, and were required to affirmatively click an electronic button indicating their agreement to continue to be bound by the updated Terms of Service. The button account holders clicked was accompanied by text indicating that they were accepting the updated Terms of Service and other applicable policies. Users were required to click this button before they were able to continue using Airbnb's services or transact with other users via their Airbnb account. Following a Consent Event, Airbnb does not allow existing users to log in, interact with other users, create a listing, or book a reservation using the Airbnb platform until after they indicate their acceptance of the updated Terms of Service.

8. In addition, Airbnb's current Terms of Service are available by hyperlink on Airbnb's homepage, www.airbnb.com, and directly at www.airbnb.com/terms. The current Terms of Service are publicly available—no Airbnb account is required to access them.

Mr. Shaw Consented to the Terms of Service

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9. I have reviewed Airbnb's business records associated with the account of Mr. Shaw. The business records that I reviewed are all regularly maintained in the ordinary course of Airbnb's business and were made at or near the time of the events, conditions, or occurrences they describe. The business records showing the date that Mr. Shaw created an account and each date upon which she consented to updated versions of the Terms of Service are attached hereto as **Exhibits A and B**, respectively, and incorporated here by this reference. Based on my review of Airbnb's business records associated with this account, and as reflected in **Exhibits A** and **B**, Mr. Shaw created an account on July 12, 2017, and the user consented to the Terms of Service on that date. As further reflected in **Exhibit A**, the user created the account using a desktop browser and thus would have been presented with the account creation flow identical or substantially similar to that described in paragraph 10 below.

10. Attached hereto as **Exhibits C and D,** and incorporated herein by this reference is a true and correct copy of the initial and second sign-up screens identical or substantially similar to that users would have seen when they created an account on July 12, 2017 through a web browser. As **Exhibit C** illustrates, the users were presented with three click button options: "Continue with Facebook", "Continue with Google", and "Sign up with Email." As **Exhibit C** further illustrates, the text immediately below the three click buttons states, "By clicking Sign Up or Continue with, I agree to Airbnb's Terms of Service…" and certain other policies. The phrase "Terms of Service" and the other policies were off-set in blue type and hyperlinked so the user could click to read the full documents. A true and correct copy of the second sign-up screen presented to users on July 12, 2017 after they clicked "Sign up with Email" is attached hereto as **Exhibit D**. As **Exhibit D** illustrates, the TOS was again hyperlinked in blue type in close proximity to the sign-up buttons.

11. Airbnb periodically updates its Terms of Service. When it does, Airbnb requires its account holders to indicate their agreement to the updated Terms of Service before they can continue to use the Airbnb Platform to transact with other users of Airbnb's website and

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services. As explained in paragraph 7 above, every time Airbnb updates the Terms of Service, it sends an email to the email addresses associated with existing account holders accounts to notify them of the change and provide them with information and an opportunity to review the updated terms directly by clicking on the hyperlink provided in the email.

12. A true and correct copy of the version of the Terms of Service that were in effect on July 12, 2017 (Version 7), and which were available to Mr. Shaw through the Terms of Service hyperlink on the initial and final sign-up screens, as shown in Exhibits C - D, is attached hereto as **Exhibit E**, and is incorporated herein by this reference.

13. **Exhibits A and B** confirm that, on July 12, 2017, Mr. Shaw agreed to the Terms of Service by going through a process on a desktop browser identical or substantially similar to that described in paragraph 10 above, that he was presented with the sign-up flow identical or substantially similar to that contained in **Exhibits C through D**, and that he clicked the "Accept" button at the end of the account creation process indicating her acceptance of the Terms of Service attached hereto as **Exhibit E**.

14. As previously indicated, Airbnb records the date(s) upon which each user assents to updated Terms of Service and regularly maintains those records in the ordinary course of its business. **Exhibit B** confirms that in addition to indicating his agreement to Airbnb's Terms of Service on July 12, 2017 when he created his account, Mr. Shaw consented to the Terms of Service two additional times: Version 8 on June 29, 2018, and Version 10 on March 28, 2019. A true and correct copy of Version 10 of the TOS, to which Mr. Shaw initially indicated agreement on March 28, 2019is attached hereto as **Exhibit F**.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 29 th day of January, 2020, at San Francisco, California United States of America.

By 
KYLE MILLER

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June 14, 2023

Via E-Filing and Email
The Honorable J. Cordell Maddox, Jr.
P.O. Box 8002
Anderson, SC 29622
cmaddoxsc@sccourts.org

RE: Foster v. Riviere, et al. (Aiken County, SC)
Case No. 2021-CP-02-00889
Our File No. 057915.01500

Judge Maddox:

Thank you for hearing the parties' arguments yesterday on Airbnb, Inc.'s Motion to Compel Arbitration filed May 15, 2023. As you requested at the hearing, enclosed please find the materials confirming Michele Jain—Plaintiff's friend who booked the Airbnb at issue—consented to the Airbnb Terms and Conditions.

Jain electronically accepted Airbnb's Terms of Service on April 11, 2019 before staying at the property in Aiken.

Attached is the Affidavit of Monique Chauvet (30(b)(6) witness deposed already) as authorized by the Court at the end of the hearing (under Rule 6(d), SCRCP). Her affidavit in turn attaches the exhibits and deposition excerpts referenced below in this letter. Aside from a few deposition excerpts mentioned, all of the exhibits and excerpts referenced were previously filed with the court.

Already filed is the following evidence of that acceptance:

(1) Airbnb's January 21, 2019 Terms of Service (Airbnb-000272–314). Airbnb attached these to its Motion to Compel Arbitration as Exhibit A. Jain accepted these Terms of Service, including:

a. the incorporation provisions on Airbnb-000272–73, 286, and 293),

b. the arbitration clause (¶ 19);

c. the class-action waiver (¶ 19.11); and

d. the non-waiver provision (¶ 27.5),

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(2) Business Records for Jain's Airbnb account confirming that she agreed to the Terms of Service. (*See* Airbnb-000171.) This record was filed as Exhibit A to Airbnb's Reply in Support of its Motion to Compel Arbitration on June 12, 2023.

(3) Deposition testimony from Airbnb's corporate representative on October 26, 2022, authenticating Jain's user data that confirms Jain agreed to the Terms of Service. (Chauvet Dep. Tr. 264:1–12, Oct. 26, 2022.) This deposition excerpt was previously filed as Exhibit B to Airbnb's Reply in Support of its Motion to Compel Arbitration on June 12, 2023.

Furthermore, the record already confirms that no "Member" as that defined term is used in the Terms of Service—including a Guest (like Jain) or a Host (like Rhett Riviere)—could use the Airbnb website or app to book a reservation without first agreeing to the Terms of Service:

> **An individual creates a user account, and in doing so, agrees to the Airbnb's Terms of Service and Community Standards** for how they'll conduct themselves on the platform, regardless of whether they're a host or a guest.
>
> *** * ***
>
> And in order to create a user account, yes, you need to provide some information in putting, you know, a name for the account, e-mail address, **agree to the Terms of Service and Community Standards**.

(*See* Chauvet Dep. Tr. 103:1–5, 123:8–12 (emphasis added); *see also id*. 351:10–13 ("The requirements to use the platform are to agree to the Terms of Service, to have a user account, and to abide by those terms of Community Standards.").) Airbnb's corporate representative explained that "TOS_Consent" "refers to the occasions when a user has agreed to the Terms of Service." (*Id*. 198:23–24.) Indeed, Plaintiff's counsel even said in the 30(b)(6) deposition, "I understand that you make people agree to the Terms of Service, I get that." (*Id*. 228:7–8.)

Plaintiff has long asserted (after all, she has sued Airbnb), that the house she stayed in was "booked with Airbnb" and this argument that there is no proof of Ms. Jain's agreement to the Terms of Service is without merit. (*See*, *e.g.*, Am. Compl. ¶¶ 3, 121, 140, 165, 183, 205, 222, 239–40, 248.)

Incorporation provisions and direct benefits estoppel

As stated at the hearing, below are the incorporation provisions, which provide that various portions of the Airbnb website and application (the "Airbnb Platform") are incorporated into and made a part of the terms of service:

- "We've recently updated our: (1) Terms of Service, (2) Payments Terms of Service, and (3) Privacy Policy (collectively, "Terms"). . . . If you signed up for

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an account on or after January 21, 2019, the updated Terms apply to you." (Terms of Service, Airbnb-000272.)

- "Our Host Guarantee Terms, Japan Host Insurance Terms, Guest Refund Policy, Nondiscrimination Policy **and other Policies applicable to your use of the Airbnb Platform are incorporated by reference** into this Agreement." (*Id*. at 273(emphasis added).)
- "You will not post, upload, publish, submit or transmit any Member Content that: . . . violates Airbnb's Content Policy or any other Airbnb policy." (*Id*. at 279.)
- In connection with your use of the Airbnb Platform, you will not and will not assist or enable others to: breach or circumvent any applicable laws or regulations, agreements with third-parties, third-party rights, or our Terms, Policies or Standards . . ." (*Id*. at 286.)

In her Amended Complaint which Airbnb Answered (reserving therein rights to compel arbitration) and regarding which Airbnb moved to compel arbitration (the motion before this Court), Plaintiff points to and relies on Airbnb website/platform policies, terms, and standards numerous times to support her claims against Airbnb. (*See*, *e.g.*, Am. Compl. ¶¶ 47, 62–63, 66–68, 72, 73, 84–86, 96, 139, 144, 146, 154, 170, 172, 200, 215, 222, 224, and 242.) Further, Plaintiff claims that "Airbnb 'Controls' its Hosts through Its **Standards** and **Policies**" as a heading it her Amended Complaint. (*Id*. at 11 (emphasis added).) As a result, Plaintiff is subject to "direct benefits estoppel" as to her Amended Complaint, as she is relying expressly on portions of the contract at issue (Terms of Service with incorporated other provisions) to support her claims. Plaintiff admits, as she must to press her claim, that she stayed at an Airbnb booked house and she further admits she paid her portion of the rental fee. Plaintiff, even though a nonsignatory, cannot rely on such portions of the contract and not be subject to other portions.

Airbnb thus asks that the Court grant its Motion to Compel Arbitration and dismiss or stay the action.

Respectfully,



C. Mitchell Brown

Enclosure
cc: Via ECF and Email
Counsel of Record

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN	)	
Julianne Foster, Plaintiff, vs. Rhett Riviere, Katherine A. Thomas, Chase Enterprises, LLC of South Carolina, and Airbnb, Inc. Defendants.	)	Civil Action No. 2021-CP-02-00889 **Affidavit of Monique Chauvet**

I Monique Chauvet, depose and testify under oath:

1. I am currently employed by Airbnb, Inc. as a Legal Investigations Coordinator. I am familiar with the manner in which Airbnb maintains its records of user assent and account creation in the ordinary course of its business, as well as the manner in which Airbnb regularly maintains records pertaining to bookings made through the Airbnb online platform. I have personal knowledge of the facts set forth below. If called as a witness, I could and would testify to the facts herein. I am authorized to provide this Declaration on Airbnb's behalf.

2. Attached hereto as **Exhibit A** is a true and correct copy of the Airbnb user account information for Michele Jain, produced in this litigation with the bates label AIRBNB_000169 to AIRBNB-000174. The user account information shows (at AIRBNB_000169 and 000171) that Ms. Jain accepted Airbnb's Terms of Service (or "TOS"):

first_name	last_name	country	market	acct_created_at	email	phone	native_currency	tos_version	tos_accepted_at
Michele	Jain	US	Other (Domestic)	2019-04-11 22:18:51	Mbjain5@gmail.com	18645510802	USD	10	2019-04-11 22:19:03

TOS_Consent

id	first_name	last_name	email	tos_version	tos_accepted_at
255245518	Michele	Jain	Mbjain5@gmail.com	10	2019-04-11 22:19:03.0

3. During my October 26, 2022, deposition in this matter in which I sat as Airbnb's corporate representative, I testified that "TOS_Consent refers to the occasions when a user has agreed to the Terms of Service." (*See* Chauvet Dep. Tr. at 198:22-24, attached hereto as **Exhibit B**). For Ms. Jain, the "TOS_Consent" in her user account information indicates that she agreed to and accepted Airbnb's Terms of Service on April 11, 2019, approximately one month before the reservation at issue in this litigation began on May 17, 2019.

4. At my October 26, 2022, deposition, I repeatedly testified that users were **required** to agree to Airbnb's Terms of Service in order to use the Airbnb platform (for example, to make a booking as a guest):

> **An individual creates a user account, and in doing so, agrees to the Airbnb's Terms of Service** and Community Standards for how they'll conduct themselves on the platform, regardless of whether they're a host or a guest.
>
> * * * *
>
> **[I]n order to create a user account**, yes, **you need to** provide some information in putting, you know, a name for the account, e-mail address, **agree to the Terms of Service** and Community Standards
>
> * * * *
>
> **The requirements to use the platform are to agree to the Terms of Service**, to have a user account, and to abide by those terms of Community Standards.

(*See* **Exhibit B**, Chauvet Dep. Tr. 103:1-5; 123:8-12; 351:10-13 (emphases added)). Further, during the deposition, Plaintiff's counsel acknowledged that Airbnb requires all users to agree to

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the Terms of Service: "Q: I understand that you make people agree to the Terms of Service, I get that." (*See id.* at 228:7-8).

5. Airbnb produced in this litigation its Terms of Service at documents bates labeled AIRBNB-000001-000065, and AIRBNB-000272-000314. Airbnb also previously filed as Exhibit 1 to Airbnb's May 15, 2023, Motion to Compel Arbitration, its applicable Terms of Service. All these versions of the Terms Service include a mandatory arbitration agreement provision.

6. In addition to being previously produced, Plaintiff's counsel introduced Michele Jain's user account information (AIRBNB_000169 to AIRBNB-000174) as Exhibit 10 during my October 26, 2022, deposition. At that deposition, I testified that these are Airbnb's "records related to user account information for Ms. Jane [sic] and the reservation in question." (*See* **Exhibit B**, Chauvet Dep. Tr. at 264:1-12.) Ms. Jain's user information was also previously filed as Exhibit A to Airbnb's Reply in Support of its Motion to Compel Arbitration on June 12, 2023, and excerpts of my deposition testimony confirming that this was Ms. Jain's user account information were filed as Exhibit B to that Reply.

Further affiant saying not.

June 13, 2023

Signature

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NOTARY PUBLIC
COMMISSION EXPIRES AUGUST 03, 202
MY COMMISSION NO.

State of Oregon Notarial Certificate (ORS Ch. 194.280, 194.285)

VERIFICATION ON OATH OR AFFIRMATION

STATE OF OREGON

COUNTY OF MULTNOMAH

Signed and sworn to (or attested) before me on June 13 (Date), 2023,

by Monique Chauvet (Name(s) of individual(s) making statement).

Notary Signature — 06/13/2023 Date

NOTARY PUBLIC, STATE OF OREGON

OFFICIAL STAMP
LIAM FASHAHO SEED
NOTARY PUBLIC - OREGON
COMMISSION NO. 1015361
MY COMMISSION EXPIRES AUGUST 03, 2025

Official Stamp
OFFICIAL STAMP
LIAM FASHAHO SEED
NOTARY PUBLIC - OREGON
1015361

Document Description

This certificate is attached to page 3 of a Affidavit of Monique Chauvet (Title or Type of Document),

dated June 13, 2023, consisting of 3 pages.

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Exhibit A

Produced Michele
Jain User
Information

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user_id	first_name	last_ name	country	market	acct_created_at	email	phone	native_currency	tos_version	tos_accepted_at	hometown	employer	about	current_city
255245518	Michele	Jain	US	Other (Domestic)	2019-04-11 22:18:51	Mbjain5@gmail.com	18645510802	USD	10	2019-04-11 22:19:03				Greenville, South Carolina, United States

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id_user	first_name	last_name	email	dim_language	dim_locale	ds_account_created	dim_signup_method	dim_platform	dim_user_agent
255245518	Michele	Jain	Mbjain5@gmail.com	EN	EN	04/11/2019	EMAIL	WEB_DESKTOP	Mozilla/5.0 (Windows NT 10.0; Win64; x64) AppleWebKit/537.36 (KHTML, like Gecko) Chrome/73.0.3683.103 Safari/537.36

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id	first_name	last_name	email	tos_version	tos_accepted_at
255245518	Michele	Jain	Mbjain5@gmail.com	10	2019-04-11 22:19:03.0

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guest_id	listing_id	listing_name	apt	street	city	state	zipcode	country	reso_created_at	confirmation_code	reservation_id	start_date	nights
255245518	31993856	Relax House		115 3rd Avenue Southwest	Aiken	SC	29801	US	2019-04-12 15:41:47	HMANNSHZ8D	1261135241	2019-05-17	3

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number_of_guests	base_price	guest_fee	security_price	extras_price	coupon_savings	coupon_id	canceled_at	cancellation_policy	host_currency	guest_currency
2	495	64	0	0	40	143019233		strict14WithGracePeriod	USD	USD

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ds_event	id_product	dim_product_type	dim_product_sub_type	dim_event_type	dim_status	m_amount_native	dim_native_currency
2019-04-13	1261135241	STAY	Reservation	PAYIN_RESPONSE	SUCCEEDED	339.39	USD
2019-05-02	1261135241	STAY	Reservation	PAYIN_RESPONSE	SUCCEEDED	229.77	USD
2019-05-26	12538219	Resolution::Resolution	RESOLUTION_HOST_TO_GUEST	REFUND_RESPONSE	SUCCEEDED	-250.23	USD
2019-05-26	12538219	Resolution::Resolution	RESOLUTION_HOST_TO_GUEST	PAYIN_SETTLEMENT	SUCCEEDED	480.00	USD
2019-05-26	12538219	Resolution::Resolution	RESOLUTION_HOST_TO_GUEST	REFUND_RESPONSE	SUCCEEDED	-229.77	USD

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Exhibit B

Airbnb Deposition Transcript Excerpt

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STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
COUNTY OF AIKEN) C/A #: 2021-CP-02-00889

Julianne Foster,

Plaintiff,

vs.

Rhett Riviere, Katherine A. Thomas, Chase Enterprises, LLC of South Carolina, and Airbnb, Incorporated.

Defendants.

30(b)(6) DEPOSITION OF

AIRBNB, INCORPORATED

MONIQUE CHAUVET

****

Wednesday, October 26, 2022
9:10 a.m. - 7:20 p.m.

The Rule 30(b)(6) deposition of Airbnb, Incorporated Representative MONIQUE CHAUVET, taken on behalf of the Plaintiff at the Aiken County Chamber of Commerce, 121 Richland Avenue East, Aiken, South Carolina, on the 26th day of October, 2022, before Jamie Leigh Barrs, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition and/or agreement of counsel.

enforceable conviction history, those are reviewed by individuals to determine whether or not an eli- -- individual is eligible to use the platform.

Q: Have you ever been a party to any of those discussions?

A: That was not part of my role on the team, so I wasn't part of those discussions. But I did work with people who were involved in those discussions.

Q: How many people apply on a regular basis on an ann- -- a daily basis to be an Airbnb host?

MS. TAYLOR: Objection, scope.

A: There, there isn't exactly a host application process. A user can create it -- a person can create a user account, and in doing so, agree to Airbnb's terms and Community Standards, something that they might chose -- choose to do, is to list a property to potentially accept reservations. But there isn't a unique account creation process just for hosts.

Q: So to be a host, all you have to do is create an account, there's no application process, is that what you're saying?

MS. TAYLOR: Objection.

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A: An individual creates a user account, and in doing so, agrees to the Airbnb's Terms of Service and Community Standards for how they'll conduct themselves on the platform, regardless of whether they're a host or a guest.

Q: So, what information do I have to provide to create a user account with Airbnb? And let's just put the time frame in 2019. What did I have to provide as a ho- -- if I wanted to be a host, to list a property?

MS. TAYLOR: Objection.

A: To -- so, to create an account, there were a few different options in terms of, like, way infor- -- the way that you would provide information. But users needed a username, an e-mail address to create an account and then, in order to create a listing, you'd obviously have to provide details about that listing, and you might be prompted to provide additional information about your identity.

Q: You might be prompted?

A: Correct.

Q: Is that right?

A: Correct.

Q: So, when is it you prompt someone to give you

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Q: Okay. And so, do you know, on average, how many people sign up to be hosts for Airbnb each year?

A: I don't know that I know that information. I know that there's, there's -- again, there's like a lar- -- a large number of users who create listings on the platform.

Q: And so, is it your testimony, that each person who signs up to be an Airbnb host is treated individually, and that they're case is reviewed individually to determine whether or not they're a suitable host?

MS. TAYLOR: Objection.

A: To clarify. I was trying to say that each user account is, is unique and that it has unique attributes and different, different, you know, behaviors and patterns of logging in. And there are different products that might make different decisions about, you know, whether an account appears to potentially be authorized by an un- -- unauthorized individ- -- or excuse me, accessed by an unauthorized individual, or other instances when more information will be provided. It just depends on the user account, the activity. That's pretty situation

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specific.

Q: Uh-huh. But, generally speaking, all I need to get is a username, an e-mail address, agree to the Terms of Service, and if I want to list a property, give a description of the property, is that right?

MS. TAYLOR: Objection.

A: And in order to create a user account, yes, you need to provide some information in putting, you know, a name for the account, e-mail address, agree to the Terms of Service and Community Standards. In order to list a property, you'll -- once you've created a user account, you, you may be able to list a property, additional information might be provided at any point in that process.

MS. TAYLOR: It's noon. Is this is a good time for -- I don't know if lunch or a quick break? We've been going for a little bit.

MS. BARBIER: Well, we have, but we haven't gotten very far.

MR. ROTHSTEIN: And we had some technical issues with your team logging in remotely.

MR. BEASLEY: Umm ...

MS. BARBIER: I think we'll go about another 30

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whether the description of the property is accurate, is that correct?

A: Airbnb users, in creating their account, and -- agreed to provide accurate, honest information, including if they decided to create a listing. So, in order to create a listing they would've already agreed to those terms.

Q: I'm not asking you whether the person's agreed to the terms, okay. What I'm asking you is, does Airbnb do anything to verify the description of the property as being accurate?

MS. TAYLOR: Objection.

A: Airbnb doesn't proactively review the content to determine if it's consistent. But again, if a user contacts Airbnb to report that it's not accurate, then Airbnb would certainly review it to determine whether there was any enforce- -- any, any inconsistencies that were enforced -- enforceable under the policies.

Q: Okay. I want you to look at Airbnb 267.

A: 267, okay.

Q: What does TOS consent mean?

A: TOS consent refers to the occasions when a user has agreed to the Terms of Service.

Q: And so, these are the instances when she signed

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up and agreed to Terms of Service, is that right?

A: These describe -- yes. So the incident that -- the occasions when Ms. Thomas agreed to the Terms of Service, starting at the account creation date, and then agreeing to subsequent updated versions of the Terms of Service.

Q: All right. And you indicated earlier that the account was terminated in 2019, is that right?

A: No, in 2021.

Q: Okay. You understand the videotaping took place in 2019, right?

A: I understand that that's -- that the stay in question occurred in 2019, yes.

Q: Right. And so, for a year and a half after that, you all continued to allow Ms. Thomas to be a host?

MS. TAYLOR: Objection.

A: When Airbnb -- Airbnb can only carry out enforcement if Airbnb knows there's been a violation. My understanding, is that when Airbnb learned there had been a violation, enforcement was carried out. But I also understand that Ms. Thomas had deactivated her listings and was no longer hosting on the

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A: Airbnb requires users to agree that they are authorized to list the property and that they're complying with any laws or regulations before they could either create a user account to list a property, or -- and to continue using the platform.

Q: I understand that you make people agree to the Terms of Service, I get that. My question to you is, did Airbnb do anything to determine the actual ownership of these properties?

MS. TAYLOR: Objection.

A: I don't believe so.

Q: Okay. Let's look at Exhibit 9. I'm gonna skip Exhibit 8 because it's actually a duplicate of Exhibit 1 or 2.

A: Okay.

Q: So, let's look at Exhibit 9.

(Plaintiff's Exhibit Number 9 was introduced into the record.)

A: All right.

Q: Is this a printout of Ms. Thomas's -- when her account was created?

A: (Whispering) Exhibit 9.

MS. TAYLOR: Take your time to review the document.

A: This -- I don't know if this is -- it doesn't

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MS. TAYLOR: Objection.

Q: --- if safety is the number one priority?

MS. TAYLOR: Objection.

A: Again, I don't know that asking a host questions ahead of time would prevent a host, or any user, or any individual who's determined to engage in behavior that would violate the Community Standards or, in this case, a guest's privacy, I don't think asking them whether or not they'll do that ahead of time would prevent them from doing it, since they've already agreed not to do that when they created their user account.

Q: So, that's why they don't do it, 'cause you don't think it would work?

MS. TAYLOR: Obje- ---

Q: Is that right?

MS. TAYLOR: Objection.

A: No, that's not what I said. I said, users have already agreed that they will abide by the Community Standard for, for guest privacy during a reservation when they, when they created their account and for continued use of their account.

Q: I'm gonna show you Exhibit 10.

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(Plaintiff's Exhibit Number 10 was introduced into the record at this time.)

Q: Are these records related to the user information of Michele Jane?

MS. TAYLOR: (Whispering.) Take a moment ...

COURT REPORTER: Ms. Taylor, did you say something?

MS. TAYLOR: Yeah. I said take a moment and take a look at it.

COURT REPORTER: Thank you.

A: Yes. They are records related to user account information for Ms. Jane and the reservation in question.

Q: So, these are recu- -- records that confirm that Ms. Jane rented the property located at 113 Third Avenue in Aiken, South Carolina?

A: One -- 115 or 113?

Q: 113. 115, I'm sorry.

A: Okay.

Q: Is that right?

A: These documents show that Ms. Jane was the booking guest for -- yes, a reservation a 115 Third Avenue.

Q: Uh-huh. That was started on May 17, 2019, is that right?

A: Yes.

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MS. TAYLOR: Same objection.

A: This is -- the identity verification process is not, it's just not a requirement to use the platform, however, some users may chose not to, not to engage with other users who have not completed identity verification.

Q: I'll ask you one more time. Why is it not a requirement to use the platform?

MS. TAYLOR: Objection to form and scope.

A: The requirements to use the platform are to agree to the Terms of Service, to have a user account, and to abide by those terms of Community Standards. It's -- completing identity verification is not included in those -- in the terms or the Community Standards.

Q: I understand that. Well, I'm asking you why it's not a requirement? Do ---

MS. TAYLOR: Same ---

Q: --- you know or do you not know?

MS. TAYLOR: Same objection.

A: Again, it -- the requirements are to read the terms. If that's not part of the terms, then it's -- that's why it's not required.

Q: Why isn't it part of the terms?

MS. TAYLOR: Objection.

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June 16, 2023

Via E-Filing and Email
The Honorable J. Cordell Maddox, Jr.
P.O. Box 8002
Anderson, SC 29622
cmaddoxsc@sccourts.org

RE: Foster v. Riviere, et al. (Aiken County, SC)
Case No. 2021-CP-02-00889
Our File No. 057915.01500

Judge Maddox:

Attached is an additional Affidavit of Monique Chauvet, as authorized by the Court at the end of the hearing on June 13, 2023. This affidavit shows all steps that Ms. Jain took to accept Airbnb's Terms of Service (the "Terms") when she signed up for an Airbnb account to book the reservation at issue in this case, including images of the Terms consent screens Ms. Jain saw before agreeing to the Terms.

As Ms. Chauvet's declarations and testimony make clear, Ms. Jain could not have booked the reservation at issue in this case unless she consented to the Terms. These records conclusively demonstrate that Ms. Jain indeed accepted the Terms—including the Terms' arbitration provision, which was flagged for Ms. Jain in bold typeface on the very page of the Terms.

Plaintiff submitted on June 16, 2023, an affidavit from Ms. Jain, averring that she does not recall agreeing to the arbitration provision. However, lack of memory is not grounds for avoiding an arbitration provision contained within a clickwrap agreement. *See, e.g.*, *Liptak v. Accelerated Inventory Mgmt.*, LLC, No. 2:20-CV-967, 2021 WL 650514, at *2 (W.D. Pa. Feb. 19, 2021) ("Although Mr. Liptak has alleged in response to Defendants' Motion to Compel Arbitration that he does not remember reading the clickwrap agreement or assenting to arbitration, courts have generally held that parties are presumed to have read the agreements that they have sign. Mr. Liptak would not have been able to obtain the loan from WebBank if he did not select the 'I Agree' button on the webpage. Mr. Liptak has not placed sufficient information in the record to question the validity of the arbitration clause. Thus, because clickwrap agreements are generally enforced by the courts and because of

the strong federal policy favoring arbitration, the arbitration provision in the clickwrap agreement shall be enforced.").

As Ms. Chauvet's declarations indicate, Ms. Jain agreed to the Terms. Airbnb thus asks the Court to grant its Motion to Compel Arbitration and dismiss or stay the action.

Respectfully,

/s/C. Mitchell Brown

C. Mitchell Brown

Enclosure
cc: Via ECF and Email
Counsel of Record

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STATE OF SOUTH CAROLINA COUNTY OF AIKEN	)	IN THE COURT OF COMMON PLEAS SECOND JUDICIAL CIRCUIT
Julianne Foster, Plaintiff, vs. Rhett Riviere, Katherine A. Thomas, Chase Enterprises, LLC of South Carolina, and Airbnb, Inc. Defendants.	)	Civil Action No. 2021-CP-02-00889 **Declaration of Monique Chauvet**

I, Monique Chauvet, hereby declare as follows:

1. I am currently employed by Airbnb, Inc. ("Airbnb") as a Legal Investigations Coordinator, and I maintain an office at Portland, Oregon. As an Airbnb Legal Investigations Coordinator, I work with, and am familiar with, the platform and website pages maintained by Airbnb including, but not limited to, the pages that display Airbnb's account sign-up screens and the subsequent events that require user assent or consent ("Consent Events") on both computer and mobile devices. I am also familiar with the manner in which Airbnb maintains its records of user assent and account creation in the ordinary course of its business, as well as the manner in which Airbnb regularly maintains records pertaining to bookings made through the Airbnb online platform. I have personal knowledge of the facts set forth below. If called as a witness, I could and would testify to the facts herein. I am authorized to provide this Declaration on Airbnb's behalf.

2. I am familiar with the user interface presentation and the behavior of the Airbnb

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Platform. The dates and times of users' initial assent to each version of the Terms of Service are recorded automatically in Airbnb's database in the ordinary course of business at or near the time of the assent. I have personally reviewed Airbnb's records relating to the sign-up screens and Consent Events Airbnb uses, as discussed below. I have also reviewed Airbnb's business records pertaining to the account associated with the user name Michele Jain ("Ms. Jain") associated with the email address Mbjain5@gmail.com and the unique Airbnb user identification number ("User ID") 255245518. I have confirmed that Ms. Jain consented to Airbnb's Terms of Service.

3. As I explained at my deposition in this matter, at all times relevant to this litigation, Airbnb users, including Ms. Jain, were required to agree to the then-current Terms of Service (among other agreements) before they could create an Airbnb account, list or book an accommodation via the Airbnb platform, or send messages via the Airbnb platform.

4. Prospective users who sought to transact using the Airbnb platform were first required to proceed through Airbnb's account creation process. At all times relevant to this litigation, when a user signed up for an Airbnb account, that user was required to press a button to affirmatively indicate their agreement to the Airbnb Terms of Service and, depending on the time of sign-up, certain other policies including Airbnb Payments' Terms of Service. The Terms of Service and other applicable policies were visibly hyperlinked, and the user was given an opportunity to review the terms before agreeing to create an account. Thus, prospective users were notified about the Terms of Service; had the opportunity to review the Terms of Service; and indicated their agreement to be bound by the Terms of Service for as long as they continued using Airbnb's platform, website, and services in the process of signing up for an Airbnb account.

5. In addition, Airbnb's current Terms of Service are available by hyperlink on Airbnb's homepage, www.airbnb.com, and directly at www.airbnb.com/terms. The current Terms

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of Service are publicly available—no Airbnb account is required to access them.

Ms. Jain Consented to the Terms of Service

6. I have reviewed Airbnb's business records associated with the account of Ms. Jain. The business records that I reviewed are all regularly maintained in the ordinary course of Airbnb's business and were made at or near the time of the events, conditions, or occurrences they describe. The business records showing the date that Ms. Jain created her account and the date upon which she consented to updated versions of the Terms of Service were attached as Exhibit A to my June 13, 2023, declaration submitted in this matter (the "6/13/2023 Decl."), which is incorporated herein by this reference. Based on my review of Airbnb's business records associated with this account, and as reflected in 6/13/2023 Decl. Ex. A, Ms. Jain created an account on April 11, 2019, and consented to the Terms of Service on that date. As further reflected in 6/13/2023 Decl. Ex. A, Ms. Jain created the account using a desktop browser and thus would have been presented with the account creation flow as described in paragraphs 7 through 9 below.

7. Attached hereto as **Exhibit 1**, and incorporated herein by this reference, is a true and correct copy of the initial sign-up screen that users would have seen if they created an account on April 11, 2019, when they created an account through a desktop browser. As **Exhibit 1** illustrates, the users were presented with three click button options: "Continue with Facebook", "Continue with Google", and "Sign up with Email". The word "EMAIL" headed under column "dim_signup_method" in 6/13/2023 Decl Ex. A demonstrates that Ms. Jain used the "Sign up with Email" method, which indicates signing up utilizing an email address.

8. Attached hereto as **Exhibit 2** is a true and correct copy of the second screen users saw when they created an account on April 11, 2019, and clicked "Sign up with Email." As

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illustrated in **Exhibit 2**, users would enter their information, which would be captured by Airbnb's business records when users clicked "Sign up".

9. Attached hereto as **Exhibit 3**, and incorporated herein by this reference, is a true and correct copy of the final sign-up screen that users would have seen if they created an account on April 11, 2019. Regardless of which option the prospective user selected and clicked in the initial sign-up screen available at **Exhibit 1** ("Continue with Facebook"; "Continue with Google"; or "Sign up with Email"), *all users*—including Ms. Jain—who created an account on April 11, 2019 would ultimately have been directed to the final "Before you join" screen shown at **Exhibit 3**. As **Exhibit 3** illustrates, users are required to indicate their acceptance or declination of the Terms of Service, which are provided via a green hyperlink just above the "Accept" button. Users must press the "Accept" button in order to log in, interact with other users, create listings, or book reservations using Airbnb's platform.

10. A true and correct copy of the version of the Terms of Service that were in effect on April 11, 2019 (Version 10), was attached to Airbnb's May 15, 2023, Motion to Compel Arbitration as Exhibit A. The very **first** page of the Terms of Service informed Ms. Jain, in **bold typeface**, that the Terms of Service contain an arbitration clause, and that by accepting the Terms of Service, she was "**agree[ing] to be bound by this arbitration clause and class action waiver. Please read it carefully.**"

11. Exhibit A to the 6/13/2023 Decl. confirms that, on April 11, 2019, Ms. Jain agreed to the Terms of Service by going through a process on a desktop browser as described in paragraphs 7 through 9 above, that she was presented with the sign-up flow identical or substantially similar to that contained in **Exhibits 1 through 3**, and that she clicked the "Accept" button at the end of the account creation process indicating her acceptance of the Terms of Service.

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I declare under penalty of perjury under the laws of the State of South Carolina that the foregoing is true and correct. Executed this 16th day of June, 2023, at Portland, Oregon, United States of America.

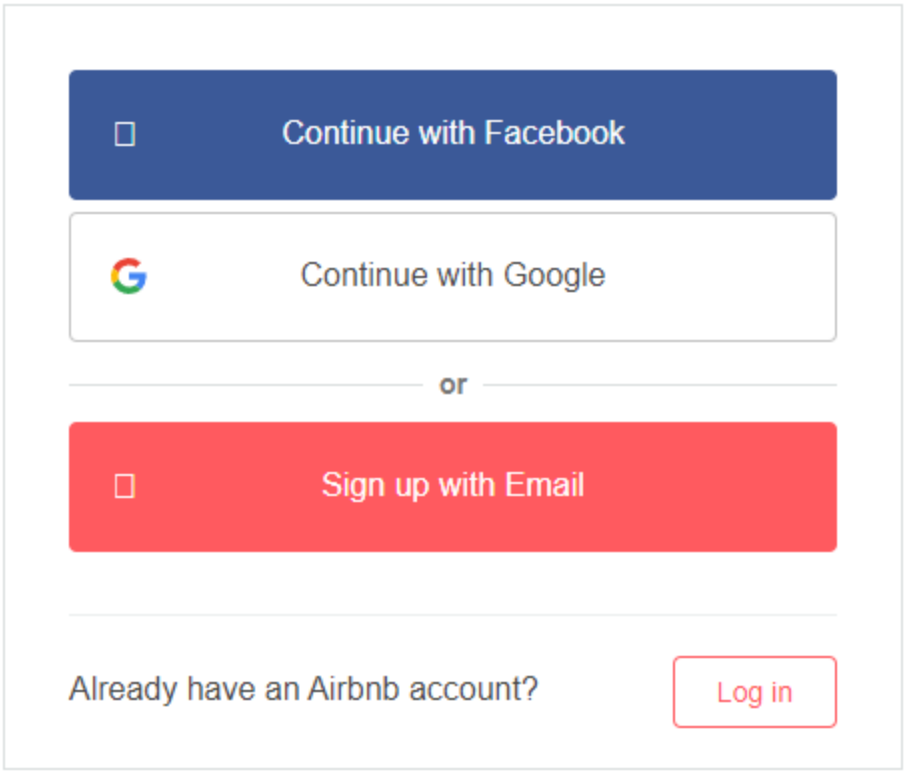
By _____
Monique Chauvet

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Exhibit 1

(Initial Sign-up Screen)



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Exhibit 2

(Second Screen)

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Sign up with Facebook or Google

or

Email address

First name

Last name

Create a Password

Birthday

To sign up, you must be 18 or older. Other people won't see your birthday.

Month | Day | Year

We'll send you marketing promotions, special offers, inspiration, and policy updates via email.

Sign up

I don't want to receive marketing messages from Airbnb. I can also opt out of receiving these at any time in my account settings or via the link in the message.

Already have an Airbnb account? Log in

Exhibit 3

(Final Screen)

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Before you join

Our mission is to build a trusted community where anyone can belong anywhere. To ensure this, we're asking you to accept our terms of service and make a commitment to respect everyone on Airbnb.

Airbnb Community Commitment

I agree to treat everyone in the Airbnb community—regardless of their race, religion, national origin, ethnicity, skin color, disability, sex, gender identity, sexual orientation or age—with respect, and without judgment or bias. Learn more

Airbnb Terms of Service

I also accept Airbnb's Terms of Service, Payments Terms of Service, Privacy Policy, and Nondiscrimination Policy.

Accept Decline

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June 16, 2023

Via E-Filing and Email:
The Honorable J. Cordell Maddox, Jr.
P.O. Box 8002
Anderson, South Carolina 29622
cmaddoxsc@sccourts.org

RE: *Foster v. Riviere, et. al.*
Case No. 2021-CP-02-00889

Your Honor,

Thank you for the opportunity to clarify and supplement the Plaintiff's positions regarding our opposition to Defendants Rhett Riviere and Airbnb's Motions to Compel Arbitration on the issues that were discussed at the conclusion of the virtual hearing in the above-referenced case on June 13, 2023. As we have stated, this case presents a serious public safety issue and it is very important to our client - as the victim of a sexual offense – to have her fundamental right to access to the Court. She seeks to hold the Defendants accountable in the hopes of preventing this from happening to other people.

The following issues will be addressed:

1. The threshold issue is whether or not there is an enforceable contract to arbitrate with Airbnb Guest Michele Jain. If your honor determines that there is no such contract, it is the end of the Court's inquiry and the motions to compel arbitration must be denied. If an enforceable arbitration agreement is recognized, the Court must then turn to the following issues:

2. Whether Airbnb can compel, Plaintiff, a non-signatory to arbitrate under South Carolina law by applying estoppel? and

3. Whether Airbnb has waived its right to arbitrate under the facts of this case?

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Plaintiff prevailing on any one of these three issues necessarily results in a denial of the Motions to Compel Arbitration, and/or a strike of the Motions to Compel Arbitration as deficient. Because each of these three issues must be decided in favor of the Plaintiff's positions, the motions must be denied.

1. **Airbnb Has Not Presented An Enforceable Arbitration Agreement with Michele Jain.**

In its June 14, 2023 letter, Airbnb states that Michele Jain "electronically accepted" Airbnb's Terms of Service ("TOS"), which it attempts to establish by providing a computer printed chart that it created which simply has a date in a column entitled "tos_accepted_at." Airbnb does not present any evidence of how Ms. Jain was presented with an arbitration agreement and, more importantly, how she allegedly consented to it. Airbnb does not present an electronically signed contract or any document that Michelle Jain signed wherein she allegedly agreed to arbitration.

In her sworn Affidavit (*See* **Exhibit A** – Affidavit of Michelle Jain), Ms. Jain has indicated that: 1. She did not physically sign or electronically sign an agreement to arbitrate with Airbnb; 2. She does not have any recollection of being presented with Airbnb's Terms of Service; 3. She does not have any recollection of "clicking" to agree to Airbnb's Terms of Service; 4. She did not receive any documentation from Airbnb memorializing that she agreed to their Terms of Service; 5. She is not aware of ever agreeing to any arbitration agreement with Airbnb; 5. She did not discuss with any of her friends in her tennis group, including Julianne Foster, that their stay at the Airbnb was subject to an arbitration agreement or any Terms of Service; and 6. She did not have the authority to bind Julianne Foster to an arbitration agreement at that time or presently. *See* **Exhibit A** – Affidavit of Michelle Jain.

While new commerce on the Internet has exposed courts to many new situations, it has not fundamentally changed the principles of contract." *Register.com, Inc. v. Verio, Inc.*, 356 F.3d 393, 403 (2d Cir. 2004). "Arbitration is available only when the parties involved contractually agree to arbitrate." *Towles v. United HealthCare Corp.*, 338 S.C. 29, 37, 524 S.E.2d 839, 843-44 (Ct. App. 1999). Courts should not assume parties have agreed to arbitration, and, when an agreement is made electronically, there are specific requirements under the Uniform Electronics Transactions Act ("UETA"), S.C. Code Ann. § 26-6-10, et. seq., which must be met.

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> For example, § 26-6-90 provides:
>
> Showing that electronic record or signature is attributable to a person; effect of electronic record or signature.
>
> (A) An electronic record or electronic signature is attributable to a person if it is the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of a security procedure applied to determine the person to which the electronic record or electronic signature was attributable.
>
> (B) The effect of an electronic record or electronic signature attributed to a person pursuant to subsection (A) **is determined from the context and surrounding circumstances at the time of its creation, execution, or adoption, including the parties' agreement,** if any, and as otherwise provided by law.

S.C. Code Ann. § 26-6-90 (emphasis added). Recently, the Court in *Fair v. Shutterfly*, *LLC*, No. 0:21-cv-1718-JMC-SVH, 2021 WL 11421826,*4 (D.S.C. Aug. 4, 2021), applied § 26-6-90 of the UETA in a case where an employer used a web-based site to allow its new employees to electronically sign their initial employment documents, including an arbitration agreement.[1] The employer put forth extensive evidence of the process the web-based site uses to deliver and obtain the electronic signatures of new employees. 2021 WL 11421826, *2. Thus, the Court determined that the employer had met its initial burden under § 26-6-90. *Id.* at *4. Likewise, in *Hill v. Aarons, Inc.*, No. 7:18-cv-1892-TMC, 2019 WL 13258466, *8 (D.S.C. Jan. 7, 2019), the Court discussed the UETA and what evidence is needed to establish an electronic acceptance. The Court determined that the company presented sufficient evidence that the plaintiff had electronically signed the agreement when it verified the company records showing when the agreement was published to the plaintiff and when he accepted it and established the security measures that ensure the signature was authentic.

Here, however, Airbnb has failed to meet its initial burden that Ms. Jain entered into an agreement to arbitrate under the UETA. Airbnb merely presents an electronic chart purporting to be Ms. Jain's consent to its terms of service which allegedly contained an arbitration provision (from someone who is not the custodian) without any evidence regarding

[1]Furthermore, Airbnb has stated it "does not have any records of any communications between Airbnb and Jain" and that it has already produced complete responses about the "information Michelle Jain provided at sign-up." (Response Opp. Mot. to Compel Arb., Exhibit C – Airbnb's Responses 4-5, 7).

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the actual document, the context and surroundings at the time of its creation, execution, or adoption.

In her June 14, 2023 Affidavit, Ms. Chauvet avers that "the 'TOS_Consent' in [Ms. Jain's] user account information ***indicates*** that she agreed to and accepted Airbnb's Terms of Service," and that *generally* Users are required to agree to Airbnb's TOS. (Chauvet Aff. ¶3, 4) (emphasis added). She then repeatedly cites to her own deposition testimony as to what the TOS states. *Id.* at ¶¶3, 4, 6. Ms. Chauvet says nothing more than Airbnb claims to have records of when Ms. Jain allegedly "consented" to the TOS on April 11, 2019. That is all; this is simply not enough for Airbnb to meet its burden. *See Bazemore v. Jefferson Capital Sys., LLC*, 827 F.3d 1325, 1330 (11th Cir. 2016) (affirming denial of arbitration where corporation's declaration was "woefully inadequate" and there was no evidence about what appeared on plaintiff's computer screen and how declarant could determine she had consented). Airbnb wants the Court to basically just take their word for it that Ms. Jain agreed to arbitration.

Ms. Chauvet does not aver or testify what steps must be taken to accept the TOS or that she was even familiar with the registration process on April 11, 2019. Ms. Chauvet also does not aver or testify that the registering Guest is required to click through a page where they can actually read the TOS or that the document is emailed or otherwise provided to the new Guest. She does not aver or testify that the arbitration clause was conspicuously placed within the TOS as required by South Carolina law. Further, Ms. Chauvet also does not aver or testify that the registering Guest is required to electronically sign the TOS.[2]

Importantly, Airbnb has failed to provide any evidence of the User interface in place *at the time* Ms. Jain reserved the Airbnb rental at issue in this case. The booking for the rental house at issue did not take place on April 11, 2019 – it took place on April 13, 2019. There is no evidence that at the time Ms. Jain made this reservation on April 13, 2019 that she agreed to any Terms of Service or was presented with any arbitration agreement or that she signed anything.

[2] The Affidavit of Ms. Chauvet stands in stark contrast to the Affidavit Airbnb submitted in the case of *Shaw v. Airbnb, Inc*., No. 2:20-cv-00214-DCN-MGB, *4-5 (D.S.C. 2020) which was attached to their Reply brief. In that case Airbnb's declarant set out the manner in which the plaintiff in that case was presented with and agreed to the TOS and arbitration agreement. He also declared that he "is familiar with the computer code that generates the Platform and website pages maintained by Airbnb including, but not limited to, the parts of the code that display Airbnb's account sign-up screens and the subsequent events that require user assent or consent ("Consent Events") on both computer and mobile devices (the "Code")." *Id.* ¶1. Ms. Chauvet does not make those declarations.

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The bottom line is that despite knowing that the formation of an arbitration agreement was disputed and being given numerous opportunities to do so in this case, Airbnb has simply not presented any evidence that Ms. Jain was presented with an arbitration agreement; that she agreed to arbitration; or that she either physically signed or electronically signed an arbitration agreement. Thus, there is no showing of an offer, an acceptance, or of any consideration and the Defendants have not presented this Court with an enforceable arbitration agreement.

2. Airbnb Cannot Compel Plaintiff, a Nonsignatory, to Arbitrate and Estoppel Is Inapplicable Because Plaintiff Is Not Attempting to Enforce Any Contract Provision.

In its June 14, 2023 Letter, Airbnb contends that Plaintiff is subject to direct benefits estoppel. Airbnb implicitly acknowledges that estoppel applies in this case only if Plaintiff is raising a claim under a contract, and thus argues that Plaintiff is relying on portions of its Terms of Service and other incorporated provisions, the Standards and Policies, to support her claims.

First and foremost, "a presumption against arbitration arises where the party resisting arbitration is a nonsignatory to the written agreement to arbitrate." *Wilson v. Willis*, 426 S.C. 326, 337-38, 827 S.E.2d 167, 173 (2019). Airbnb cannot overcome this presumption and force Plaintiff, a nonsignatory, to arbitrate.

Second, there can be no third-party beneficiary unless a valid contract exists, which as discussed above, Airbnb has failed to establish. Moreover, even assuming Ms. Jain agreed to the arbitration agreement, "[a] third-party beneficiary is a party that the contracting parties intend to directly benefit." *Helms Realty, Inc. v. Gibson-Wall Co.*, 363 S.C. 334, 340, 611 S.E.2d 485, 488 (2005). There is nothing to establish that the parties agreed to arbitrate to directly benefit Plaintiff.

Furthermore, Airbnb cannot escape the fact that Plaintiff is simply not attempting to enforce the arbitration agreement or any other contract provisions, which is what estoppel in the context of arbitration is meant to preclude**.** *See Hodge v. UniHealth Post-Acute Care of Bamberg*, LLC, 422 S.C. 544, 563, 813 S.E.2d 292, 302 (Ct. App. 2018) (holding because Respondents are not suing for a breach of the Admission Agreement, they equitable estoppel does not apply).

"[W]hen the substance of the claim arises from general obligations imposed by state law, including statutes, torts and other common law duties, or federal law," direct-benefits estoppel is not implicated even if the claim refers to or relates to the contract or would not

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have arisen 'but for' the contract's existence." *Id.* (citation omitted); *see also Wilson*, 426 S.C. at 343, 827 S.E.2d at 167 ("direct benefits estoppel is not implicated simply because a claim relates to or would not have arisen 'but for' a contract's existence.").

Referring to Airbnb's Standards in her Amended Complaint to support her tort and statutory claims is entirely different than bringing a breach of contract claim.

> In the arbitration context, the [estoppel] doctrine recognizes that a party may be estopped from asserting that the lack of his signature on a written contract precludes enforcement of the contract's arbitration clause when he has consistently maintained that other provisions of the same contract should be enforced to benefit him.

Pearson v. Hilton Head Hosp., 400 S.C. 281, 290, 733 S.E.2d 597, 601 (Ct. App, 2012) (emphasis omitted) (citation omitted)). *See also Thompson*, 416 S.C. at 57, 784 S.E.2d at 687 (holding third-party beneficiary cannot be required to arbitrate unless he is attempting to enforce the contract containing the arbitration agreement) (citation omitted).

The claims Plaintiff has alleged in her Amended Complaint in this case rely on breaches of common law, regulatory, and statutory duties.

Finally, "estoppel is, ultimately, a theory designed to prevent injustice, and it should be used sparingly." *Wilson*, 426 S.C. at 345, 827 S.E.2d at 177 (citation omitted)((noting equitable estoppel "is more properly viewed as a shield to prevent injustice rather than a sword to compel arbitration")). Airbnb is attempting to use estoppel as a sword to compel arbitration and not to prevent any injustice.

Following Airbnb's logic to its conclusion – anyone who creates an account with Airbnb is subject to arbitration for *any* rental thereafter and *anyone* who stays with them in *any* rental is also thereafter bound to arbitration. Therefore, the Airbnb account creator is binding potentially hundreds of people to future arbitration without their knowledge or consent. This novel theory does not even come close to comporting with the stringent requirements of legal consent required to bind someone to arbitration.

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3. Airbnb Has Waived Any Right It May Have Had to Arbitrate in This Case.

A party may waive its contractual right to arbitration if it knew of the right and acted inconsistently with that right. *In re Mercury Const. Corp.*, 656 F.2d 933, 939 (4th Cir. 1981). Airbnb has been actively litigating this matter in court for over two years—answering the Complaint and the Amended Complaint, participating in extensive discovery and mediation, and filing numerous motions with the Court, including two dispositive motions, which the Court denied. Airbnb waived any right it contends it had to arbitrate by acting inconsistently to an arbitration agreement for the past two years.

Finally, Airbnb's claim that the Amended Complaint revived its right to arbitrate is without merit or basis in law. Airbnb has been aware of the proposed Amended Complaint since Plaintiff filed a motion to amend her Complaint on September 2, 2022. The Court granted it on November 30, 2022, and, instead of moving to compel arbitration, Airbnb moved to dismiss the Amended Complaint on January 20, 2023, which the Court denied on April 5, 2022. Airbnb then waited another six weeks to finally file the instant Motion to Compel Arbitration – almost 6 months after the Amended Complaint was filed. The Motion to Compel Arbitration was Airbnb's direct response to it losing a host of discovery disputes –e.g., being ordered to produce hundreds of thousands of documents; being ordered to retake the Rule 30(b)(6) deposition; being ordered to allow the deposition of its Director of Global Operations; and being scolded by the Court for their failure to produce discovery.

Airbnb cannot "reserve" its purported arbitration rights while taking inconsistent actions for almost two years. *In Re Mirant Corp. v. Castex Energy, Inc.*, 613 F.3d 584, 591 (5th Cir. 2010) ("A party cannot keep its right to demand arbitration in reserve indefinitely while it pursues a decision on the merits before the district court."). "A reservation of rights is not an assertion of rights." *See also Hooper v. Advance Am., Cash Advance Ctrs. of Missouri, Inc.*, 589 F.3d 917, 923 (8th Cir. 2009). Further, as the court held in *Liberty Builders,* "the right to arbitrate can be waived even in the face of a no-waiver provision." 336 S.C. at 667, 521 S.E.2d at 754.

Moreover, Plaintiff's Amended Complaint, including the SCUTPA claim, did not alter the scope in such a way as to revive Airbnb's alleged right to arbitration. *See Manasher v. NECC Telecom*, 310 F. App'x 804, 807 (6th Cir. 2009) (holding additional claims contained in amended complaint did not substantially alter the scope or theory of case so as to revive defendant's right to compel arbitration).

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Conclusion

Ms. Foster has suffered greatly as a result of the Defendants' actions and after two years of enduring their abusive litigation tactics, she deserves her day in court in front of a jury of her peers. Indeed, South Carolina courts have declined to enforce arbitration provisions in cases of outrageous acts that are unforeeseable to reasonable consumers. *Wilson v. Willis*, 426 S.C. 326 (2019).

Thank you for your careful consideration of this important matter.

Best regards,

s/ Deborah Barbier
DEBORAH BARBIER

s/ Ryan Beasley
RYAN BEASLEY

s/ Wes Few
WES FEW

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STATE OF SOUTH CAROLINA COUNTY OF AIKEN Julianne Foster, Plaintiff, vs. Rhett Riviere, Katherine A. Thomas, Chase Enterprises, LLC of South Carolina, and AIRBNB Inc., Defendants.	)	IN THE COURT OF COMMON PLEAS 2nd JUDICIAL CIRCUIT Case No: 2021-CP-02-00889 **AFFIDAVIT OF MICHELE JAIN**

Personally appeared before the undersigned Notary Public, Michele Jain, who being duly sworn, does hereby testify as follows:

1. I am a citizen and resident of Greenville County, South Carolina. I make this Affidavit based on personal knowledge and belief.
2. Upon the best recollection, I created an Airbnb account sometime in April of 2019.
3. I did not physically sign or electronically sign an agreement to arbitrate with Airbnb.
4. I do not have any recollection of being presented with Airbnb's Terms of Service.
5. I do not have any recollection of "clicking" to agree to Airbnb's Terms of Service. I did not physically sign or electronically sign Airbnb's Terms of Service.
6. I did not receive any documentation from Airbnb memorializing that I agreed to their Terms of Service.
7. I am not aware of ever agreeing to any arbitration agreement with Airbnb.

8. On or about April 13th, 2019, I rented the Stirrup Cottage on Airbnb for the dates of May 17-19, 2019, in Aiken, South Carolina for the purpose of attending a tennis tournament with my tennis group.
9. I did not discuss with any of my friends in my tennis group, including Julianne Foster, that their stay at the Airbnb was subject to an arbitration agreement or any Terms of Service.
10. In 2019, I did not have the authority to bind Julianne Foster to an arbitration agreement and I do not presently have the authority to bind Julianne Foster to an arbitration agreement.

THE AFFIANT FURTHER SAYETH NAUGHT.

Michele Jain

Sworn to before me this 16 day of June, 2023

Notary Public for the State of South Carolina

My commission expires: 11/10/2031

JONATHAN BRADEN SMITH
NOTARY PUBLIC
MY COMMISSION EXPIRES
NOVEMBER 10, 2031
SOUTH CAROLINA

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STATE OF SOUTH CAROLINA COUNTY OF AIKEN	)))	IN THE COURT OF COMMON PLEAS SECOND JUDICIAL CIRCUIT
Julianne Foster, Plaintiff, vs. Rhett Riviere, Katherine A. Thomas, Chase Enterprises, LLC of South Carolina, and Airbnb, Inc. Defendants.	)	Civil Action No. 2021-CP-02-00889 **Airbnb, Inc.'s Supplemental Memorandum in Support of its Motion to Compel Arbitration**

Airbnb, Inc. submits this supplemental memorandum to address the outrageous torts exception to arbitration, raised for the first time by Plaintiff in submissions after the Court's hearing on Airbnb's Motion to Compel Arbitration, and to address the one aspect of direct benefits estoppel that arose in the oral argument. As detailed below:

(1) This judicially created exception places arbitration on a lesser footing than normal contracts, so the exception is no longer viable in South Carolina after *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011);

(2) In any event, whether the outrageous torts exception applies—and it does not—must be decided by an arbitrator; and

(3) The direct benefits estoppel analysis focuses on the benefit derived by the plaintiff from the contractual relationship during the litigation, not on a benefit obtained or not obtained during the contract's performance.

As a result, the Court should compel arbitration. Alternatively, the Court should exclude the outrageous torts exception and the type of benefit received from its reasoning in denying Airbnb's Motion to Compel Arbitration.

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I. The Outrageous Torts Exception is no longer a viable ground for denying arbitration.

In South Carolina, the outrageous torts exceptions doctrine has permitted "parties whose claims arose out of an opponent's 'outrageous' tortious conduct to avoid arbitration." *Parsons v. John Wieland Homes & Neighborhoods of the Carolinas, Inc.*, 418 S.C. 1, 9, 791 S.E.2d 128, 132 (2016). South Carolina "created" this exception to arbitration in 2007. *Id.* (citing *Aiken v. World Fin. Corp. of South Carolina*, 373 S.C. 144, 151–52, 644 S.E.2d 705, 709 (2007)). In *Aiken*, the Court "pronounce[d] a more definitive rule" that the State's courts "will refuse to interpret any arbitration agreement as applying to outrageous torts that are unforeseeable to a reasonable consumer in the context of normal business dealings." *Aiken*, 373 S.C. at 151, 644 S.E.2d at 709.

Four years after the South Carolina Supreme Court adopted the outrageous torts exception in *Aiken*, the United States Supreme Court analyzed California's unconscionability precedent and held that it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress," under the Federal Arbitration Act ("FAA").[1] *Concepcion*, 563 U.S. at 352. As a result, the Court concluded that the California unconscionability precedent was preempted by the FAA. *Id.*

Like the California precedent specific only to arbitration that was analyzed in *Conception*, the Supreme Court has explained that the outrageous torts exception is "unique, and "restricted" to the field of arbitration. *Parsons*, 418 S.C. at 11, 791 S.E.2d at 133 (Kittredge, J.) (plurality opinion). All cases that have applied the exception since *Aiken* have focused explicitly on arbitration; Airbnb is aware of no case where the exception has even been discussed outside of the

[1] As explained previously, the FAA applies to this dispute instead of the South Carolina Uniform Arbitration Act. *Walden v. Harrelson Nissan, Inc.*, 399 S.C. 205, 208, 731 S.E.2d 324, 325 (Ct. App. 2012). Not only did the parties agree the FAA would apply, but the transaction involved a company and individuals in two different states passing funds electronically over interstate wires.

arbitration context. *See, e.g.*, *MCE Auto., Inc. v. Wetherald*, No. 6:10-cv-00409-JMC, 2010 WL 5257233, at *3 (D.S.C. Dec. 17, 2010); *Timmons v. Starkey*, 389 S.C. 375, 378, 698 S.E.2d 809, 810 (2010); *Partain v. Upstate Auto. Grp.*, 386 S.C. 488, 493–94, 689 S.E.2d 602, 605 (2010); *Osborne v. Marina Inn at Grande Dunes, LLC*, No. 4:08-cv-0490, 2009 WL 3152044, at *8 (D.S.C. Sept. 23, 2009); *Chassereau v. Glob. Sun Pools, Inc.*, 373 S.C. 168, 172, 644 S.E.2d 718, 720 (2007); *Simpson v. World Fin. Corp. of S.C.*, 373 S.C. 178, 179, 644 S.E.2d 723, 724 (2007) (affirming in Rule 220, SCACR opinion relying on *Aiken*); *Hatcher v. Edward D. Jones & Co., L.P.*, 379 S.C. 549, 553, 666 S.E.2d 294, 297 (Ct. App. 2008); *cf. Davis v. ISCO Indus., Inc.*, 434 S.C. 488, 499, 864 S.E.2d 391, 397 (Ct. App. 2021) (declining to rule on the exception by affirming on another ground); *Woods v. Dolgencorp, Inc.*, No. 7:20-CV-04399-DCC, 2021 WL 5989965, at *3 (D.S.C. Dec. 17, 2021) (rejecting application of the exception); *Edens v. Synovus Fin. Corp.*, No. 3:17-cv-0806-MBS, 2017 WL 5001290, at *3 (D.S.C. Nov. 2, 2017) (same); *Doe v. TCSC, LLC*, 430 S.C. 602, 615–16, 846 S.E.2d 874, 881 (Ct. App. 2020) (declining to rule on exception given delegation clause); *Palmetto Wildlife Extractors, LLC v. Ludy*, 435 S.C. 690, 702, 869 S.E.2d 859, 865 (Ct. App. 2022) (same). In fact, the one opinion that tried to apply the exception *outside* of the arbitration context was reversed by our Supreme Court. *Wachovia Bank, Nat. Ass'n v. Blackburn*, 407 S.C. 321, 333–34, 755 S.E.2d 437, 444 (2014) ("[H]owever, we reverse the portion [of the Court of Appeals opinion] finding that the outrageous and unforeseeable torts exception to arbitration applies in the jury trial waiver context, and find instead that Respondents waived their right to a jury trial on all of their counterclaims.").

It is this unique application of the exception only to arbitration agreements that requires the exception to yield to the Federal Arbitration Act's "national policy favoring arbitration and places arbitration agreements on equal footing with all other contracts." *Buckeye Check Cashing,*

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Inc. v. Cardegna, 546 U.S. 440, 443 (2006) (citing 9 U.S.C. § 2). The exception cannot remain viable following the Supreme Court's opinion in *Concepcion*.

II. The arbitrator, and not the Court, must decide whether the exception applies.

Regardless of the viability of the exception in South Carolina after *Concepcion* and *Parsons*, the delegation clause of the arbitration agreement confirms that an arbitrator must decide whether the exception exists and should be applied. *Doe v. TCSC, LLC*, 430 S.C. 602, 615–16, 846 S.E.2d 874, 881 (Ct. App. 2020) ("We express no opinion on whether the 2011 arbitration contract covers Doe's claims, or, if so, whether the claims are still subject to arbitration due to the "outrageous and unforeseen torts" exception. The dissent argues this exception does apply, but whether the exception applies is a question the parties delegated to the arbitrator, not the court.") (citation omitted). Just last year in *Palmetto Wildlife Extractors, LLC v. Ludy*, our Court of Appeals confirmed that the question of the outrageous torts exception and foreseeability is one for the arbitrator:

> In the present case, the [Arbitration] Agreement provided, "Any dispute as to whether a controversy or claim is subject to arbitration shall be submitted as part of the arbitration proceeding." This statement is clear that issues of arbitrability are be determined by the arbitrator. This includes claims arising out of conduct that Respondents assert was unforeseeable.

Palmetto Wildlife Extractors, LLC v. Ludy, 435 S.C. 690, 702, 869 S.E.2d 859, 865 (Ct. App. 2022) (citation omitted).

The Airbnb arbitration agreement similarly provides that "[i]f there is a dispute about whether this Arbitration Agreement can be enforced or applies to our Dispute, you and Airbnb agree that the arbitrator will decide that issue." (Terms of Service at 291, § 19.4.) Plaintiff does not dispute that the Airbnb Terms of Service contain such a delegation clause, but instead raised the outrageous torts exception to avoid enforcing the arbitration agreement at all (an argument she

raised for the first time *after* the Court's hearing on the Motion to Compel Arbitration). Such an argument ignores the line of cases confirming that an arbitrator must decide the exception's applicability. *Id.* at 699–700, 869 S.E.2d at 864 (quoting *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 139 S. Ct. 524, 529–30 (2019)); *Doe v. TCSC, LLC*, 430 S.C. 602, 615–16, 846 S.E.2d 874, 881 (Ct. App. 2020). Therefore, the Court should compel the action to arbitration and leave the issue of whether the exception applies to the arbitrator.

III. The direct benefits estoppel analysis focuses on the benefit Plaintiff receives from relying on the contractual provisions to support her claims, not the benefit exchanged by the parties during the performance of the contract.

Plaintiff concedes that South Carolina law recognizes several situations where a non-signatory can be bound to arbitration agreements, including estoppel. *See Wilson v. Willis*, 426 S.C. 326, 338, 827 S.E.2d 167, 174 (2019). As *Willis* explained, where plaintiffs "sue and seek relief based on contracts containing arbitration clauses, courts have applied equitable estoppel." *Willis*, 426 S.C. at 344, 827 S.E.2d at 177. The application of direct benefits estoppel is not limited to actions for breach of contract, though. *See Hellenic Inv. Fund, Inc. v. Det Norske Veritas*, 464 F.3d 514, 519 (5th Cir. 2006) (applying direct benefits estoppel to non-signatory's tort claims founded upon alleged violations of defendant's rules and policies); *Blaustein v. Huete*, 449 F. App'x 347, 350 (5th Cir. 2011) (applying direct benefits estoppel to malpractice and other torts brought by LLC's member against LLC's patent attorneys); *G.W. Foods, Inc. Health, Welfare, & Benefits Plan v. WH Administrators, Inc.*, No. 6:17-CV-03380-SRB, 2018 WL 3414323, at *5–6 (W.D. Mo. May 17, 2018) (applying direct benefits estoppel to statutory and tort claims, compelling non-signatory to arbitration). Direct benefits estoppel "recognizes that a party may be estopped from asserting that the lack of his signature on a written contract precludes enforcement

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of the contract's arbitration clause when he has consistently maintained that other provisions of the same contract should be enforced to benefit him." *Willis*, 426 S.C. at 344, 827 S.E.2d at 177.

Plaintiff has routinely relied on other provisions of the Terms of Service to seek relief. The Terms of Service incorporate by reference other Airbnb policies and standards in several places. (*See* Airbnb-000272–73, 286, and 293.) In fact, the Terms of Service defines the "Terms" that apply to all users of the Airbnb Platform to include its Privacy Policy, (*id.* at Airbnb-000272), and states that "other Policies applicable to your use of the Airbnb Platform are incorporated by reference into this Agreement." (*Id*. at 273.) Plaintiff specifically points to Airbnb policies, terms, and standards to support her claims against Airbnb. (*See*, *e.g.*, Am. Compl. ¶¶ 47, 62–63, 66–68, 72, 73, 84–86, 96, 139, 144, 146, 154, 170, 172, 200, 215, 222, 224, and 242.)

Plaintiff's entire theory of Airbnb's duty to Plaintiff is founded upon the policies and standards set by Airbnb. She explains that in her Amended Complaint, (Am. Compl. ¶ 140 ("Airbnb owed a duty to Plaintiff because Plaintiff has a special relationship with Airbnb, by virtue of their staying at an accommodation rented through Airbnb"), and has argued this policy theory to the Court, (Hr'g Tr. 11:20–23, April 5, 2023) ("And plaintiff, as Your Honor knows, was a guest in an Airbnb rental. And our position is that they undertook a duty to keep her safe and her friend safe while she was staying there."). The same is true for Plaintiff's theory that Airbnb has sufficient control over the property to prove her claim for premises liability—her theory is that "Airbnb controls the entire transaction. They control the payment. They control the terms. . . . They can control all of the terms of the rental Airbnb is in control of." (*Id*. 13:18–23.)

As a result, Plaintiff seeks to "benefit" from these other contractual provisions from the Terms of Service while at the same time shunning her responsibilities under the arbitration agreement under the same Terms of Service. This is the proper analysis for direct benefits estoppel

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rather than an analysis of whether Plaintiff received a contractual benefit at the time of performance. *Willis*, 426 S.C. at 344, 827 S.E.2d at 177 (discussing direct benefits estoppel when the plaintiff "has consistently maintained that other provisions of the same contract should be enforced to benefit him."). "In short, the plaintiff[] cannot have it both ways. [She] cannot rely on the contract, when it works to [her] advantage, and repudiate it when it works to [her] disadvantage." *Tepper Realty Co. v. Mosaic Tile Co*., 259 F. Supp. 688, 692 (S.D.N.Y. 1966).

Even if the appropriate analysis focuses on the benefit provided to the plaintiff during the contractual relationship, Plaintiff received at least a partial benefit. Plaintiff has consistently maintained that the house she stayed in was "booked with Airbnb." (*See, e.g.*, Am. Compl. ¶¶ 3, 121, 140, 165, 183, 205, 222, 239–40, 248.) She has even confirmed that she paid her share of the reservation fee, which means she exchanged money for the ability to stay at the property. (*Id*. ¶ 100.) *See Nicosia v. Amazon.com, Inc.*, 384 F. Supp. 3d 254, 275 (E.D.N.Y. 2019) (binding plaintiff to arbitration after his use of spouse's Amazon account to order product and later suing under federal consumer law about the marketing of that product), *aff'd*, 815 F. App'x 612 (2d Cir. 2020); *See also In re Lloyd's Reg. N. Am., Inc.*, 780 F.3d 283, 292–93 (5th Cir. 2015) (granting mandamus of tort and fraud claims on direct benefits estoppel theory, reasoning that "if we assume that [the defendant's] performance was deficient, however, that partial performance was still a direct benefit to [the plaintiff].").

Conclusion

For the reasons stated above and in Airbnb's motion and as explained above, the Court should grant Airbnb's motion and compel the parties to arbitrate the entire dispute, including Plaintiff's claims against Airbnb and the claims that Airbnb asserted against Thomas and Riviere.

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If the Court grants Airbnb's motion, Airbnb also requests the Court to dismiss this action with prejudice, or in the alternative, dismiss this action without prejudice. In the second alternative, Airbnb requests the Court grant the motion and stay this action, including further discovery, pending the completion of the arbitration.

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STATE OF SOUTHCAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

JULIANNE FOSTER,

Plaintiff,

v.

RHETT RIVIERE, KATHERINE A. THOMAS, CHASE ENTERPRISES, LLC OF SOUTH CAROLINA, AND AIRBNB, INC,

Defendants.

C/A No. 2021-CP-02-00889

PLAINTIFF'S RESPONSE IN OPPOSITION TO AIRBNB'S SUPPLEMENTAL MEMORANDUM IN SUPPORT OF ITS MOTION TO COMPEL ARBITRATION

Plaintiff files this Response in Opposition to Airbnb's Supplemental Memorandum in Support of Its Motion to Compel Arbitration ten days before Plaintiff's deadline to file a proposed Order on the motion. Airbnb persists in its endless briefing of this matter despite the following: 1. Plaintiff is the victim of a sexual offense that Airbnb facilitated by allowing Defendant Rhett Riviere to host and manage Airbnbs to the unsuspecting public; 2. Plaintiff never entered into any arbitration agreement with Airbnb; and 3. Plaintiff has been further victimized by Airbnb during two years of litigation in which they have objected to every single discovery requests and boldly defied Orders from South Carolina circuit court judges compelling them to produce and to participate in discovery in good faith.

Airbnb argues against two of the three grounds which the Court has specifically stated as reasons for denying the motion.[1] Airbnb's arguments regarding the outrageous torts exception and

[1] On June 21, 2023, the Court entered an Order stating that the motion was being taken under advisement. On July 11, 2023, the Court notified the parties that it was denying Airbnb's Motion to Compel and that Plaintiff was to draft a proposed order on the grounds that:

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estoppel are not persuasive and, in fact, do not even accurately set forth the applicable caselaw. Not only is Airbnb incorrect in its analysis of these two grounds, but Airbnb also does not address the third ground the Court included in its reasoning for denying the Motion to Compel Arbitration—waiver. By itself, the Court's finding of waiver requires the denial of Airbnb's Motion to Compel Arbitration.

I. ARGUMENT

Despite all the additional briefing that occurred after the June 13th hearing, Airbnb has now filed the instant Supplemental Memorandum in Support of its Motion to Compel to supposedly address the outrageous torts exception and one aspect of the direct benefits estoppel. Airbnb contends that the torts exception is no longer viable after the Supreme Court's decision in *AT&T Mobility LLC v. Concepcion*, 563 U.S. 33, 339 (2011), and, even if it is still viable, the arbitrator must decide whether the exception applies, not the Court. Airbnb also argues that the direct benefits estoppel must focus on the benefit Plaintiff receives from relying on the contractual provisions and not whether Plaintiff received a benefit at the time of performance of the contract. As discussed below, Airbnb's arguments are without merit.

---

1. The theory of direct benefits estoppel cannot be used to bind the Plaintiff non-signatory into arbitration, as she received no direct contractual benefit because she suffered harm while staying at the residence that was the subject of the contract.
2. South Carolina courts have declined to enforce arbitration provisions in cases of outrageous acts that are unforeseeable to reasonable consumers.
3. Airbnb waived its right to enforce arbitration by participating in extensive litigation for over two years

The Court directed Plaintiff to circulate the proposed order to all counsel of record and submit it to the Court by August 1, 2023.

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A. The Torts Exception Remains Viable in South Carolina.

In *Concepcion*, the Supreme Court struck down a California legal doctrine that explicitly declared unconscionable, and thus unenforceable, all arbitration clauses in consumer contracts containing class action waivers. 563 U.S. 339. The Supreme Court explained that arbitration agreements can be invalidated by "generally applicable contract defenses," such as fraud, duress, or unconscionability, but not by defenses that apply solely to arbitration contacts because this disproportionate application "stands as an obstacle to the accomplishment of the FAA's objectives." 131 S. Ct. 1746.

Airbnb contends that the "outrageous and unforeseeable tort exception to arbitration" is not a general contract principle and pursuant to the holding in *Concepcion* cannot be applied to arbitration agreements citing *Parsons v. John Weiland Homes & Neighborhoods of the Carlina, Inc.*, 418 S.C. 1, 791 S.E.2d 128 (2016) (plurality opinion). (Supp. Memo. at 2). Airbnb concludes that "the exception cannot remain viable following the Supreme Court's opinion in Concepcion." *Id.* at 3. However, Airbnb misleads the Court and fails to inform it that the South Carolina Supreme Court in *Parsons* squarely addressed this question, and "the majority of [the] Court finds the outrageous torts exception to arbitration remains viable" after *Concepcion*. *Id.* at 13, 791 S.E.2d at 134. Accordingly, Airbnb's arguments are without merit.

B. The Court Should Determine Whether the Outrageous Torts Exception Applies.

Citing to *Palmetto Wildlife, LLC v. Ludy*, 435 S.C. 690, 869 S.E.2d 859 (Ct. App. 2022), Airbnb contends that whether the outrageous tort exception applies must be decided by the arbitrator. (Supp. Memo. at 4). However, in *Palmetto Wildlife*, there was a delegation clause which

the plaintiff did not contest. Here, Plaintiff has specifically challenged both the arbitration and the delegation clause. (Pl's Mem. Opp. Airbnb's Mot. to Compel Arbitration at 6 & n.1).

Arbitration is a matter of consent, not coercion.'" *Stolt-Nielsen, S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 681 (2010). "A delegation clause is merely a specialized type of arbitration agreement." *New Prime, Inc. v. Oliveira*, 139 S. Ct. 532, 539, 586 U.S. __ (2019) (citing *Rent-A-Ctr.*, 561 U.S. at 70). And as with any arbitration agreement, "before referring a dispute to an arbitrator, the court determines whether a valid arbitration agreement exists." *Henry Schein*, 139 S. Ct. at 530 (citing 9 U.S.C. § 2). "[C]ourts should order arbitration of a dispute only where the court is satisfied that neither the formation of the parties' arbitration agreement nor (absent a valid provision specifically committing such disputes to an arbitrator) its enforceability or applicability to the dispute is in issue." *Granite Rock Co. v. Int'l Bd. of Teamsters*, 561 U.S. 287, 299 (2010); *see also Granite Rock*, 561 U.S. at 297 (articulating the issues a "court must resolve," which "always include whether the clause was agreed to, and may include when that agreement was formed"). As the Supreme Court held in *Schein* "[t]o be sure, before referring a dispute to an arbitrator, the court determines whether a valid arbitration agreement exists." *Henry Schein*, 139 S. Ct. at 530 (emphasis added) (citing 9 U.S.C. § 2). Accordingly, it is the Court which must first determine whether Plaintiff is bound by a delegation clause and this Court has already found that Plaintiff is not so bound.

C. Direct Benefits Estoppel Does Not Apply.

Airbnb contends that Plaintiff has routinely relied on Airbnb's policies and standards, which are incorporated by reference into the TOS, in seeking relief, and thus seeks to benefit from these provisions. (Supp. Mem. at 6). Airbnb argues that even if the appropriate analysis focuses

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on the benefit provided to Plaintiff during the contractual relationship, Plaintiff received at least a partial benefit because she stayed at an Airbnb rental. *Id.* at 7.

Plaintiff, however, is not seeking to enforce any contract provisions; she did not at any time agree to Airbnb's TOS; and she has referred to Airbnb's policies and standards as a means of establishing a duty for her tort claims. Further, she has not received any direct benefit from the TOS or her stay at the Airbnb rental.

In its Supplemental Memorandum, Airbnb cites to cases outside of South Carolina in an attempt to sway the Court. (Supp. Mem. at 7). However, Plaintiff has addressed this argument previously in its memorandum opposing Airbnb's Motion to Compel Arbitration citing to supporting South Carolina cases. For example, in *Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, the court declined to apply equitable estoppel against nonsignatories to an arbitration agreement between a nursing home and a decedent because "[t]he only agreement from which Respondents even arguably received a benefit was the Admission Agreement because [plaintiff] was admitted to the Facility as a result of it. However, because the Facility allegedly caused [plaintiff's] injuries that later led to her death, we find it difficult to find she benefited even from being admitted." 422 S.C. 544, 563, 813 S.E.2d 292, 302 (Ct. App. 2018). Likewise, it would be difficult to find Plaintiff received a benefit from staying at the Airbnb rental in Aiken when Airbnb caused her injuries and her privacy rights to be violated.

II. CONCLUSION

Plaintiff did not agree to arbitrate any matter—not the question of arbitrability and not the merits of this dispute—and she should not be compelled to arbitrate under an estoppel theory. Airbnb's never-ending briefing and filing of supplemental memoranda in support of its Motion

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to Compel Arbitration should not be allowed to continue. Airbnb has had more bites at the apple than any party should be allowed. Accordingly, the Court should deny Airbnb's Motion to Compel Arbitration and decline to entertain any further arguments. Plaintiff deserves her day in court in front of a jury of her peers.

Respectfully submitted,

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ELECTRONICALLY FILED - 2023 May 16 1:11 PM - AIKEN - COMMON PLEAS - CASE#2021CP0200889

STATE OF SOUTH CAROLINA COUNTY OF AIKEN	)))	IN THE COURT OF COMMON PLEAS SECOND JUDICIAL CIRCUIT
Julianne Foster, Plaintiff, vs. Rhett Riviere, Katherine A. Thomas, Chase Enterprises, LLC of South Carolina, and Airbnb, Inc. Defendants.	)))))))))))	Civil Action No. 2021-CP-02-00889 **AIRBNB, INC.'S MOTION TO STAY**

Defendant Airbnb, Inc. ("Airbnb") moves to stay the underlying proceedings and discovery pending resolution of the Motion to Compel Arbitration. The grounds for this motion are:

1. Plaintiff has asserted claims for: (1) negligence (all Defendants), (2) negligent hiring, supervision, or retention of employees (Defendant Airbnb), (3) negligent hiring, supervision, or retention of employees, or alternatively independent contractors (Defendant Airbnb), (4) premises liability (all Defendants), (5) invasion of privacy (Defendant Riviere), (6) vicarious liability for invasion of privacy (Defendant Airbnb), (7) intentional infliction of emotional distress (Defenant Riviere), (8) constructive fraud/misrepresentation (Defendant Riviere), and (9) negligence per se (all Defendants), and (10) violation of the South Carolina Unfair Trade Practices Act (all Defendants).

2. Plaintiff has expounded certain discovery and deposition notices under Rules 26, 30, 33, and 34, SCRCP.

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3. Airbnb has separately moved to compel arbitration in this matter.[1] Airbnb moves to stay discovery and related underlying judicial proceedings pending resolution of the Motion to Compel Arbitration.

4. Under Rule 11(a), SCRCP, undersigned counsel Harpootlian confirms he has conferred with Plaintiff's counsel, but could not reach a resolution of the motion before its filing.

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[1] Airbnb denies that Plaintiff's claims have any merit whatsoever, and it reserves all defenses to Plaintiff's claims and does not waive any available defenses. Airbnb is filing this motion to stay while continuing to reserve and plead all available defenses on the merits.

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STATE OF SOUTHCAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
2ND JUDICIAL CIRCUIT

JULIANNE FOSTER,

Plaintiff,

v.

RHETT RIVIERE, KATHERINE A. THOMAS, CHASE ENTERPRISES, LLC OF SOUTH CAROLINA, AND AIRBNB, INC,

Defendants.

C/A No. 2021-CP-02-00889

PLAINITIFF'S RESPONSE IN OPPOSITION TO DEFENDANT AIRBNB'S MOTION TO STAY

Defendant Airbnb, Inc. ("Airbnb") has filed a Motion to Stay pending the resolution of its simultaneously filed Motion to Compel Arbitration. These motions are meritless and are just another attempt of Airbnb to stonewall all requests for discovery and ignore the Orders of multiple circuit court judges. In seeking a stay, Airbnb states, without any elaboration, that its grounds are that Plaintiff has asserted numerous claims and "expounded certain discovery and deposition notices" and that it has "moved to compel arbitration." (Mot. at 1).

Plaintiff never entered into an arbitration agreement (or any agreement) with Airbnb, and Plaintiff's claims are based on tort and statutory law, not on any contract. Plaintiff has had to fight for the discovery to which she is entitled – often being forced to seek the Court's involvement. During a hearing on April 5, 2023, the Court ordered Airbnb to respond to Plaintiff's discovery requests from almost a year ago. Airbnb's response was to hire new counsel, file these two motions, and send the Court a letter essentially seeking reconsideration of the April 5th Order- raising the same issues that were raised in the responses and at the hearing and rejected by the Court. A stay now would be inconsistent with the Orders granting Plaintiff's Motions to Compel

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and thwart Plaintiff's ability to obtain this court-ordered discovery and other discovery and would be extremely prejudicial to Plaintiff. Importantly, Airbnb does not set forth any purported prejudice or argue that any of its interests will be affected if its Motion to Stay is denied. Plaintiff, however, will be greatly prejudiced if the stay is granted. Accordingly, weighting the competing interests, the Court should deny Airbnb's Motion to Stay.

I. Legal Standard

A court's power to stay proceedings is incidental to the inherent power to control the disposition of its cases in the interests of efficiency and fairness to the court, counsel, and litigants. *See Landis v. N. Am. Co.*, 299 U.S. 248, 254-55 (1936). The granting or refusing of a stay is discretionary and should be exercised with caution after balancing competing interests. *See Carolina Water Serv. Inc. v. Lexington Cty. Joint Mun. Water & Sewer Comm'n*, 367 SC 141, 153, 625 S.E.2d 227, 233 (Ct. App. 2006). A court "must weigh competing interests and maintain an even balance." *Landis*, 299 U.S. at 254. Furthermore, "the [movant] for a stay must make out a clear case of hardship or inequity in being required to go forward, if there is even a fair possibility that the stay for which he prays will work damage to someone else." *Id.* at 255 (emphasis added).

II. Argument

Although Airbnb has a pending motion to arbitrate, a stay is **not** required prior to a determination that arbitration is appropriate. *See* 9 U.S.C.§ 3 (providing for a stay "upon being satisfied that the issue involved . . . is referable to arbitration."). Moreover, stays are generally disfavored. Plaintiff adamantly opposes a stay and wishes to proceed expeditiously and continue with discovery.

A stay of this case may result in the diminished memories of the parties and witnesses and documents and other evidence becoming unavailable, which would greatly hinder Plaintiff's

ability to present her case. Further, discovery finally appears to be moving forward; discovery should continue as it would be equally useful in this court case or any future arbitration proceedings. Additionally, Airbnb's motion has not stated what grounds warrant the imposition of a stay at the present time. Finally, the strong public interest in promptly and efficiently handling cases weighs in favor of denying the stay.

In a case with similar facts, the court denied defendant's motion to stay pending the resolution of a motion to compel arbitration. *Stafford v. Rite Aid Corp.*, No. 3:17-cv-01340-TWR-AHG, 2019 WL 3818019 (S.D. Ca. Aug. 14, 2019). The court noted that the litigation had been pending for over two years, and the defendant had already brought two dismissal motions and participated in discovery. *Id.* at *1. The court denied the stay finding it would be "unfair to allow [the defendant] to benefit from the discovery process just enough to then use information discovered during that process as a sword to cut down [the plaintiff's] case and further delay the Court's schedule." *Id.* at *2.

Similarly, in *Jones v. Deutsche Bank, AG, et.al.*, the court denied a motion to stay where a motion to compel arbitration was "brought comparatively late in this litigation process, and long after the parties (and the Court) ha[d] expended considerable resources in discovery and other proceedings." No. C 04 5357 JW (RS), 2007 WL 951811, at *1 (N.D. Cal. Mar. 28, 2007). The court reasoned that

> [a] party claiming a right to arbitrate can persuasively argue that it should not be exposed to the risk that it will have unnecessarily **begun** discovery should arbitration subsequently be compelled. [Defendant's] present argument that it should not be required to take the risk that **additional** discovery will prove to have been unnecessary has significantly less force. Conversely, the risk that a stay will cause prejudice to the parties and to the orderly management of the Court's docket in the event arbitration is not compelled is far greater at this point in the proceedings than it would be in a newly-filed case.

Id. (emphasis in original).

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Likewise, here, it is prejudicial to Plaintiff to stay the case now based on a pending meritless motion to compel arbitration that could have been brought at the beginning of this litigation. The present case has been pending for over two years without Airbnb raising the issue of arbitration to the Court. Further, Airbnb has filed two motions to dismiss and, as Airbnb itself acknowledges, the parties have attempted to engage in extensive discovery, although in light of Airbnb's stonewalling, not particularly fruitful for Plaintiff. (Mem. Opp. Pl.'s Mot to Amend filed Oct. 13, 2022 at 6) (arguing that Plaintiff's delay in seeking to amend her complaint prejudiced it because the action had been pending for eighteen months, and the parties had "engaged in extensive discovery" and six depositions had been taken). Moreover, "if there is even a fair possibility that the stay . . . will work damage to someone else, the stay may be inappropriate absent a showing by the moving party of hardship or inequity." *Dependable Highway Express*, 498 F.3d at 1066 (citation and internal quotation marks omitted). Airbnb has not shown, or even alleged, any hardship or inequity. The Court should see the motion to stay for what it really is – another tactic to delay discovery.

The South Carolina Supreme Court has instructed the judiciary to refrain from sitting passively in the wake of abusive discovery tactics: "Our judges must use their authority to make sure that abusive deposition tactics and other forms of discovery abuse do not succeed in their ultimate goal: achieving success through abuse of the discovery rules rather than by the rule of law." *In re Anonymous Member of the South Carolina Bar*, 346 S.C. 177, 193, 552 S.E.2d 10, 18 (2001). The Court should not let Airbnb achieve its goal of succeeding by employing abusive discovery tactics.

Airbnb's Motion to Stay is another stonewalling tactic, and arises conspicuously close in time to the Court's recent Order requiring Airbnb to respond to discovery Plaintiff served a year

ago. In its Motion to Stay, Airbnb notes that Plaintiff has expounded discovery and deposition notices. Tellingly, Airbnb does not, however, state that some of this discovery was expounded almost a year ago, and Airbnb unilaterally determined that it did not have to respond. In a letter to the Court filed contemporaneously with its Motions to Stay and for Arbitration, Airbnb appears to question the Court's oral ruling at the April 5, 2023 hearing and raises the exact same issues it raised in its response opposing Plaintiff's Motions to Compel and at the hearing. The Court addressed these issues at the hearing.

At the hearing on Plaintiff's Motions to Compel on April 5, 2023, Judge Jocelyn Newman attempted to follow the Supreme Court's directive on discovery and addressed Airbnb's abusive discovery tactics. Airbnb sought thirty days within which to produce discovery responses that were due ten months earlier. Judge Newman questioned why Airbnb had failed to produce any discovery which was not objectionable and had not filed a motion for a protective order within thirty days as required. Judge Newman stated that the Plaintiff "should have had that by July 7th of last year." (Tr. 107:2-3). Airbnb was evasive. Judge Newman, however, persevered asking the question several times before Airbnb reluctantly admitted that it had not filed for a motion for protection nor produced any documents in response. Instead, Airbnb had unilaterally determined that it did not need to respond at all:

> THE COURT: Okay. Did you file a motion for a protective order in that 30-day timeframe to project -- protect you from the requirements to respond to those discovery requests?
>
> MS. TAYLOR: And Your Honor, again -- just again, for the record. Plaintiff here admitted that she never contacted customer service. So I mean, we had valid objections to these requests.
>
> THE COURT: What I want is an answer to my question.
>
> MS. TAYLOR: I --

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> THE COURT: Was there a motion for a protective order filed, as required by the rules?
>
> MS. TAYLOR: We objected, Your Honor, and there was motion practice over these requests.
>
> THE COURT: Was there a motion for protective order by (indiscernible) --
>
> MS. TAYLOR: I don't believe --
>
> THE COURT: Is this how Airbnb answers questions? Because I would understand the frustration in the deposition.
>
> MS. TAYLOR: I apologize. I'm trying to check while we're asking, which is why. I don't believe we filed a motion for protective order; we just objected. I'm trying to talk to my associates as we speak just to make sure. But we just objected; we did not file a motion for protective order.

(Tr. 107:14 -108:11). Judge Newman noted that this case should have been on the trial roster a year ago, but instead discovery disputes were still being resolved and Airbnb was asking for 60 more days to produce discovery requests which had been made almost a year earlier. (Tr. 109:17-24). Judge Newman granted both of Plaintiff's Motions to Compel and reluctantly gave Airbnb sixty days to comply. Airbnb seeks this stay to further delay the discovery ordered by Judge Newman.

Based on the foregoing, the Court should deny Airbnb's Motion to Stay pending the resolution of its dilatory Motion to Compel Arbitration. Airbnb has failed to meet its burden of showing why the Court should exercise its discretion and grant a stay. This request is part of an ongoing and apparently never ending effort by Airbnb to avoid responding to discovery.

Airbnb's gamesmanship, disrespect and mockery of this Court's rules must end.

Respectfully submitted,

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STATE OF SOUTH CAROLINA COUNTY OF AIKEN	)))	IN THE COURT OF COMMON PLEAS SECOND JUDICIAL CIRCUIT
Julianne Foster, Plaintiff, vs. Rhett Riviere, Katherine A. Thomas, Chase Enterprises, LLC of South Carolina, and Airbnb, Inc. Defendants.	)	Civil Action No. 2021-CP-02-00889 **Airbnb, Inc.'s Reply in Support of its Motion to Stay**

Without waiving, and indeed expressly reserving its arbitration rights, Airbnb, Inc. moved to stay these proceedings pending resolution of its Motion to Compel Arbitration. The cases confirm that a stay is a balancing of several different factors, the majority of which weigh in favor of Airbnb's request for a stay. The two cases Plaintiff relies on do not undermine this Court's authority to stay these proceedings.

As a result, the Court should reject Plaintiff's arguments. It should instead stay the underlying proceedings pending resolution of the Motion to Compel Arbitration.

Argument

I. The Court has the authority to stay these proceedings and doing so is appropriate.

Plaintiff concedes that the Court has the inherent authority to stay these proceedings. (Resp. Opp. Mot. Stay at p. 2.) She also concedes that issuing a stay lies within the Court's discretion after conducting a balancing of several factors. (*Id.*) Though Plaintiff relies on the discussion of a balancing test, her opposition focuses only on the alleged prejudice to her and ignores the remaining factors that weigh in favor of a stay. (Resp. Mot. Stay at 4–5.)

When determining if a stay is appropriate, courts generally consider:

(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits;

(2) whether the applicant will be irreparably injured absent a stay;

(3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and

(4) where the public interest lies.

Hilton v. Braunskill, 481 U.S. 770, 776 (1987). The test is not dependent on any one factor, but involves "balancing competing interests." *Water Serv., Inc. v. Lexington Cnty. Joint Mun. Water & Sewer* Comm'n, 367 S.C. 141, 153, 625 S.E.2d 227, 233 (Ct. App. 2006), *rev'd on other grounds*, 373 S.C. 96, 644 S.E.2d 681 (2007).

Airbnb has made a strong showing that it is likely to succeed on its Motion to Compel Arbitration. Airbnb does not rehash each of its arguments in support of arbitration here, and instead incorporates them from its motion and reply brief by reference.

Airbnb's rights would be prejudiced absent a stay, which is proper and aligned with Airbnb's right to have arbitration and related issues decided by an arbiter. Plaintiff would still be able to effectively pursue her claims in arbitration if the Court entered a temporary stay. Plaintiff would not be injured by a stay, much less be *substantially* injured. *Hilton*, 481 U.S. at 776. Ignoring for the time being that Plaintiff has already received much more information than is necessary to pursue her claims, her argument that a stay would somehow prevent her from obtaining information relevant to her claims conflates a stay while the Court resolves the pending motion to compel arbitration – which is what is at issue here - with a stay pending resolution of an arbitration. The latter is not the subject of the motion to stay currently before this court.

The public interest is furthered by staying the proceedings and expeditiously resolving the Motion to Compel Arbitration. *Parsons v. John Wieland Homes & Neighborhoods of the Carolinas, Inc.*, 418 S.C. 1, 6, 791 S.E.2d 128, 131 (2016) (discussing strong public policy interests

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favoring arbitration). As our Court of Appeals has explained, contested motions seeking to compel arbitration should be resolved "forthwith." *New Hope Missionary Baptist Church v. Paragon Builders*, 379 S.C. 620, 629, 667 S.E.2d 1, 5 (Ct. App. 2008) (quoting *Jackson Mills, Inc. v. BT Capital Corp.*, 312 S.C. 400, 404, 440 S.E.2d 877, 879 (1994)).

II. The cases Plaintiff cites are distinguishable and do not limit the Court's authority to issue a stay.

Plaintiff cites to two California district court cases in an attempt to argue prejudice. Her reliance on them is misplaced. In *Stafford v. Rite Aid Corp.*, No. 3:17-cv-01340-TWR-AHG, 2019 WL 3818019 (S.D. Ca. Aug. 14, 2019), the district court applied a balancing test that weighed in favor of the plaintiff there. The court focused on the parties' impending class certification deadline and the extensive discovery Rite Aid had sought and relied on to support its motion to compel arbitration, finding "it unjust to allow Rite Aid to benefit from the discovery process just enough to then use information discovered during that process as a sword to cut down Stafford's case and further delay the Court's schedule." *Id.* at *2. But Airbnb has not similarly benefitted from the discovery process, nor has it waited until the end of that process to use information gleaned as a sword to compel arbitration. Further, there is no impending class certification deadline. Thus, *Stafford* is inapplicable.

The second case Plaintiff relies on, *Jones v. Deutsche Bank, AG, et.al.*, No. C 04 5357 JW (RS), 2007 WL 951811, at *1 (N.D. Cal. Mar. 28, 2007), was distinguished by *Bailey v. AffinityLifeStyles.com*, Inc., No. 2:16-CV-02684-JAD-VCF, 2017 WL 10378319, at *3 (D. Nev. June 28, 2017). In *Bailey*, the court noted that the parties were earlier in the discovery process than in *Jones* and found that the balancing test favored the defendant: "[T]hat the parties have expended some time and money in participating in the discovery process is beyond dispute. Even so, the Court is not persuaded that any prejudice to Bailey would be significant enough to outweigh

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the importance of resolving the question of arbitration while preserving its key advantages—speed and economy." *Id.*

Further, the plaintiff in *Jones* did not amend the complaint to change the litigation. *See Haarslev, Inc. v. Nissen*, No. 5:19-CV-06128-BCW, 2023 WL 2782313, at *7 (W.D. Mo. Jan. 30, 2023) ("When a plaintiff files an amended complaint which changes the theory or scope of the case, the [d]efendant is allowed to plead anew as though it were the original complaint filed by the [p]laintiff."); *see also Brown v. Green Tree Servs., LLC*, 585 F. Supp. 2d 770, 782 (D.S.C. 2008) (finding where the amended complaint altered the lawsuit significantly, the defendant would not have been "deemed to have waived its right to compel arbitration merely because of the delay [of 13 months]").

Lastly, Plaintiff complains about alleged discovery abuse unrelated to this motion—even going so far as to allege "gamesmanship, disrespect and mockery of this Court's rules." Such arguments confirms that her opposition to the motion to stay lacks support on the merits.

Conclusion

For the reasons set forth above, the Court should stay these proceedings pending its resolution of Airbnb's Motion to Compel Arbitration.

[Signature on following page.]

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ELECTRONICALLY FILED - 2023 Jul 28 12:21 PM - AIKEN - COMMON PLEAS - CASE#2021CP0200889

STATE OF SOUTH CAROLINA COUNTY OF AIKEN	) IN THE COURT OF COMMON PLEAS) SECOND JUDICIAL CIRCUIT)	
Julianne Foster, Plaintiff, vs. Rhett Riviere, Katherine A. Thomas, Chase Enterprises, LLC of South Carolina, and Airbnb, Inc., Defendants.	)	Civil Action No. 2021-CP-02-00889 **JOINT MOTION OF DEFENDANT AND THIRD-PARTY PLAINTIFF AIRBNB, INC., AND THIRD-PARTY DEFENDANT RHETT RIVIERE TO ACKNOWLEDGE THE AUTOMATIC STAY APPLIES OR, IN THE ALTERNATIVE, FOR SUPERSEDEAS**
Airbnb, Inc. Third-Party Plaintiff, vs. Rhett Riviere, Third-Party Defendant.	)	

Pursuant to the automatic stay provisions and other supersedeas/stay provisions set forth in Rule 241, SCACR, Third-Party Plaintiff Airbnb, Inc. ("Airbnb") and Third-Party Defendant Rhett Riviere ("Riviere") jointly move this Court for an Order acknowledging that the automatic stay is in effect, staying all further judicial proceedings, or, in the alternative, granting supersedeas/stay regarding further judicial proceedings in this case.

PROCEDURAL HISTORY

On May 26, 2023, Riviere moved to compel arbitration ("Riviere's Motion"). On June 13, 2023, the Court held a hearing on Riviere's motion, among others. On July 26, 2023, the Court denied Riviere's Motion. On July 26, 2023, Riviere timely filed a notice of appeal of the Order.

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ARGUMENT

Riviere's appeal from the Order is proper and, under applicable law, requires a stay of all proceedings in this case. Under Section 16 of the governing Federal Arbitration Act ("FAA"), an appeal may be taken from an order denying arbitration. *Towles v. United HealthCare Corp.*, 338 S.C. 29, 34–35, 524 S.E.2d 839, 842 (Ct. App. 1999) (finding that the circuit court's order refusing to compel arbitration was immediately appealable, citing section 16 of the FAA). Riviere has instituted such an appeal. Therefore, under the Supreme Court's June 23, 2023 precedent in *Coinbase*, this Court "must stay its proceedings." *Coinbase, Inc. v. Bielski*, 143 S. Ct. 1915, 1918 (2023) (citing *Griggs v. Provident Consumer Disc. Co*., 459 U.S. 56, 58 (1982)).

South Carolina law, while displaced by the FAA, is in accord. Rule 241 of the South Carolina Appellate Court Rules provides that "[a]s a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision," subject to exceptions inapplicable here. Rule 241(a), SCACR. Furthermore, in the alternative, Rule 241 authorizes this Court to grant a supersedeas to "suspend or stay the matters decided in the order, judgment, decree or decision on appeal . . . ." Rule 241(c), SCACR.

Accordingly, this Court should enter an order staying the trial court proceedings pending appeal, or in the alternative, a supersedeas order to the same effect.

I. Under the FAA and Recent Supreme Court Precedent, This Court Must Automatically Stay Its Proceedings.

A. The FAA Governs the Arbitration Agreement Here and Preempts State Law.

As the U.S. Supreme Court has held, federal substantive law preempts state law and controls arbitration issues arising under contracts governed by the FAA. *Preston v. Ferrer*, 552 U.S. 346, 349–50, 128 S. Ct. 978, 981, 169 L. Ed. 2d 917 (2008). The FAA applies to the

arbitration agreement here because it "'evidenc[e] a transaction involving commerce,' specifically interstate commerce." *Towles*, 338 S.C. at 35 (quoting 9 U.S.C. § 2 (1999)); *see also Cape Romain Contractors, Inc. v. Wando E., LLC*, 405 S.C. 115, 121, 747 S.E.2d 461, 464 (2013) (holding that arbitration agreement affected interstate commerce and thus was "subject to the FAA").

The Arbitration Agreement states that it "evidences a transaction in interstate commerce and thus the Federal Arbitration Agreement governs the interpretation and enforcement of this provision." (Terms of Service § 19.6, Airbnb-291.) *See Airbnb, Inc. v. Rice*, 138 Nev. Adv. Op. 65, 518 P.3d 88, 90 (2022) (Airbnb's arbitration agreement "specified that the FAA governs its enforcement and interpretation"). Under the FAA, "arbitration is a matter of contract, and courts must enforce arbitration contracts according to their terms." *Henry Schein, Inc. v. Archer & White Sales, Inc*., 139 S. Ct. 524, 529 (2019)); *see also Airbnb, Inc. v. Doe*, 336 So. 3d 698, 703 (Fla.), cert. denied, 143 S. Ct. 484 (2022) ("The parties agree that issues of arbitrability are governed by the FAA, as required by the contract.").

Furthermore, Airbnb provides an online marketplace where Hosts and guests enter a contract or license with each other to rent properties around the globe; an important purpose of the Airbnb marketplace is to facilitate connection amongst Hosts and guests engaging in interstate and foreign commerce. "The presence of interstate commerce makes the FAA applicable to the present arbitration agreement," and "the FAA preempts" South Carolina law. *Soil Remediation Co. v. Nu-Way Env't, Inc.*, 323 S.C. 454, 461, 476 S.E.2d 149, 153 (1996).

B. Under Federal Law, this Court Must Automatically Stay Further Proceedings.

Under Section 16 of the FAA, Riviere was entitled to an immediate appeal from the Order. 9 U.S.C. § 16(a). On July 26, 2023, Riviere filed a timely notice of appeal. Now, any further proceedings in this Court are subject to an automatic stay.

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Last month, the U.S. Supreme Court held that a trial court must stay further proceedings during the pendency of an interlocutory appeal on the question of arbitrability. *Coinbase*, 143 S.Ct. at 1919. This ruling is consistent with long-standing Supreme Court precedent holding that a trial court lacks jurisdiction over issues pending before the governing appellate court. *See Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982).

As the Supreme Court explained in *Coinbase*, because the question on appeal is "whether the case belongs in arbitration or instead in the [trial] court," "the entire case is essentially 'involved in the appeal'" such that trial court proceedings must be stayed. *Coinbase*, 143 S.Ct. at 1919 (quoting *Griggs*, 459 U.S. at 58). The appellate court must decide "whether 'the litigation may go forward in the [trial] court.'" *Coinbase*, 143 S.Ct. at 1919 (quoting *Bradford-Scott Data Corp. v. Physician Comput. Network, Inc.*, 128 F.3d 504, 506 (7th Cir. 1997) (Easterbrook, J)). Thus, it "makes no sense for trial to go forward while the court of appeals cogitates on whether there should be one." *Id.* (quoting *Apostol v. Gallion*, 870 F.2d 1335, 1338 (7th Cir. 1989)).

Absent an automatic stay, Congress's decision to afford a right in the FAA to an interlocutory appeal "would be largely nullified." *Coinbase*, 143 S.Ct. at 1921. Parties would be forced to proceed with trial court proceedings they had contracted to avoid via arbitration, and "many of the asserted benefits of arbitration (efficiency, less expense, less intrusive discovery, and the like) would be irretrievably lost—even if the court of appeals later concluded that the case actually had belonged in arbitration all along." *Id.* Such an outcome "could potentially force parties to settle to avoid [trial] court proceedings (including discovery and trial) that they contracted to avoid through arbitration." *Id.* Moreover, allowing the trial court to proceed would "create[] the possibility that the [trial] court will waste scarce judicial resources—which could be

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devoted to other pressing criminal or civil matters—on a dispute that will ultimately head to arbitration in any event." *Id.*

Stated succinctly, continuing trial court proceedings while arbitrability is pending on appeal "largely defeats the point of the appeal." *Coinbase*, 143 S.Ct. at 1921 (quoting *Bradford-Scott*, 128 F.3d at 505). Accordingly, this Court "must stay its proceedings." *Id*. at 1918.

Airbnb and Riviere respectfully request that the Court issue an Order acknowledging that the automatic stay is in effect and that all further proceedings in this Court are stayed pending the resolution of Riviere's appeal.

II. South Carolina State Law is in Accord.

Because the FAA applies, federal law preempts state law here. But even if state law applied, South Carolina law is in accord with the *Coinbase* directive to grant a stay of trial court proceedings during the pendency of an appeal as to issues of arbitrability.

Rule 205 of the South Carolina Appellate Court Rules provides that, upon service of the notice of appeal, "the appellate court shall have exclusive jurisdiction over the appeal" and all matters "affected by the appeal." Rule 205, SCACR. Correspondingly, Rule 241 provides that, "[a]s a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision," and that "[t]his automatic stay continues in effect for the duration of the appeal unless lifted by order of the lower court, the administrative tribunal, appellate court, or judge or justice of the appellate court." Rule 241, SCACR. None of the exceptions to this general rule enumerated in subsection (b) to Rule 241 apply here. Thus, even if South Carolina law applied, this Court should enter an order staying proceedings during the pendency of Riviere's interlocutory appeal.

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Furthermore, the Court also has discretion to issue a supersedeas under Rule 241. A supersedeas should be used to "stay proceedings in the [circuit] court, to preserve the status quo pending the determination of the appeal . . . and to preserve to appellant the fruits of a meritorious appeal where they might otherwise be lost to him." *Graham v. Graham*, 301 S.C. 128, 130, 390 S.E.2d 469, 470 (1990) (quoting 4A C.J.S. *Appeal & Error* § 662 at 494–95 (1957)) (alteration in original). In ruling on a motion for supersedeas, the "court should consider whether such an order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot." Rule 241(c)(2), SCACR. For each of the reasons the Supreme Court discussed in *Coinbase*, proceeding with discovery and litigating the merits of the case would moot the contested issues on appeal entirely.

CONCLUSION

For the foregoing reasons, Airbnb and Riviere respectfully jointly move this Court for an Order that the automatic stay is in effect, staying any further proceedings, or, in the alternative, granting supersedeas to the same effect.

Consultation regarding this Motion would serve no useful purpose. Airbnb and Riviere reserve the right to file a further supplemental memorandum supporting this motion.

[Signatures on following pages.]

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STATE OF SOUTHCAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

JULIANNE FOSTER,

Plaintiff,

v.

RHETT RIVIERE, KATHERINE A. THOMAS, CHASE ENTERPRISES, LLC OF SOUTH CAROLINA, AND AIRBNB, INC,

Defendants.

C/A No. 2021-CP-02-00889

RESPONSE IN OPPOSITION TO A JOINT MOTION OF DEFENDANT THIRD-PARTY PLAINTIFF AIRBNB, INC., AND THIRD-PARTY DEFENDANT RHETT RIVIERE TO ACKNOWLEDGE THE AUTOMATIC STAY APPLIES OR, IN THE ALTERNATIVE, FOR SUPERSEDEAS

Defendant and Third-Party Plaintiff Airbnb, Inc. ("Airbnb") and Third-Party Defendant Rhett Riviere ("Riviere") (collectively herein "Movants") have filed a Joint Motion to Acknowledge the Automatic Stay Applies or, in the Alternative, for Supersedeas/Stay of all further judicial proceedings in this case. Movants argues that the Federal Arbitration Act ("FAA") and Rule 241, SCACR, require a stay. However, the FAA **procedural** rules do not apply, and Rule 241 does not require the Court to issue a stay of the entire case. To issue a stay in this case would be an injustice to a victim of a sexual offense who has been litigating this case for nearly two years.

On May 26, 2023, after years of litigation Riviere moved to compel arbitration ("Riviere's Motion") of the claims raised in the separate Third-Party Complaint brought by Airbnb solely against Riviere based on indemnification. On July 26, 2023, the Court denied Riviere's Motion to Compel Arbitration, and, that same day, Riviere filed a notice of appeal of that Order.[1]

[1] Of note is the fact that Airbnb did not voice any objections to this Order that denied arbitration for the same three reasons as was set out in the proposed Order denying Airbnb's Motion to Compel Arbitration, which Airbnb strongly contested. To state the obvious, over two years into this litigation, Airbnb is using arbitration as a ruse to prevent it from having to comply

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FAA

Movants correctly state that if interstate commerce is involved, federal substantive law preempts state law. (Jt. Mot. at 2). However, "[o]ur supreme court has held our state procedural rules—rather than the Federal Arbitration Act (FAA)—govern appealability of arbitration orders. *See Toler's Cove Homeowners Ass'n, Inc. v. Trident Const. Co.*, 355 S.C. 605, 611, 586 S.E.2d 581, 584-85 (2003).

> The general rule is that the FAA does not preempt state ***procedural*** law relating to arbitration. 6 C.J.S. *Arbitration* § 32 (2004); *see also Volt Info. Sciences, Inc. v. Bd. of Trustees of Leland Stanford Jr. Univ.*,489U.S. 468, 477 n.6, 109 S.Ct. 1248, 103 L.Ed. 2d 488 (1989) (noting while the Supreme Court had held certain substantive provisions of the FAA were applicable in state and federal courts, it had never held that sections 3 and 4, which appeared by their references to the U.S. district court to apply only to proceedings in federal court, were applicable in state courts).

Henderson v. Summerville Ford-Mercury, Inc., 405 S.C. 440, 448, 748 S.E.2d 221, 225 (2013).

Earlier this year, the South Carolina Supreme Court reiterated that South Carolina's rules govern appealability of arbitration orders: "Our supreme court has held our state procedural rules—rather than the Federal Arbitration Act (FAA)—govern appealability of arbitration orders." *Huskins v. Mungo Homes, LLC*, 439 S.C. 356, 364-65, 887 S.E.2d 534, 538 (2023) (citing *Toler's Cove Homeowners Ass'n, Nic. v. Trident Cpstr. Cp.*, 355 S.C. 605, 585 S.E.2d 581 (2003)).

Nothing in the recent United States Supreme Court decision in *Coinbase, Inc. v. Bielski*, 143 S.Ct. 1919 (2023), calls these decisions into question or requires a stay in this case. In *Coinbase*, "the sole question before th[e] Court [was] whether a [federal] district court must stay its proceedings while the interlocutory appeal on arbitrability is ongoing." *Id.* The Court applied FAA procedural rules in a case in federal court. Here, in this state case, however, the FAA

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with recent discovery orders compelling it to produce discovery that it has refused to produce throughout two years of litigation.

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procedural rules do not govern appealability. *Huskins*, 439 S.C. at 364-65, 887 S.E.2d at 538. Accordingly, neither the procedural rules in the FAA nor the Supreme Court's decision in *Coinbase* apply.

Rule 241

Additionally, Rule 241 does not require a stay in this case. Movants conveniently omit the portion of Rule 241, SCACR, which is not favorable to their argument. Rule 241 in its entirety provides:

> General Rule. As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay *matters* decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision. This automatic stay continues in effect for the duration of the appeal unless lifted by order of the lower court, the administrative tribunal, appellate court, or judge or justice of the appellate court. *The lower court or administrative tribunal retains jurisdiction over matters not affected by the appeal including the authority to enforce any matters not stayed by the appeal*.

Rule 241, SCACR (emphasis added). *See also* Rule 205, SCACR (stating that nothing in the South Carolina Appellate Court Rules "shall prohibit the lower, commission or tribunal from proceedings with matters not affected by the appeal"). Rule 241 does not require the entire case to be stayed – only those matters affected by the appeal. Plaintiff's claims against Airbnb are not affected by whether Airbnb's indemnification claims against Riviere are heard by the Court or an arbitrator (i.e., whether the Order denying arbitration is affirmed or reversed). Further, the exceptions to the general rule set forth in Subsection (b) are irrelevant because the general rule applies only to matters decided in the order.

Alternatively, Movant requests that the Court exercise its discretion and issue a supersedeas staying the case under Rule 241. In ruling on a motion for supersedeas, the "court should consider whether such an order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot." Rule 241(c)(2), SCACR. Movants argue that proceeding with

discovery and litigating the merits of the case would moot the contested issues on appeal entirely for the same reasons the Supreme Court discussed in *Coinbase*. (Jt. Mot. at 6). However, here, continuing with Plaintiff's claims against Airbnb would not affect the appeal over arbitrability of the indemnification claims that Airbnb has brought in its Third-Party Complaint against Riviere. In fact, moving forward with Plaintiff's claims and establishing Airbnb's liability to Plaintiff is a prerequisite for Airbnb's claims against Riviere, whether the third-party claims are decided in a court or before an arbitrator.

Conclusion

Respectfully, Plaintiff requests that the Court deny this Joint Motion seeking a stay or supersedeas. Pursuant to Rule241, SCACR, the remaining matters are not affected by Riviere's appeal and should be allowed to continue. If the Court denies the Motion to Stay, Plaintiff requests that it sever Airbnb's Third-Party Complaint against Riviere and is filing a Motion to Sever Contemporaneously with this response.

Respectfully submitted,

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ELECTRONICALLY FILED - 2023 Aug 09 11:25 AM - AIKEN - COMMON PLEAS - CASE#2021CP020889

STATE OF SOUTH CAROLINA COUNTY OF AIKEN	)	IN THE COURT OF COMMON PLEAS SECOND JUDICIAL CIRCUIT
Julianne Foster, Plaintiff, vs. Rhett Riviere, Katherine A. Thomas, Chase Enterprises, LLC of South Carolina, and Airbnb, Inc., Defendants.	)	Civil Action No. 2021-CP-02-00889 **REPLY IN SUPPORT OF THE JOINT MOTION TO ACKNOWLEDGE THE AUTOMATIC STAY APPLIES OR, IN THE ALTERNATIVE, FOR SUPERSEDEAS BY DEFENDANT AND THIRD-PARTY PLAINTIFF AIRBNB, INC., AND THIRD-PARTY DEFENDANT RHETT RIVIERE**
Airbnb, Inc. Third-Party Plaintiff, vs. Rhett Riviere, Third-Party Defendant.	)	

Binding United States Supreme Court precedent from June 2023 requires a mandatory stay. *See Coinbase, Inc. v. Bielski*, 143 S. Ct. 1915, 1918 (2023). Plaintiff's response to Airbnb and Riviere's joint motion to stay pending appeal cites to South Carolina authority predating *Coinbase*.. These authorities do not take precedent over *Coinbase*; on the contrary, the U.S. Supreme Court's precedent abrogates any contrary South Carolina authorities, and regardless, the South Carolina cases cited by Plaintiff are inapposite in any event. Furthermore, even without the mandatory stay under *Coinbase*, a discretionary stay is appropriate.

I. The Court should confirm that the mandatory stay is in place.

As Airbnb and Riviere detailed in their joint motion to stay, in *Coinbase* the Supreme Court explained that because the question on appeal is "whether the case belongs in arbitration or instead

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in the [trial] court," "***the entire case is essentially 'involved in the appeal,'***" such that trial court proceedings must be stayed. *Coinbase*, 143 S. Ct. at 1919 (emphasis added) (quoting *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982)). The appellate court must decide "whether 'the litigation may go forward in the [trial] court.'" *Coinbase*, 143 S. Ct. at 1919 (quoting *Bradford-Scott Data Corp. v. Physician Comput. Network, Inc.*, 128 F.3d 504, 506 (7th Cir. 1997) (Easterbrook, J)). Thus, it "***makes no sense for trial to go forward while the court of appeals cogitates on whether there should be one***." *Id.* (emphasis added) (quoting *Apostol v. Gallion*, 870 F.2d 1335, 1338 (7th Cir. 1989)).

Absent an automatic stay, Congress's decision to afford a right in the FAA to an interlocutory appeal "would be largely nullified." *Coinbase*, 143 S. Ct. at 1921. Parties would be forced to proceed with trial court proceedings, and "many of the asserted benefits of arbitration (efficiency, less expense, less intrusive discovery, and the like) would be irretrievably lost—even if the court of appeals later concluded that the case actually had belonged in arbitration all along." *Id.* Such an outcome "could potentially force parties to settle to avoid [trial] court proceedings (including discovery and trial) that they contracted to avoid through arbitration." *Id.* Moreover, allowing the trial court to proceed would "create[] the possibility that the [trial] court will waste scarce judicial resources—which could be devoted to other pressing criminal or civil matters—on a dispute that will ultimately head to arbitration in any event." *Id.*

Stated succinctly, continuing trial court proceedings while arbitrability is pending on appeal "largely defeats the point of the appeal." *Id.* (quoting *Bradford-Scott*, 128 F.3d at 505). Accordingly, a stay "must" issue. *Id*. at 1918.

Plaintiff cites inapposite cases (a) that predate the governing U.S. Supreme Court precedent in *Coinbase* and (b) that did not involve the concerns at issue in *Coinbase*. *Toler's Cove*

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Homeowners Association, Inc. v. Trident Construction Company was addressing the question of whether an order ***compelling*** arbitration is immediately appealable, concluding that under South Carolina procedural law it was not.[1] *See* 355 S.C. 605, 611, 586 S.E.2d 581, 584–85 (2003). This rule is consistent with federal precedent. *See Coinbase*, 143 S. Ct. at 1919 ("Congress provided for immediate interlocutory appeals of orders denying—but not of orders *granting*—motions to compel arbitration."). Likewise, in *Henderson v. Summerville Ford-Mercury, Inc.*, the South Carolina Supreme Court was reviewing an order ***confirming*** an arbitration award. 405 S.C. 440, 446, 748 S.E.2d 221, 224 (2013). The court did not address whether the FAA preempted South Carolina's procedural rules, finding that it did not matter because "the result would be the same." *Id*. at 447, 748 S.E.2d at 225. *Toler's Cove* and *Henderson* are factually inapposite and predate *Coinbase*; they offer no authority against the mandatory stay.

Coinbase mandates that this Court grant a stay following an appeal from an order denying a motion to compel arbitration. Plaintiff cites no authority supporting a different result. The Court should grant the Joint Motion and acknowledge the automatic stay here.

II. A discretionary stay is also appropriate.

Plaintiff contends that the lower court retains jurisdiction over matters "not affected by the appeal," Rule 241, SCACR, but that is irrelevant here, where, as *Coinbase* explained, the entire case is "affected by the appeal." *Coinbase*, 143 S. Ct. at 1919. Because the Order denying the

[1] South Carolina case law (like federal law) is clear that ***"[a]n order denying arbitration is immediately appealable***." *Cape Romain Contractors, Inc. v. Wando E., LLC*, 405 S.C. 115, 121, 747 S.E.2d 461, 464 (2013) (emphasis added); *see also Towles v. United HealthCare Corp.*, 338 S.C. 29, 34–35, 524 S.E.2d 839, 842 (Ct. App. 1999) (noting section 16 of the FAA explicitly provides for an appeal from an order denying a motion to compel arbitration and finding that the circuit court's order refusing to compel arbitration was immediately appealable).

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motion to compel arbitration is the Order on appeal, the issue on appeal is which forum should adjudicate the merits of this alleged dispute.

Courts have also recognized the propriety of a discretionary stay where the appeal of an arbitration order involves a non-signatory. *See, e.g.*, *Hill v. G E Power Sys., Inc.*, 282 F.3d 343, 347 (5th Cir. 2002) ("We have long held that if a suit against a nonsignatory is based upon the same operative facts and is inherently inseparable from the claims against a signatory, the trial court has discretion to grant a stay if the suit would undermine the arbitration proceedings and thwart the federal policy in favor of arbitration." (quoting *Sam Reisfeld & Son Import Co. v. S.A. Eteco*, 530 F.2d 679, 681 (5th Cir.1976))); *Kroll v. Doctor's Assocs., Inc.*, 3 F.3d 1167, 1171 (7th Cir. 1993) (whether to grant a stay should be motivated by the court's "concern that litigation against a party not bound by an arbitration provision may impair an arbitrator's consideration of claims against a party that is compelled to arbitrate.").

Plaintiff nevertheless contends that the entire case does not need to be stayed here because her claims against Airbnb purportedly are not affected by whether Airbnb's indemnification claims against Riviere are heard by the Court or arbitrator. Not so. Airbnb asserts contract-based claims against Riviere arising out of the same contract and factual circumstances as Plaintiff's claims. As a result, the third-party complaint and the original action are intertwined and should not be in two different forums. Further, assuming the Court enters the order it has stated it intends to order denying Airbnb's motion to compel arbitration, Airbnb will also be serving and filing a notice of appeal.

For all these reasons, a discretionary stay is also appropriate. *See Graham v. Graham*, 301 S.C. 128, 130, 390 S.E.2d 469, 470 (1990) (explaining that supersedeas should be used to "stay proceedings in the [circuit] court, to preserve the status quo pending the determination of the appeal

. . . and to preserve to appellant the fruits of a meritorious appeal where they might otherwise be lost to him").

CONCLUSION

For the foregoing reasons, Airbnb and Riviere jointly request that this Court enter an Order finding that the automatic stay is in effect, staying any further proceedings, or, in the alternative, granting supersedeas to the same effect.

[Signatures on following pages.]

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STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
2ND JUDICIAL CIRCUIT

JULIANNE FOSTER,

Plaintiff,

v.

RHETT RIVIERE, KATHERINE A. THOMAS, CHASE ENTERPRISES, LLC OF SOUTH CAROLINA, AND AIRBNB, INC,

Defendants.

C/A No. 2021-CP-02-00889

PLAINTIFF'S MOTION TO COMPEL DEFENDANTS RHETT RIVIERE, CHASE ENTERPRISES, KATHERINE THOMAS, AND AIRBNB, INC.

Plaintiff Julianne Foster, by and through her undersigned attorneys, under Rules 26, 33, 34, 36 and 37, SCRCP, hereby moves for an order compelling and requiring immediate full and complete discovery responses from Defendants Rhett Riviere, Chase Enterprises, LLC, of South Carolina, Katherine Thomas,[i] and Airbnb, Inc.

BACKGROUND / FACTS / PATTERN

Plaintiff filed this lawsuit on April 28, 2021, alleging, *inter alia*, "wrongful invasion into her private affairs [in May 2019] caused by Defendants' negligent and / or willful, wanton and reckless conduct." Complaint at ¶ 1. Plaintiff was in Aiken to participate in a tennis tournament. Complaint at ¶ 24. Through the popular and well-known Airbnb online portal, Plaintiff's tennis teammate, Michele Jain, arranged for three of the tennis team members to stay in the "Stirrup Cottage" at 115 Third Avenue in Aiken. Riviere / Chase owned the Stirrup Cottage. His former fiancé, Defendant Katherine Thomas, managed it.

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On Feb. 16, 2021, Michele Jain filed her lawsuit against Riviere, Chase and Thomas, on behalf of herself and others similarly situated, *Jain et al v. Chase Enterprises, LLC aka Chase Enterprises, LLC of South Carolina, Rhett Riviere, and Katherine A. Thomas*, 2021-CP-02-00333. Jain's lawsuit was apparently resolved and dismissed with prejudice on October 11, 2021. The allegations in Jain's lawsuit relate to these same Defendants, excepting Airbnb was not named directly in that lawsuit. Jain alleged she was secretly video-recorded while in the Airbnb bedroom of Plaintiff in Defendant Chase / Riviere's Stirrup Cottage at 115 Third Avenue, Aiken, South Carolina 29801. Jain Complaint at ¶¶'s 12-25.

Jain's Complaint recounts a 2-minute telephone call she made directly to Rhett Riviere's mobile phone number on May 18, 219, at 10:31 A.M. Jain alleged she notified Riviere of the rental of his Stirrup Cottage, and requested permission to use the nearby tennis court. Jain Complaint at ¶¶'s 20-22. Jain's lawsuit included her Verizon phone records from May 18, 2019, showing the two-minute call to Riviere's mobile phone. Jain Complaint, Exhibit E.

An unidentified minor also filed suit against Riviere on August 28, 2020, related to rental of another property owned by Riviere in Aiken, South Carolina. *Miller v. Riviere*, 2020-CP-02-01616. The minor Plaintiff alleged she and a friend rented a property owned by Riviere and managed by Thomas, known as the Sea Horse Ranch Airbnb ("Sea Horse Cottage"). The Sea Horse Cottage had a stated address of 541 Two Notch Road, Aiken, South Carolina, however, that structure is apparently located on a 10.02 acre property known as 785 Grace Avenue, SE, Aiken, South Carolina 29803 ("Grace 10 Acres").

Riviere was shown as the owner of the Grace 10 Acres, until March 29, 2021, when Riviere purportedly conveyed the property for consideration of $5.00 to an entity known as Cam-Ash Holdings, LLC, which is believed to be owned or controlled by Riviere or one or more of his two children. On or about Dec. 11, 2020, Chase Enterprises, which is owned by Riviere, also sold the Stirrup Cottage, where Plaintiff Julianne Foster was secretly filmed undressing in her Airbnb bedroom.

In the minor lawsuit referenced above, that Plaintiff similarly alleged she "was informed by an agent from the South Carolina Law Enforcement Division that there were videos of her from her stay at [Riviere's] property." Minor Complaint at ¶ 14. Plaintiff in that lawsuit alleged Defendant Riviere "set up video surveillance equipment and secretly recorded the girls ... changing clothes." Minor Complaint at ¶ 13. The minor Complaint lawsuit was dismissed with prejudice on June 16, 2021. Counsel to Riviere in all three of the above referenced civil "invasion of privacy" lawsuits included Julie J. Moose, Esquire, and John W. Harte, Esquire.

According to publicly available (and not sealed) court records, Rhett Riviere was charged with voyeurism on June 4, 2021, under S.C. Code § 16-17-470. (*The State of South Carolina vs. Rhett Riviere*, Case No. 2021A0210700228). This offense is included in S.C. Code Title 16 ("Crimes and Offenses") in Chapter 17, known as "Offenses Against Public Policy." These lawsuits are of public interests. Each involves invasions of privacy of unwitting persons in commerce leasing / renting accommodations online. Airbnb online bookings require little more than a click, a few keystrokes (maybe a telephone call), and providing a 16-digit debit / credit card number, 4-digit expiration date, and a 3-digit

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security code (from the back of the card). Ten, Fifteen or Twenty years ago, this online activity was unknown to the typical U.S. citizens, who were more likely to call to arrange for a hotel room at the Hampton Inn.

In 2019 when this occurred and since then, Airbnb has become a household name / brand, like Coca-Cola, Nike or Holiday Inn. Thezebra.com website reports the following statistics under its "Airbnb fast facts and user demographics" heading:[1]

> Airbnb is a peer-to-peer online marketplace connecting users with rental listings and unique experiences. Today, it has over 150 million users and hosts more than half a billion guests per year. Here's a look at its user base and Airbnb demographics.
>
> - Airbnb has 5.6 million active listings worldwide.
> - There are at least 100,000 cities with active Airbnb listings.
> - 150 million people use Airbnb to book vacation stays or experiences.
> - Over 1 billion guests have stayed at Airbnbs.
> - Airbnb has listings in over 220 countries and regions.
> - Roughly 60% of Airbnb's user base are millennials.

(Citation in footnote).

Airbnb's site, at https://news.airbnb.com/about-us/ notes a start-up date in 2008, and includes an updated claim of "6 million active listings worldwide," (up from the 5.6 million referenced above), and further asserts:

> - $150B+ earned by Hosts, all-time (as of Feb. 2022); and
> - $9K+ average annual earnings per US Host (as of Dec. 31, 2021).

Id.

[1] https://www.thezebra.com/resources/home/airbnb-statistics/#:~:text=Airbnb%20has%205.6%20million%20active,guests%20have%20stayed%20at%20Airbnbs.

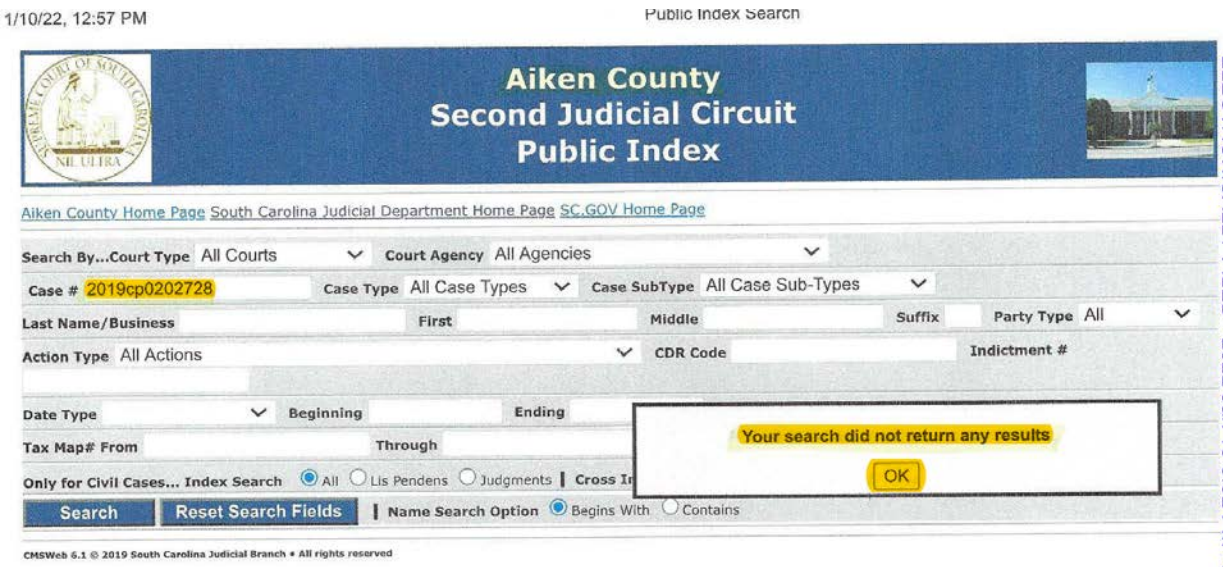
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Katherine Thomas testified in her deposition the "arrangement" she had with Riviere, whereby she managed his Airbnb properties, and she alone received all the "rental income." (Thomas Depo. at p. 123, lines 14-25, not designated as Confidential by Riviere).

CONFIDENTILITY – SHIELD OR SWORD

The parties have agreed to entry of a Confidentiality Order in this case, which was filed on September 16, 2021, and includes an Attorneys Eyes Only provision specifically intended to limit further disclosure of Defendants' naked video-recordings of the Plaintiff on micro-SD cards. There is no dispute that certain discovery in this case can and will be marked as either CONFIDENTIAL or ATTORNEYS EYES ONLY, as provided for in the Sept. 16, 2021 order. Unfortunately, not only has the discovery of improperly sealed cases in Aiken County been discovered, but Confidentiality designations have been abused for purposes of delay and obstruction of discovery.

On Jan. 6, 2022, as is set forth in the Plaintiff's Jan. 10, 2022, Emergency Motion to Unseal Court Records, counsel to Plaintiff was made aware of a 2019 Common Pleas case filed by Riviere against Katherine Thomas. (*Rhett Riviere v. Katherine Anne Thomas*, 2019-CP-02-02728). That case was not only discovered to have been sealed, but was also removed from any public search results on the www.sccourts.org search function found under the *Trial Courts* and *Case Records Search* tabs. The Jan. 10, 2022 motion to unseal included the results of a search for "2019CP0202728," as an Exhibit, which is also shown below as a screenshot of that filing:



Id.

Production of documents and information related to that sealed and removed from existence lawsuit are but some of the issues on the exhaustive list of matters in dispute between the parties and put at issue by this motion to compel. Remarkably, counsel to each Riviere and Thomas, parties to that once publicly filed, but now sealed and removed rom existence lawsuit, each have asserted the allegations and subject matter in that lawsuit was "not relevant," to the facts in this lawsuit, despite each not producing the settlement reached that resulted in the Order Confirming Settlement in that case. The subject of unsealing that lawsuit is before the Court in Case No. 2019CP0202728, and is set to be heard on March 8, 2022, at 10:00 by the Master-in-Equity appointed to preside over that case under Rule 53. Limited documents made available to the undersigned, which were at one time publicly filed, show a motion to refer the case to the Master-in-Equity filed by Riviere's counsel on Nov. 18, 2019. The record indicates counsel to Thomas did not consent to that motion. The

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order referring the case was filed Nov. 27, 2019, less than a month a Riviere filed suit on Oct. 30, 2019.

Despite herculean efforts by the undersigned, including extensive written and telephone consultations (described and identified below), counsel to the parties continue to disagree about numerous matters. It is clear to the undersigned no progress will occur absent court intervention. Due to the extensive nature of the consultations, and concern to avoid further collateral issues being raised about Defendants' allegedly confidential "rumors," the consultations are referenced and incorporated by such reference below. Strangely, only Defendants Riviere and Chase have sought to designate portions of Defendant Thomas's Jan. 6, 2022 deposition as Confidential. To our knowledge, Thomas herself, nor her counsel, has sought to designate any part of her testimony Confidential.

ONCE PUBLIC / NOW SECRET

A response to a FOIA request dated Feb. 17, 2022 revealed that, in addition to the Sealed Case referenced above between Riviere and Thomas, seven (7) other cases filed in the Aiken County Court of Common Pleas since 2015 were removed from public access at the www.sccourts.org web-site, under the *Trial Courts* and *Case Records Search* tabs for Aiken County. These 8 total cases are identified below by case number only for purpose of showing they not accessible by searching the "Case #" field as shown in the screenshot above for Case No. 2019CP0202728:

- 2015CP0200859;
- 2015CP0202756;
- 2016CP0201851;
- 2017CP0202641;
- 2019CP0202728;

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- 2019CP0200678;
- 2020CP0200572; and
- 2020CP0200573.

(Aiken County Clerk of Court FOIA Response, dated Feb. 17, 2022).

As set forth in the above-identified Motion to Unseal Court Records, Rule 41.1 does not provide for any publicly filed civil lawsuits in the Court of Common Pleas to be removed from existence. Instead, the rules require a motion to seal, and an order sealing any matter be issued publicly. Rule 41.1(b) requires a motion to seal documents, which would include previously filed documents or orders, as follows:

> The motion shall state the reasons why sealing is necessary, explain why less drastic alternatives to sealing will not afford adequate protection, and address the following factors:
>
> (1) the need to ensure a fair trial;
> (2) the need for witness cooperation;
> (3) the reliance of the parties upon expectations of confidentiality;
> (4) the public or professional significance of the lawsuit;
> (5) the perceived harm to the parties from disclosure;
> (6) why alternatives other than sealing the documents are not available to protect legitimate private interests as identified by this Rule; and
> (7) why the public interest, including, but not limited to, the public health and safety, is best served by sealing the documents.

Id. (underline emphasis added).

Similarly, Rule 41.1(c), provides instructions to the Court regarding any order sealing a "settlement":

> In determining whether to approve the filing of the settlement documents, in whole or in part, under seal, the court shall consider:
>
> (1) the public or professional significance of the lawsuit;
> (2) the perceived harm to the parties from disclosure:
> (3) why alternatives other than sealing the documents are not available to protect legitimate private interests as identified by this Rule; and,

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> (4) why the public interest, including, but not limited to, the public health and safety, is best served by sealing the documents.

Id. (underline emphasis added).

Finally, Rule 41.1(d) provides: "All orders sealing documents or all or parts of settlements shall set forth with specificity the reasons that require they be sealed." It is not known at this time if the other 7 cases identified above followed the requirements set forth in Rule 41.1. It is known no motion to seal was filed in the 2019CP0202728 case, and also no order exists setting "forth with specificity the reasons that require [2019CP0202728] be sealed." *Id.*

MATTERS AT ISSUE REQUIRING RESOLUTION

Based on the above and in an abundance of caution, to avoid further efforts to derail and delay discovery in this case, Plaintiff incorporates by reference the following documents to this motion. The undersigned will file any or all of these under seal, if necessary, or ordered by the Court, prior to any hearing on this motion:

- **1. Defendant Thomas's Responses to Plaintiff's Interrogatories and Requests for Production**, served July 30, 2021;[2] and
  - Plaintiff's extensive consultation email dated Feb. 16, 2022,[3] and
  - Counsel to Thomas's response dated Feb. 21, 2022 (referenced in the endnote to this motion);

[2] Discovery was delayed in this case by a motion for a stay filed in July 2021, and resulting in a 90-day stay from approximately August 31, 2021 to Nov. 29, 2021, during which time Defendants took the position that no discovery, not even scheduling of depositions to occur after the stay ended, could occur.

[3] Plaintiff's discovery issues with Defendant Thomas largely piggy-back on and are redundant to the same issues with Riviere, as each has failed to provide communications between each other, and Riviere has provided only 111 pages of previously publicly filed documents from the Sealed Case, 2019-CP-02-02728.

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- **2A. Defendant Riviere's Responses to Plaintiff's Interrogatories and Requests for Production**, served Nov. 29, 2021; and
  - Plaintiff's 6-page consultation letter dated Feb. 10, 2022 (page one of which is copied below in the endnote referenced here),[ii] and
  - Counsel to Riviere's response letter dated Feb. 18, 2022, promising but not providing any supplemental responses, or documents;

- **2B. Defendant Chase's Responses to Plaintiff's Interrogatories and Requests for Production**, served Nov. 29, 2021;
  - These responses are addressed in Plaintiff's Feb. 10, 2022 Rule 11 letter referenced above, as Riviere is believed to be the sole member / owner of Chase, and each Defendant is represented by the same counsel;

- **3. Defendant Riviere's Responses to Plaintiff's Request for Admission**, served June 28, 2021;
  - An order of this Court, dated Feb. 1, 2022, granted Riviere's motion filed August 20, 2021 to amend his Request for Admission Responses, however, no amended responses[4] have been served, therefore, the responses must be struck in their entirety and all matters deemed admitted;
    - One of the stated reasons Riviere wished to amend his Request for Admission responses related to his denied knowledge of any renters in the Stirrup Cottage on May 18, 2019, even though his two-minute telephone conversation with Jain, as shown in Exhibit E to her Complaint, and referenced above, was publicly filed and known to he and his counsel;
    - Such an attempted denial in view the phone records already of record in the Jain case, and other similar cases indicates extreme bad-faith, dishonesty, and / or indifference of counsel to confer with their client or to investigate the matters alleged prior to providing responses under Rule 36;

- **4. Defendant Airbnb's Responses to Plaintiff's Interrogatories and Requests for Production**, served Aug. 19, 2021;
  - Each of these "objections" served by Airbnb stated:
    - Objection. See General Objections. Further objection to the extent any statements are subject to work product protection or the attorney-client privilege. In addition, should discovery ensue after the forthcoming August 31, 2021 hearing on various pending Motions, Airbnb will supplement these responses as applicable

[4] In addition, prior to this matter being heard on Jan. 31, 2022, counsel to Riviere did not provide counsel or the Court with proposed revised responses to these Request for Admissions.

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> within a reasonable time, or any other timeframe ordered by the Court, thereafter.

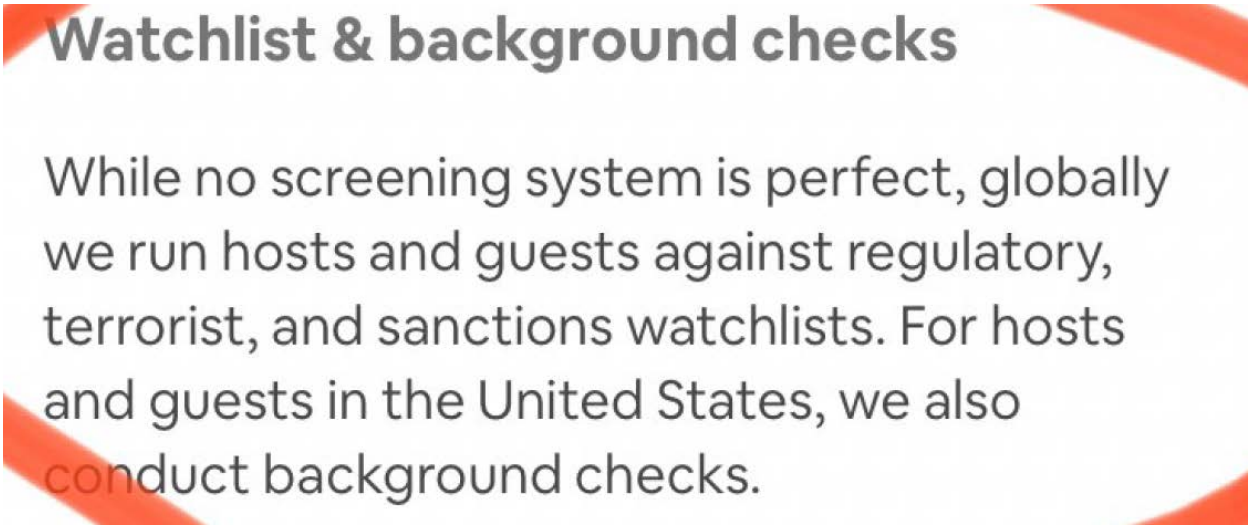
As is often stated, this is not Airbnb's "first rodeo." Yvonne Schumacher filed a substantially identical lawsuit against Airbnb in 2015 in the Northern District of California, alleging an unauthorized video-recoding of her at an Airbnb rental in 2013. Schumacher's lawsuit, even if the allegations were wholly frivolous, put Airbnb on notice of the risk of this type of behavior by its Hosts, stating as follows: "Moreover, she has been and continues to be concerned that images of her exist in electronic form and could make their way onto the Internet or some other medium." *Id.* Airbnb is reported to have issued a statement in response to Schumacher's allegations: "Airbnb takes privacy issues extremely seriously, … All hosts must certify that they comply with all applicable laws in their locations and are, of course, expected to respect the privacy of their guests." *Id.*

To date, counsel to Plaintiff, Plaintiff, nor anyone else can find evidence that Airbnb took any steps to identify or screen their hosts applicants for voyeuristic behavior. Airbnb's attempts to not respond to discovery, or supplement their responses since August 2021, indicate no such evidence will come to light in this lawsuit. Katherine Thomas testified as follows in her deposition regarding efforts to conduct background checks by Airbnb:

> 8 Q. … When you were applying to become on
> 9 the supply side of the Airbnb business did you provide
> 10 any information for purposes of a background check for
> 11 yourself?
> 12 A. No.
> 13 Q. Did you provide any information for purposes
> 14 of a background check for Rhett Riviere?
> 15 A. No.

(Thomas Depo., at page 111, lines 8-15, not designated Confidential by Riviere).

Plaintiff obtained the following screenshot from an Airbnb site / smartphone application, apparently contradicting Thomas testimony above, as follows:



(produced as Foster_00016).

Moving counsel affirms any further consultation regarding the substance of this motion with opposing counsel would serve no useful purpose.

CONCLUSION

Plaintiff requests this Court enter an order requiring Defendants to immediately fully and properly respond to the discovery requests identified above, and address all deficiencies noted in Plaintiff's extensive consultations. For the reasons set forth above, the undersigned additionally requests an award of fees and costs of this motion, as same is necessary to serve as a deterrent to what will otherwise be inevitable similar conduct in the

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future if the discovery practices and abuses identified herein are allowed without consequences. Respectfully submitted,

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March 3, 2022
Greenville, South Carolina

[i] Subsequent to sending an email response to the undersigned on Feb. 21, 2022, counsel to Defendant Katherine Thomas requested consent from counsel to be relieved as counsel, and has refused to provide Plaintiff with discoverable information described in their Feb. 21, 2022 email, as follows:

> We recently received a copy of Ms. Thomas's interview with SLED on August 26, 2019. Ms. Thomas received this recording directly from Mr. Riviere. Needless to say, we are concerned that this video only came to our attention because Riviere happened to provide it to our client, and that it has not been produced during discovery. What else is missing? Did you previously have a copy of this interview? If so, why hasn't it previously been produced?

[ii] Page 1 screenshot (Feb. 10, 2022 Rule 11 Letter):

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RE: RULE 11 CONSULTATION – DEFICIENT DISCOVERY RESPONSES
Foster v. Riviere et al, Case No.: 2021-CP-02-00889
Our File No.: 00305-001

Julie,

Thank you for your clients' discovery responses dated November 29, 2021 (attached). I have intended to get you this letter for a while now, so please accept my apologies for the delay. As the responses we have received are so deficient, I must clarify that no matter the length of this letter, I don't think I could possibly identify every issue at this time. In addition, we would incorporate by reference here my prior efforts via email to identify specific issues that require further attention, including but not limited to emails sent on the following dates: (i) Feb. 1, 2022,[1] (ii) Feb. 1, 2022,[2] (iii) Feb. 2, 2022,[3] (iv) Feb. 3, 2022,[4] (V) Feb. 3, 2022,[5] and (vi) earlier today, Feb. 10, 2022.[6]

What we have received are objections and stone-walling on discovery, and that is going to have to be the subject of a motion if we do not get the discovery we are all entitled to in this case.

REQUESTS FOR PRODUCTION:

With respect to your client's responses to the Plaintiff's Request for Production ("RFP") Nos. 1-9, the only documents we've received are the 111 pages we got on Friday, Jan. 28, 2022. Please

[1] Missing Affidavits from Marianne Bartley-Leham, and Linda Quinn, as well as page 2 of Jan. 13, 2020 order.
[2] Missing pages from order dated Nov. 29, 2019, and motion dated Dec. 11, 2019.
[3] Disputed Confidentiality designations in Thomas deposition and in 111 pages produced.
[4] Continuing discussion re: Confidentiality designations, and related matters.
[5] Providing index of documents produced by parties and in response to subpoenas, *e.g.*, to SLED.
[6] Providing response and update on Confidentiality designations.

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STATE OF SOUTHCAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

JULIANNE FOSTER,

Plaintiff,

v.

RHETT RIVIERE, KATHERINE A. THOMAS, CHASE ENTERPRISES, LLC OF SOUTH CAROLINA, AND AIRBNB, INC,

Defendants.

C/A No. 2021-CP-02-00889

PLAINTIFF'S MOTION TO COMPEL DEFENDANT AIRBNB, INC. TO RESPOND TO REQUESTS FOR PRODUCTION NUMBERS 45-48

Plaintiff Julianne Foster, by and through her undersigned attorneys, under Rules 26, 33, 34, 36 and 37, SCRCP, respectfully moves the Court for an order requiring Defendant Airbnb, Inc. ("Airbnb") to fully and properly respond to Plaintiff's Requests for Production – Nos. 45-48. Under Rule 37 of the South Carolina Rules of Civil Procedure, a party seeking discovery may move for an order compelling disclosure or discovery.

I. BACKGROUND

Airbnb, a billion-dollar company with millions of users, has repeatedly stonewalled or delayed discovery in this case despite the Court granting Plaintiff's previous Motion to Compel and admonishing the parties at the May 31, 2022 hearing. The Court required the Defendants to provide an Affidavit stating that the Defendants had complied with the discovery requests and stated the following:

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> As I said, it's very simple, if you find something -- after they've given you an Affidavit that says this is it and you find something out, ***then we're talking about some serious sanctions.*** And I don't think the lawyers want to be going to the office of disciplinary counsel ***nor do I think the companies want to be penalized.*** But the bottom line is, that's what's going to happen, folks, so let's quit playing the games, let's do something

(Ex. D. May 31, 2022 Hearing Tr. at 16:5-6). For example, after Plaintiff noticed a 30(b)(6) deposition in early 2022, Airbnb objected to every single topic and sought reconsideration after the Court denied its motion for a protective order. The Court denied the motion for reconsideration and ordered that the deposition take place on all of the noticed topics, and the deposition was finally set for October 26, 2022. However, at the October 26th deposition, the witness designated by Airbnb was woefully unprepared on many of the noticed topics and refused to answer or was evasive in response to even basic questions on the noticed topics - requiring Plaintiff to seek intervention from the judge during the deposition. Judge Keesley ordered the Airbnb witness to answer the questions. Yet, the Airbnb witness continued to refuse to answer. Due largely to the 30(b)(6) witness' evasive answers, the deposition was ultimately continued to a later date, and it is currently scheduled to be resumed on January 25, 2023. Airbnb has also objected to every single request to produce and interrogatory propounded; objected to every single Airbnb witness being deposed; failed to produce documents that it has been ordered to produced; and failed to comply with the Court's Order granting Plaintiff's Motion to Compel. Through these recent objections to Plaintiff's Requests for Production, Airbnb continues its delay tactics, and Plaintiff is once again forced to turn to the Court to obtain the discovery she is rightfully due.

Plaintiff filed this lawsuit on April 28, 2021, alleging, inter alia, "wrongful invasion into her private affairs [in May 2019] caused by Defendants' negligent and/or willful, wanton and reckless conduct." Am. Comp. ¶ 1. Plaintiff was in Aiken to participate in a tennis tournament. Id.

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¶ 99. Through the popular and well-known Airbnb online portal, Plaintiff's tennis teammate, Michele Jain, arranged for three of the tennis team members to stay in the "Stirrup Cottage" at 115 Third Avenue in Aiken. Riviere/Chase owned the Stirrup Cottage. Defendants Rhett Riviere and his former fiancé, Defendant Katherine Thomas, managed the rental of the property along with Airbnb.

On November 1, 2022, Plaintiff served Airbnb Requests for Production Nos. 45-48. (Ex. A, Pl.'s Request for Production to Defendant Airbnb, Inc. - Nos. 45-48). Plaintiff sought all contact information for Guests associated with certain reservation id numbers and confirmation codes listed in exhibits which were attached to the Request for Production, including at a minimum, the Guest's user id(s), all names associated with the Guest's user id, and all contact information associated with the Guests in the possession or control of Airbnb. *Id.* at 2, 4, 6. The information sought is for Guests who stayed in the Defendants' Airbnb rental properties and who may have also been video recorded.[1] This information is critical to defend against Mr. Riviere's claim that the video recording of Ms. Foster was an "accident". Plaintiff also sought all documents which identify any Airbnb Hosts from December 1, 2013 until the present who have been convicted of certain criminal offenses. (Ex. A at 8-12). This information is extremely relevant to Airbnb's false claim that "Safety is their number one priority".

On December 22, 2022, Airbnb responded to the discovery objecting to every request. (Ex. B, Airbnb's Responses to Plaintiff's Requests for Production). In its general objections, Airbnb objected, inter alia, to producing privileged documents and private personal information about non-parties. *Id.* at 1. Airbnb also stated that it would not produce documents created after the filing

[11] Airbnb has yet to notify these Guests of the fact that they were Guests in a property that was determined to contain hidden cameras.

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of the complaint. *Id.* at 2. Airbnb also objected to each specific request "for the reasons stated in it general objections," and because it contends that the Requests seek private information protected by South Carolina and California privacy laws, the Stored Communications Act, and "any other applicable constitutional, statutory and/or common-law privacy rights . . to the extent it calls for communications from third parties, or personally identifiable or otherwise sensitive information about third parties." *Id.* at 2-3, 4-5, 6, 12. Further, Airbnb contends that the information is not reasonably calculated to lead to relevant information and the request is overly broad and unduly burdensome. *Id.* at 3, 5, 7, 12.

On December 29, 2022, Airbnb produced a privilege log in which it objected to producing communications between Defendant Katherine Thomas and her other Guests that are stored on the Airbnb platform only on the basis of the Stored Communications Act. (Ex. C, Defendant Airbnb's Privilege Log).

II. LEGAL STANDARD

In South Carolina the scope of discovery is very broad and 'an objection on relevance grounds is likely to limit only the most excessive discovery request.'" *Samples v. Mitchell*, 329 S.C. 105, 110, 495 S.E.2d 213, 215 (Ct. App. 1997) (quoting J. Flanagan, South Carolina Civil Procedure 216 (2d ed.1996)); *see also Oncology & Hematology Assocs. of S.C., LLC v. S.C. Dep't of Health & Env't Control*, 387 S.C. 380, 387, 692 S.E.2d 920, 924 (2010) ("We are keenly aware that the scope of discovery is broad."). Rule 26 governs the scope of discovery:

> Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection

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> that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

Rule 26(b)(1), SCRCP; *In re Mt. Hawley Ins. Co.*, 427 S.C. 159, 166–67, 829 S.E.2d 707, 712 (2019) ("The scope of discovery in South Carolina is generally broad. . . . As a result, parties may obtain discovery regarding any matter that is not privileged so long as it is relevant to the subject matter involved in the pending claim.").

The party submitting a request for production "may move for an order under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested." Rule 34(b), SCRCP. An evasive or incomplete answer is treated the same as a failure to answer. Rule 37(a)(3). If the Court grants the motion and issues an order compelling discovery, failure to comply with such discovery can result in sanctions on the non-complying party. Rule 37(b).

III. ARGUMENT

Plaintiff sought "all contact information" for Guests associated with certain reservation id numbers and confirmation codes as listed in exhibits which were attached to the Request for Production, including at a minimum, the Guest's user id(s), all names associated with the Guest's user id, and all contact information associated with the Guests in the possession or control of Airbnb. (Ex. A at 2, 4). In its responses, Airbnb objected to each request "for the reasons stated in it general objections," and because it contends that the Requests seek private information protected by South Carolina and California privacy laws, the Stored Communications Act, and "any other applicable constitutional, statutory and/or common-law privacy rights." (Ex. B at 2-3, 4-5, 6, 12). Further, Airbnb contends that the information is not reasonably calculated to lead to relevant information and the request is overly broad and unduly burdensome. *Id.* at 3-4, 5-6, 7, 12-13.

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First, as to each request, Airbnb initially objects "for the reasons stated in it general objections, which it incorporates by reference." This is precisely the type of objection that is not an objection at all. *See e.g., Novelty, Inc. v. Mountain View Mktg., Inc.*, 265 F.R.D. 370, 375 (S.D. Ind. 2009) (holding that general objections made without elaboration, whether placed in a separate section or repeated by rote in response to each requested category, are not objections at all and will not be considered.). Airbnb's general objection made without elaboration or even identifying which of the numerous general objections applies is insufficient and should not be considered an objection at all. Therefore, Airbnb's initial objections to each request based on its general objections should be overruled.

Second, Airbnb's objections based on the Stored Communications Act ("SCA") are without merit. The SCA covers access to electronic information stored in third party computers. 18 U.S.C. §§ 2701–12. Under the SCA, "a person or entity" (1) "providing remote computing service to the public" (2) "shall not knowingly divulge to any person or entity the contents of any communication" (3) "which is carried or maintained on that service . . . on behalf of, and received by means of electronic transmission from (or created by means of computer processing of communications received by means of electronic transmission from), a subscriber or customer of such service" (4) "solely for the purpose of providing storage or computer processing services to such subscriber or customer," unless the provider is authorized to access the contents of any such communications to provide other services. *Id.* § 2702(a)(2).

The SCA "differentiates between contents and record information." *In re Zynga Privacy Lit.*, 750 F.3d 1098, 1104 (9th Cir. 2014). "Section 2702(c)(6) permits an electronic communications service or remote computing service to "divulge a record or other information pertaining to a subscriber to or customer of such service (not including the contents of

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communications covered by [§ 2702](a)(1) or (a)(2)) . . . to any person other than a governmental entity." *Id.* Although there is no specific statutory definition for "record," § 2703(c) provides that record information includes, among other things, the "name," "address," and "subscriber number or identity" of "a subscriber to or customer of such service," but not "the contents of communications." *Id.* (citing 18 U.S.C. § 2703(c)(2)(A), (B), (E)). "In other words, the Stored Communications Act generally precludes a covered entity from disclosing the contents of a communication, but permits disclosure of record information like the name, address, or client ID number of the entity's customers." *Id.*

Here, Plaintiff, who is not a governmental entity, has sought only record or non-content based information from Airbnb. The SCA by its plain terms does not preclude Airbnb from providing the requested non-content information to Plaintiff. Accordingly, Airbnb's objections based on the SCA are without merit and should be overruled.

Third, Airbnb's objection that Plaintiff is seeking communications from third parties, personally identifiable, or otherwise sensitive information about third parties is also without merit. To be clear, as discussed above, Plaintiff is ***not*** seeking any communications from third parties. Rather Plaintiff is simply seeking contact information, which is not precluded from discovery under the SCA. The SCA

> do[es] not preclude the disclosure of personally identifiable information; indeed, [it] expressly allow[s] it. *See id*. §§ 2702(c)(6), 2703(c)(2) (allowing providers to disclose subscribers' names, addresses, telephone connection records, length of service, telephone numbers, subscriber numbers, credit card numbers, and bank account numbers under certain circumstances). There is no language in ECPA equating "contents" with personally identifiable information. Thus, an allegation that [defendants] disclosed personally identifiable information is not equivalent to an allegation that they disclosed the contents of a communication.

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In re Zynga Privacy Lit., 750 F.3d at 1107. As the information sought is not precluded from disclosure by the SCA, Airbnb's objection based on the SCA is without merit. [2] Moreover, the Court has already overruled Airbnb's objections to many of the 30(b)(6) topics on the ground that the SCA precludes discovery. Finally, Ms. Thomas has already produced responsive communications thereby waiving the prohibition of disclosure under the SCA.

Airbnb also argues that the discovery of the requested information would infringe on the constitutional right to privacy of third parties. Rule 26(b)(1), SCRCP, provides, unless otherwise limited by order of the court, "[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action . . . It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." Rule 26 SCRCP.

Rule 26 allows for broad discovery. "'The Rules do not differentiate between information that is private or intimate and that to which no privacy interests attach. . . . Thus, the Rules often allow extensive intrusion into the affairs of both litigants and third parties.'" *Hamm v. South Carolina Public Serv. Com'n,* 312 S.C. 238, 241, 439 S.E.2d 852, 853 (1994) (citing *Seattle Times Co. v. Rhinehardt*, 467 U.S. 20, 30 (1984)). [3]

Airbnb contends that the contact information of "Guests other than Michelle Jain, the guest who booked Plaintiff's stay" is not likely to lead to evidence that is related to a claim or defense

[2]Additionally, if this Court grants Plaintiff's motion to compel and orders disclosure, Airbnb's "good faith reliance" on a court order operates as a "complete defense to any civil or criminal action brought under [the SCA] or any other law." 18 U.S.C. § 2707(e); *see also McCready v. eBay, Inc.*, 453 F.3d 882, 892 (7th Cir. 2006).

[3]If the discovery process threatens create a particularized harm to a litigant or third party, the trial judge may issue an order "to protect a party or person from annoyance, embarrassment, oppression, or undue burden by expense." Rule 26(c), SCRCP; *Hamm*, 312 S.C. 238, 439 S.E.2d 852. Neither Airbnb nor any third party has moved for a protective order.

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of any party in this case and is overly broad and unduly burdensome. Airbnb's objections are without merit. The information sought, contact information about Guests who communicated about the Airbnb rental managed by Ms. Thomas, is likely to lead to evidence related to Plaintiff's claims regarding her stay in an Airbnb rental managed by Ms. Thomas.

Moreover, Airbnb has not elaborated on how providing the requested contact information is overly broad or unduly burdensome.

> Objections that state that the discovery request is "vague, overly broad, or unduly burdensome" are, standing alone, meaningless and will be found meritless by this court. A party objecting on these grounds must explain the specific and particular way in which a given request is vague, overly broad, or unduly burdensome. See Fed. R. Civ. P. 33(b)(4); *Josephs v. Harris Corp.*, 677 F.2d 985, 992 (3d Cir.1982) ("[T]he mere statement by a party that the interrogatory was 'overly broad, burdensome, oppressive and irrelevant' is not adequate to voice a successful objection to an interrogatory. On the contrary, the party resisting discovery 'must show specifically how . . . each interrogatory is not relevant or how each question is overly broad, burdensome or oppressive.' " (citation omitted)).

Curtis v. Time Warner Entertainment-Advance/Newhous P'ship, C/A No. 3:12-cv-2370-JFA, 2013 WL 2099496, *2 (D.S.C. 2013). Airbnb's generic and boilerplate objections which do not provide any explanation as to how the requested discovery is overly broad or burdensome should be overruled, and the Court should order Airbnb to fully respond to Plaintiff's Requests for Production.

Pursuant to Rule 11, SCRCP, moving counsel affirms that it has consulted with opposing counsel on these matters and further consultation regarding the substance of this motion with opposing counsel would serve no useful purpose.

CONCLUSION

Based on the foregoing, Plaintiff respectfully requests that the Court grant her Motion to Compel and order Airbnb to fully respond to Plaintiff's Requests for Production Nos. 45-48.

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Respectfully submitted,

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January 17, 2023
Greenville, South Carolina

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November 1, 2022

VIA EMAIL - beattie@beattieashmore.com:
Beattie Ashmore
Beattie B. Ashmore, P.A.
650 East Washington Street
Greenville, South Carolina 29601

RE: Julianne Foster vs. Rhett Riviere, Katherine A. Thomas, Chase Enterprises, LLC of South Carolina, and Airbnb, Inc.
Case No.: 2021-CP-02-00889

Dear Beattie,

Enclosed and served upon you are Plaintiff's Requests for Production 45-48 to Airbnb, Inc. and certificate of service for same.

Best regards,

s/Deborah B. Barbier
Deborah B. Barbier

DBB Enclosures

CC: All Counsel of Record (*Via email only)*
Ryan L. Beasley, Esq. (*Via email only)* Wes Few, Esq. (*Via email only)*
Client (*Via email only*)

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STATE OF SOUTH CAROLINA COUNTY OF AIKEN Julianne Foster, Plaintiff, vs. Rhett Riviere, Katherine A. Thomas, Chase Enterprises, LLC of South Carolina, And Airbnb, Inc., Defendants.	)	IN THE COURT OF COMMON PLEAS 2ND JUDICIAL CIRCUIT CASE NO. 2021-CP-02-00889 **PLAINTIFF'S REQUEST FOR PRODUCTION TO DEFENDANT AIRBNB, INC. – NOS. 45 -**

TO: BEATTIE B. ASHMORE, ESQUIRE, COUNSEL TO DEFENDANT AIRBNB, INC.

Pursuant to Rules 34 of the South Carolina Rules of Civil Procedure, Plaintiff Julianne Foster ("Plaintiff") hereby requests that Defendant Airbnb, Inc. ("AIRBNB") answer the following Requests for Production, in writing and under oath, within thirty (30) days from the date of the service hereof.

TABLE OF DEFINITIONS / ABBREVIATIONS

This section defines various words and phrases in this Notice. This information is provided to clarify the means of terms in this Notice to assist AIRBNB in understanding the objectives of Plaintiff's discovery efforts, and to help locate and furnish the information and materials.

1. "AIRBNB" or "**Defendant**," - Refers to AIRBNB, Inc., its subsidiaries, divisions, or any other entity (by whatever name and/or denomination), which is/was an owner, a predecessor or successor in interest, including any entity which may have merged or consolidated with AIRBNB's designee may also be asked questions potentially known by another party, other contracting entities, or their agents or employees. By acceptance of this Notice, and production of a responsive witness thereto. AIRBNB acknowledges it will produce someone knowledgeable

about such matters. To the extent any other party, agent, or employee of AIRBNB can provide answers or responses unknown to AIRBNB's designated representative, be prepared to explain why that is the case.

2. The phrase "**writing and recording**" shall be defined under South Carolina Rules of Evidence Rule 1001(1), which specifically includes all electronic communications and electronically recorded information such as word processing files, e-mails, and computer / network backup media.

3. The term "**photograph**" shall be defined under South Carolina Rules of Evidence Rule 1001(2).

4. Where originals and/or non-identical copies are not available, "**writing and recording**" also means identical copies of original writing or recording and copies of non-identical copies.

5. "**Information**" - This term should include reference to both facts and applicable principles. This word should not be construed to be limited to any method of acquisition or compilation and should, therefore, be construed to include oral information and documents or other tangible objects.

6. The term **"Guest"** shall be defined as Airbnb Members using Host Services as referenced in Airbnb's Terms of Service (Last Updated: April 16, 2018). *See* AIRBNB 000371.

7. The term **"Host"** shall be defined as Members who offer certain third parties services as referenced in Airbnb's Terms of Service (Last Updated: April 16, 2018). *See* **AIRBNB 000371.**

REQUESTS FOR PRODUCTION

45. Provide all contact information in the possession of Airbnb for each and every Guest

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associated with the **reservation id number** which is listed in the attached **Exhibit A**. At a minimum, provide the following information for the Guest(s) associated with the reservation id number:

a. The Guest's user id(s);

b. All names associated with the Guest(s)' user id; and

c. All contact information associated with the Guest(s) in the possession or control of Airbnb.

46. Provide all contact information in the possession or control of Airbnb for each and every Guest(s) associated with the **confirmation code** which is listed in the attached **Exhibit A**. At a minimum, provide the following information for the Guest(s) associated with the confirmation code:

a. The Guest(s)' user id(s);

b. All names associated with the Guest(s)' user id; and

c. All contact information associated with the Guest(s) in the possession or control of Airbnb.

47. Provide all contact information in the possession of Airbnb for each and every Guest associated with the **id product** which is listed in the attached **Exhibit B**. At a minimum, provide the following information for the Guest associated with the id product:

a. The Guest(s) user id(s);

b. All names associated with the Guest(s)' user id; and

c. All contact information associated with the Guest(s) in the possession or control of Airbnb.

48. Provide all documents which identify any individual who has been an Airbnb Host during the time period of December 1, 2013 until the present who has been convicted of any of the

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following offenses[1]:

1. **Inchoate and Secondary Offenses:**
    a. Aiding and abetting
    b. Conspiracy
    c. Accessory
    d. Accessory after the fact
    e. Attempt to Commit Sexual Offense
    f. Attempt to Commit Violent Offense
    g. Intent to Commit Sexual Offense
    h. Intent to Commit Violent Offense
2. **Adjudicatory Offenses and Dispositions**
    a. Probation Violation
    b. Bail Jumping
    c. Obstruction of Justice/Contempt of Court
    d. Deferred Imposition of Sentence
3. **Sexual Offenses**
    a. Bestiality
    b. Lewd and Lacivious Acts
    c. Incest
    d. Prostitution
    e. Sexual Harassment
4. **Violent Offenses**
    a. Manslaughter (Involuntary, Vehicular)

[1] These offenses are listed in the "Violation Categorization" of Airbnb's Background Check Policy (Last Updated: 1/6/2018) *See* **Attached Exhibit C - AIRBNB 0001335 – 1345.**

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b. Threats of Violence (including Terroristic Threats)

c. Violating a restraining/protection order

d. Having a restraining/protection order taken out against you

e. Simple Assault

f. Conspiracy to Commit Assault

g. Battery (Misdemeanor)

h. Non-Violent Weapons charges (possession, illegal possession, non-firearm weapons charges)

i. Harassment

j. Stalking

k. Organized Crime/RICO

l. Elder Abuse

m. Child Abuse

n. Animal Abuse

o. Child Neglect

p. Disorderly Conduct

q. Resisting Arrest without violence

r. Resisting Arrest with Violent Component

s. Fleeing Police without Violence

t. Fleeing Police with Violent Component

5. **Fraud and Dishonesty**

a. Embezzlement

b. Hacking/Computer Crime

c. Fraud

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d. Credit Card Fraud

e. Mail/Wire Fraud

f. Tax Fraud

g. Extortion

h. Blackmail

i. Forgery

j. Counterfeiting

k. Online Impersonation

l. Bribery

m. Perjury

n. Use of a False Identity (e.g. underage drinking, using a fake ID to get into a club, election fraud)

o. Insider Trading

p. Fraudulently obtaining food stamps or other public benefit

6. Property Damage and Theft

a. Robbery (Misdemeanor)

b. Burglary (Felony)

c. Burglary (Misdemeanor)

d. Property Damage (Felony)

e. Theft (Felony)

f. Theft (Misdemeanor)

g. Breaking and Entering (Misdemeanor)

h. Property Damage/ Vandalism (Misdemeanor)

i. Larceny (Felony)

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j. Petit Larceny/Theft

k. Shoplifting

l. Theft by Check/Theft by Credit Card

m. Theft of Services

n. Trespassing

7. Drug Offenses

a. Distribution (under Drug Offenses)

b. Maintaining a Drug House

c. Manufacturing, Production, Cultivation – Not marijuana

d. Manufacturing/Delivery Combined

e. Manufacturing, Production, Cultivation for marijuana for NON personal use

f. Sale or Delivery

g. Chil

h. Possession – Not Marjuana

i. Possession of Drug Paraphernalia

j. Attempted possession with intent to distribute

8. Privacy

a. Voyeurism

b. Unlawful Surveillance

c. Indecent Exposure

d. Public Lewdness

e. Eavesdropping

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ATTORNEYS FOR PLAINTIFF JULIANNE FOSTER

November 1, 2022
Greenville, South Carolina

ELECTRONICALLY FILED - 2023 Jan 18 2:24 PM - AIKEN - COMMON PLEAS - CASE#2021CP0200889

STATE OF SOUTH CAROLINA COUNTY OF AIKEN Julianne Foster, Plaintiff, vs. Rhett Riviere, Katherine A. Thomas, Chase Enterprises, LLC of South Carolina, And Airbnb, Inc., Defendants.	)	IN THE COURT OF COMMON PLEAS 2ND JUDICIAL CIRCUIT CASE NO. 2021-CP-02-00889 **CERTIFICATE OF SERVICE**

I, Deborah Barbier, attorney for the Plaintiff in this action, do hereby certify that I have served the below parties and / or their counsel of record by Email as set forth below on this date in this action with a copy of the document(s) listed below.

1) **Plaintiff's Requests for Production 45 - 48 to Airbnb, Inc.**

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Deborah Barbier

November 1, 2022
Columbia, South Carolina

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CONFIDENTIAL

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PLAINTIFF'S EXHIBIT 6

AIRBNB-000357

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2017-11-04 20:57:29.0	86755971	523121033	547.08	USD	STAY	PAYMENT_ENQUEUED
2017-11-12 01:46:35.0	86755971	530638786	717.80	USD	STAY	PAYMENT_ENQUEUED

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2018-01-01 02:04:54.0	86755971	579447846	547.08	USD	STAY	PAYMENT_ENQUEUED
2018-01-14 18:31:17.0	86755971	597950165	601.40	USD	STAY	PAYMENT_ENQUEUED
2018-01-25 04:07:12.0	86755971	612765430	1047.60	USD	STAY	PAYMENT_ENQUEUED
2018-02-05 20:08:32.0	86755971	627993593	446.20	USD	STAY	PAYMENT_ENQUEUED
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2018-04-17 21:27:55.0	86755971	705259000	969.16	USD	STAY	PAYMENT_ENQUEUED
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2018-05-19 12:59:29.0	86755971	699186555	471.42	USD	STAY	PAYMENT_ENQUEUED
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2018-06-25 21:06:13.0	86755971	819375036	1352.44	USD	STAY	PAYMENT_ENQUEUED
2018-07-25 18:02:35.0	86755971	819375036	227.59	USD	STAY	PAYMENT_ENQUEUED
2018-08-03 18:05:13.0	86755971	878228046	1403.69	USD	STAY	PAYMENT_ENQUEUED
2019-02-22 12:11:57.0	86755971	1120064266	640.20	USD	STAY	PAYMENT_ENQUEUED

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2019-03-22 12:14:45.0	86755971	1184937236	544.17	USD	STAY	PAYMENT_ENQUEUED
2019-05-17 17:55:52.0	86755971	1401559673	1001.04	USD	STAY	PAYMENT_ENQUEUED
2019-05-18 12:22:26.0	86755971	1261135241	480.15	USD	STAY	PAYMENT_ENQUEUED
2019-07-04 21:00:04.0	86755971	1627708055	1309.50	USD	STAY	PAYMENT_ENQUEUED

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host_id	reso_created_at	reservation_id	listing_id	confirmation_code	start_date	nights	number_of_guests	base_price	host_fee	security_price	extras_price	coupon_savings	coupon_id	canceled_at
86755971	2016-12-25 19:25:13	250682491	16401221	FXHHYF	2016-12-27	2	2	222	8	200	60	0		
86755971	2017-01-07 22:34:46	256423397	16401221	449SP3	2017-03-01	30	1	1288	39	200	0	0		
86755971	2017-01-13 18:32:39	259460858	16367658	RNMPNA	2017-02-26	8	3	1066	34	200	80	0		
86755971	2017-01-17 18:36:30	261551333	16367658	5PSRD4	2017-03-26	16	3	2400	72	200	0	0		2017-01-18 17:42:34
86755971	2017-02-09 15:35:16	273314471	16367658	8HJASW	2017-02-17	3	4	666	22	200	80	0		
86755971	2017-03-06 19:25:45	287172515	16367658	FKZYAB	2017-04-03	7	3	1865	58	200	80	0		2017-03-27 17:02:02
86755971	2017-03-23 13:14:35	297013125	16401221	HM2S5S5W5K	2017-04-03	7	1	1111	33	200	0	0		
86755971	2017-03-28 19:00:22	300361185	16401221	HMHQZPT9PK	2017-05-25	2	1	222	7	200	0	0		
86755971	2017-03-31 02:16:32	301750300	16367658	HMYEQ5FYMT	2017-04-04	2	4	600	18	200	0	0		
86755971	2017-04-10 23:28:33	308419460	16367658	HMBRZ9594N	2017-04-11	2	1	270	8	200	0	0		
86755971	2017-04-19 01:40:17	313204597	16367658	HM5X83HEHS	2017-05-19	2	3	270	8	200	0	0		
86755971	2017-05-04 16:29:30	322848179	16367658	HMBNZAT4Q5	2017-07-02	6	3	810	24	200	0	0		
86755971	2017-06-06 21:04:57	351254420	16367658	HMYBKNTW3F	2017-06-14	5	4	400	14	200	60	0		
86755971	2017-07-02 16:57:40	380267471	16367658	HMRJJNWM85	2017-08-20	2	5	244	7	200	0	0		
86755971	2017-07-06 00:52:47	384530819	16367658	HMPC4JME59	2017-07-14	2	1	244	7	200	0	0		
86755971	2017-07-11 19:31:14	391871957	16401221	HMPYXJ5ZQR	2017-08-20	2	2	225	7	200	0	0		
86755971	2017-07-12 20:54:36	393320398	16401221	HMXJQ2WZ5P	2017-07-21	2	2	222	7	200	0	0		
86755971	2017-07-14 16:20:48	395682602	16401221	HM24RK9X82	2017-08-06	7	2	622	19	200	0	0		
86755971	2017-07-23 17:10:20	407089671	16367658	HMERRYQY2R	2017-07-23	7	5	683	20	200	0	0		
86755971	2017-07-24 02:52:21	407645815	16367658	HM2XJ3Q2CB	2017-09-02	2	3	244	7	200	0	0		2017-08-20 17:25:53
86755971	2017-07-29 17:58:31	415104027	16367658	HM4AMX5BTN	2017-09-22	4	3	491	15	200	0	0		
86755971	2017-08-09 14:59:32	429662716	16367658	HMXQP2REMW	2017-09-15	3	4	366	11	200	0	0		
86755971	2017-08-09 16:27:28	429773833	16401221	HM8KTZSARY	2017-08-24	3	2	333	10	200	0	0		
86755971	2017-08-13 16:52:17	434634385	16401221	HMP4A2FN3Q	2017-10-07	2	1	223	7	200	0	0		
86755971	2017-08-13 21:29:24	434922362	16367658	HMRRNFWNM3	2017-08-25	2	5	244	7	200	0	0		
86755971	2017-08-17 19:56:51	439791718	16367658	HMR85ECRCW	2017-09-29	2	3	244	7	200	0	0		
86755971	2017-09-03 17:39:37	458328144	16367658	HMZB4AHX3B	2017-12-19	4	2	488	15	200	0	0		2017-12-05 14:23:28
86755971	2017-09-11 13:44:25	467225490	16367658	HM92S5NRZD	2017-09-11	2	6	244	7	200	0	0		
86755971	2017-10-17 20:44:57	505478570	16401221	HMZRX2NKA9	2017-11-08	7	2	622	19	200	0	0		2017-10-24 19:30:51
86755971	2017-10-26 13:13:16	514233634	16367658	HMA9ED9C8Q	2017-12-28	4	5	484	15	200	0	0		
86755971	2017-10-31 23:39:05	519312101	16401221	HMMAZADMX2	2018-01-02	7	2	622	19	200	0	0		
86755971	2017-11-02 22:41:56	521272618	16401221	HMNX943W9D	2017-11-03	2	1	222	7	200	0	0		
86755971	2017-11-04 20:34:39	523121033	16401221	HMNSN9Y3RY	2017-11-28	7	2	504	17	200	60	0		
86755971	2017-11-12 00:55:09	530638786	16367658	HM28CBXANQ	2017-11-21	4	5	660	22	200	80	0		
86755971	2017-12-08 18:13:59	557373045	16367658	HM538SCZWD	2017-12-17	5	2	675	23	200	80	0		
86755971	2017-12-31 00:51:40	578646104	16401221	HMEA3ZPNRS	2018-02-27	22	1	1584	49	200	60	0		2018-02-15 15:45:53
86755971	2018-01-01 01:51:42	579447846	16401221	HMZXJ45JXC	2018-01-22	7	1	504	17	200	60	0		
86755971	2018-01-14 18:30:49	597950165	16367658	HMNJ43CPN2	2018-04-26	4	3	540	19	200	80	0		
86755971	2018-01-23 20:52:09	610926648	16367658	HMR8QJY5WJ	2018-05-31	3	6	405	15	200	80	0		2018-03-07 21:05:45
86755971	2018-01-25 04:06:53	612765430	16367658	HMWMDFQQ2A	2018-04-03	2	4	1000	32	200	80	0		
86755971	2018-02-05 20:04:04	627993593	16401221	HM9M9H8TZ2	2018-04-10	4	1	400	14	200	60	0		
86755971	2018-02-15 01:13:05	639848149	16367658	HMK5ZAYPQN	2018-05-09	4	4	556	19	200	80	0		
86755971	2018-03-28 14:14:47	699186555	16367658	HM2Z84RY8F	2018-05-18	3	5	406	15	200	80	0		
86755971	2018-04-01 20:56:58	705259000	16401221	HMW9DQ4T9B	2018-04-16	46	2	1472	46	200	60	0		
86755971	2018-05-09 01:32:21	758931490	16367658	HMH4KSZRZM	2018-05-26	2	4	270	11	200	80	0		
86755971	2018-06-23 00:35:18	819375036	16367658	HMQ3NNFJ8H	2018-06-24	35	4	1549	49	200	80	0		
86755971	2018-07-31 14:50:54	878228046	16367658	HMXF3FZSAA	2018-08-02	31	3	1367	43	200	80	0		
86755971	2019-02-13 14:17:13	1120064266	31993856	HMY2KMYSQS	2019-02-21	3	2	660	20	0	0	0		2019-02-19 02:41:52
86755971	2019-03-15 23:34:06	1182852704	16401221	HMAD88TMP2	2019-04-10	3	2	1005	32	250	60	0		2019-04-09 16:22:36
86755971	2019-03-16 21:42:13	1184916940	31993856	HMAKJRHZQC	2019-04-29	13	2	1661	50	0	0	0		2019-04-30 02:15:07

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86755971	2019-03-16 21:55:23	1184937236	31993856	HMACKMDH2J	2019-03-21	3	2	561	17	0	0	0		
86755971	2019-04-12 15:41:47	1261135241	31993856	HMANNSHZ8D	2019-05-17	3	2	495	15	0	0	40	143019233	
86755971	2019-05-17 17:55:46	1401559673	16401221	HMAFDY9ZBX	2019-05-22	10	1	972	31	250	60	0		
86755971	2019-07-04 20:59:58	1627708055	31993856	HMAB2K8MZB	2019-07-07	30	1	1350	41	250	0	0		
86755971	2019-08-09 21:42:51	1724206674	16367658	HMAKRX989T	2019-09-02	13	3	965	31	200	80	0		2019-08-23 04:17:24

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Background Check Policy (US *Only*)

AUTHOR: Community Policy Team
LAUNCH DATE: 5/6/2016
LAST UPDATED: 1/6/2018
FEEDBACK COLLECTION FORM

Policy Statement

How our stance on this issue facilitates Belonging, and what enforcement actions will be taken when violations occur.

In order to belong, people must first feel safe in our community. To proactively keep the community safe, some individuals are not eligible to be Airbnb users. One mechanism for determining that an individual is ineligible to hold an Airbnb account is through review of their criminal background check. In cases where an individual's background check reveals a conviction for specific offenses within predetermined time periods from the date of review, the individual will be prevented from operating an Airbnb account. This policy will provide a complete list of the offenses and their attendant time periods for which individuals will be ineligible to hold Airbnb accounts.

Boundaries

Scenarios you might think would be covered here but are actually addressed in another policy or are not subject to enforcement action

Covered in other policies:

- Ineligible Accounts: Policy TBD

Not subject to enforcement action:

Conviction or personal history information uncovered about users from non-background check sources, including but not limited to:

- Social media (Facebook, Twitter, Instagram etc.)
- News coverage (print or online)
- Blogs
- Other online venues (Ebay, Etsy, Uber, Lyft, Pinterest, Linkedin, OKCupid, etc.)
- Vendor information (Troo.ly)

Except in the case of restraining/protection orders issued by family courts, this policy does not cover adverse action taken by civil or non-governmental agencies, including but not limited to:

- Professional Associations (e.g. American Medical Association, state bar associations, American Dental Association, American Institute of CPAs, FINRA)
- Tax liens
- Wage garnishments
- Divorce/separation agreements
- Child support orders
- Eviction/Housing Court Records
- Traffic/Parking offenses

Definition of Terms

Relevant Terms of Use (consistent across all policies)

User: Any individual who is connected to an Airbnb account.
Conviction: Any finding of guilt or acceptance of criminal punishment, including as the result of a plea bargain, nolo contendere or no contest plea. Arrest records, indictments, charges etc. are not evidence of a conviction and may not be used as such under this policy. However, for the purposes of this policy, non-adjudicated or inconclusive court statuses[1] will be considered convictions and removals will be processed under that offense's relevant timeframe.
Transaction: When a user posts a listing or requests a reservation.

[1] Including but not limited to: deferred imposition of sentence, pretrial diversion, pretrial intervention, adjudication withheld, deferred prosecution agreement, deferred adjudication.

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Adverse Action: Denial of the use of Airbnb to the user.
Secondary Ghosting: Preventing the user from opening new accounts and removing accounts related to the originally removed individual using the dynamic ghosting tool.
Timeframe: Calculated from offense or charge date, whichever is available. If both are available, use the offense date. Do not use the date of conviction unless no other date information is available.

Investigation Boundaries

Tools, signals, and evidence that should never be requested from a user and/or considered actionable.

N/A

Action Mapping

Violation Categorization

Does the scenario in question fall into one of the below categories?

Inchoate and Secondary Offenses	
Aiding and abetting	Timeline for underlying offense
Conspiracy	Timeline for underlying offense
Accessory	Timeline for underlying offense
Accessory after the fact	Timeline for underlying offense
Attempt	Sexual Offenses, Violent Offenses, ALL offenses with Forever or 14 year timeframes = Timeline for underlying offense

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	All others = None
Intent to Commit	Sexual Offenses, Violent Offenses, ALL offenses with Forever or 14 year timeframes = Timeline for underlying offense All others = None
Adjudicatory Offenses and Dispositions	
Probation Violation	None
Bail Jumping	None
Obstruction of Justice/Contempt of Court	None
Deferred Imposition of Sentence	Timeline for underlying offense
Sexual Offenses	
Rape	Forever
Statutory Rape	Forever
Sexual Assault	Forever
Child Rape	Forever
Child Sexual Exploitation Imagery (Possession, creation, distribution, sale or purchase)	Forever
Child Molestation	Forever
Sexual Exploitation of a Minor	Forever

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Taking a child for the purpose of prostitution	Forever
Sexual Abuse of an adult or child	Forever
Sexual Solicitation of a Minor	Forever
Failure to register as a sex offender	Forever
Bestiality	14 Years
Lewd and lascivious acts[2]	None
Incest	None
Solicitation	Forever
Pimping	Forever
Promotion of Prostitution	Forever
Prostitution	7 Years
Any offense that requires registration on a sex offender registry	Forever
Human trafficking	Forever
Sexual harassment	7 Years
Violent Offenses	
Murder (1st or 2nd Degree)	Forever
Felony murder	Forever

[2] Request vendor deep-dive to determine if underlying conduct relates to an existing offense type for which we remove (e.g. child abuse, statutory rape). If not, do not remove for this offense type.

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Terrorism (including attempts, conspiracies, and threats)	Forever
Bomb Threats	Forever
Attempted Murder	Forever
Manslaughter (Voluntary)	Forever
Manslaughter (Involuntary, Vehicular)	7 Years
Kidnapping	Forever
Handgun/weapon related violent offenses OTHER THAN assault with a deadly weapon	Forever
Threats of Violence (including Terroristic Threats)	7 Years
Violating a restraining/protection order	7 Years
Having a restraining/protection order taken out against you	7 Years
Assault with a deadly weapon	Forever
Aggravated Assault	Forever
Felony Assault	Forever
Simple Assault	7 Years
Conspiracy to Commit Assault or	7 Years
Battery [Felony]	Forever
Battery [Misdemeanor]	7 Years
Domestic/Family/Household Violence	Forever

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Assault on a Female [Felony or Misdemeanor]	Forever
Hate/discrimination crimes	Forever
Unlawful imprisonment	Forever
Non-violent Weapons charges (possession, illegal possession, non-firearm weapons charges)	7 Years
Harassment	7 Years
Stalking	7 Years
Organized Crime/RICO	7 Years
Elder Abuse	7 Years
Child Abuse	Forever
Animal Abuse	7 Years
Child Neglect	None
Disorderly Conduct	None
Resisting Arrest without violence	None
Resisting Arrest with violent component	7 Years
Fleeing Police without violence	None
Fleeing Police with violent component	7 Years
Fraud and Dishonesty	
Identity Theft	Forever

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Money Laundering	Forever
Embezzlement	14 Years
Hacking/Computer Crime	7 Years
Fraud	7 Years
Credit Card Fraud	7 Years
Mail/Wire Fraud	7 Years
Tax Fraud	7 Years
Extortion	7 Years
Blackmail	7 Years
Forgery	7 Years
Counterfeiting	7 Years
Online Impersonation	7 Years
Bribery	None
Perjury	None
Use of a false identity (e.g. underage drinking, using a fake ID to get into a club, election fraud)	None
Insider Trading	None
Fraudulently obtaining food stamps or other public benefit	None
Property Damage & Theft	

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Robbery [Felony]	Forever
Robbery [Misdemeanor]	7 Years
Arson [Felony OR Misdemeanor]	Forever
Burglary [Felony]	14 Years
Burglary [Misdemeanor]	7 Years
Property Damage [Felony]	7 Years
Theft [Felony]	14 Years
Theft [Misdemeanor]	7 Years
Breaking and Entering [Felony]	Forever
Breaking and Entering [Misdemeanor]	7 Years
Property Damage/Vandalism [Misdemeanor]	None
Larceny [Felony]	14 Years
Petty Larceny/Theft	None
Shoplifting	None
Theft by Check/Theft by Credit Card	None
Theft of Services	None
Trespassing	None
Drug Offenses - Felonies ONLY	
Trafficking	Forever

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Distribution	14 Years
Maintaining a Drug House	7 Years
Manufacturing, Production, Cultivation - Not Marijuana	14 Years
Manufacturing/Delivery Combined	14 Years
Manufacturing, Production, Cultivation of Marijuana for NON personal use	7 Years
Manufacturing, Production, Cultivation of Marijuana for Personal Use	7 Years
Sale or Delivery	7 Years
chil	7 Years
Possession - Not marijuana	7 Years
Possession - Marijuana	None
Possession of Drug Paraphernalia	None
Attempted possession with intent to distribute	None
Privacy	
Voyeurism	7 Years
Unlawful surveillance	7 Years
Indecent Exposure	7 Years
Public Lewdness	None
Eavesdropping	7 Years

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Context Assessment [N/A]

Burden of Proof [N/A]

How confident are we that the violation is present?

Summary Action Table [N/A]

Action to be taken based on an assessment of the allegation, context, and evidence

Action Mapping Rationale

Why we take actions that might seem excessively harsh. Why we take action on some scenarios regardless of intent or mitigating factors.

Why are some timeframes forever? Don't we believe in rehabilitation?
Appeals to removal under this policy are assessed according to the Rehabilitation policy, which provides for reinstatement for some "Forever" removals. That said, for very serious convictions, the nature of the potential harm to both the community and the brand is too high to take the risk of allowing a user on the platform.

The criminal justice system can be inaccurate and unfair, often in ways that have a racially disparate impact. Are we punishing people again for being involved in an already unjust system?
In drafting this policy, a cross-functional group within Airbnb as well as expert external consultants thought carefully about this issue and worked to arrive at a policy that balanced the safety of the community and the company with the potential for unfairness and inequality in criminal convictions. That's why we eliminated removal for minor drug and property offenses, reduced the timeframes for marijuana convictions, and provided separate timeframes for many felony and misdemeanor convictions.

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STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

JULIANNE FOSTER,

Plaintiff,

v.

RHETT RIVIERE, KATHERINE A. THOMAS, CHASE ENTERPRISES, LLC OF SOUTH CAROLINA, and AIRBNB, INC.,

Defendants.

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT
CASE NO.: 2021-CP-02-00889

AIRBNB, INC.'s RESPONSES TO PLAINTIFF'S REQUESTS FOR PRODUCTION TO DEFENDANT AIRBNB, INC. – NOS. 45-48

COMES NOW the Defendant, Airbnb, Inc., pursuant to the South Carolina Rules of Civil Procedure and applicable law, and responds to Plaintiff's Requests for Production to Defendant Airbnb, Inc.'s Nos. 45-48 (the "Requests") as follows:

GENERAL OBJECTIONS

Airbnb objects to the document Requests from Plaintiff to the extent they are not reasonably calculated to lead to the discovery of admissible evidence; to the extent they seek any proprietary, confidential or sensitive corporate information of Airbnb (such documents will be labeled "CONFIDENTIAL" per the Court's September 16, 2021 Protective Order in this action); to the extent they seek work product prepared in anticipation of litigation or attorney-client privileged communications; to the extent they seek private personal information about non-parties to this action without their consent; and to the extent the Requests are vague, ambiguous, and unduly burdensome, including by purporting to impose obligations upon Airbnb to create new records or search or compile records beyond those for the subject dispute. Airbnb also objects because the Requests are not limited in time and are thus overbroad, unduly burdensome, and not

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reasonably calculated to lead to the discovery of admissible evidence; Airbnb will not produce documents created after the filing of the complaint. Airbnb objects to the Requests to the extent they seek documents already in Plaintiff's possession, custody, or control. To the extent Airbnb ultimately produces any documents in response to these Requests, Airbnb does not concede that it has any obligation to make available a corporate witness to give any testimony on a corresponding topic is appropriate. Similarly, if Airbnb agrees to make a corporate representative available to respond to, Airbnb does not concede that it has any obligation to produce documents on any related request for production.

RESPONSES AND OBJECTIONS

45. Provide all contact information in the possession of Airbnb for each and every Guest(s) associated with the **reservation id numbe**r which is listed in the attached **Exhibit A**. At a minimum, provide the following information for the Guest(s) associated with the reservation id number:

a. The Guest's user id(s);

b. All names associated with the Guest(s)' user id; and

c. All contact information associated with the Guest(s) in the possession or control of Airbnb.

RESPONSE: Airbnb objects to this Request for the reasons stated in its general objections, which it incorporates by reference here.

Airbnb objects to this Request because it seeks private information protected by South Carolina's constitutional right to privacy, S.C. Const. Art. 1, § 10; the South Carolina Personal Financial Security Act, S.C. Code Ann. § 16-13-500

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et seq.; the Stored Communications Act; California's constitutional right to privacy, Cal. Const. Art. I, § 1; the California Consumer Privacy Act, Cal. Civ. Code § 1798, *et seq.*; the California Financial Information Privacy Act, Cal. Fin. Code § 4052, *et seq.*; and any other applicable constitutional, statutory, and/or common-law privacy rights of entities or persons to the extent it calls for communications from third parties, or personally identifiable or otherwise sensitive information about third parties. The information requested is about third parties who bear no relevance to this lawsuit and have not consented to the disclosure of their personal information to Plaintiff's attorneys.

Airbnb objects to this Request as unintelligible insofar as it requests information regarding certain "reservation id number[s]" purportedly listed in "Exhibit A" to Plaintiff's Requests; "Exhibit A" does not refer to any "reservation id number[s]." Airbnb interprets this Request as instead referring to the "reservation_id[s]" listed in "Exhibit B" to Plaintiff's Requests. Airbnb also objects to this Request as seeking information not reasonably calculated to lead to relevant information. Airbnb further objects to this Request to the extent it seeks documents already in Plaintiff's possession, custody, or control; Airbnb will not produce such documents. Airbnb also objects to this Request on the grounds that it is overbroad, unduly burdensome, not proportionate to the needs of the case because it seeks "all contact information" for Guests other than Michelle Jain, the guest who booked Plaintiff's stay at 115 Third Ave SW, Aiken, South Carolina on May 17 and 18, 2019. Information regarding guests and reservations made by anyone other than Ms. Jain or Plaintiff is not likely to lead to evidence that is related

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to a claim or defense of any party in this case. Nor is such information regarding entirely unrelated guests and reservations relevant to any of the acts or omissions Plaintiff alleges to have taken place on May 17 and 18, 2019 during Plaintiff's stay at 115 Third Ave SW, Aiken, South Carolina. Airbnb also objects to this Request as compound. Airbnb also objects to this Request as duplicative of Request No. 46, which seeks the same information regarding the same guests referenced in this Request.

46. Provide all contact information in the possession or control of Airbnb for each and every Guest(s) associated with the **confirmation code** which is listed in the attached **Exhibit A**. At a minimum, provide the following information for the Guest(s) associated with the confirmation code:

a. The Guest(s)' user id(s);

b. All names associated with the Guest(s)' user id; and

c. All contact information associated with the Guest(s) in the possession or control of Airbnb.

RESPONSE: Airbnb objects to this Request for the reasons stated in its general objections, which it incorporates by reference here.

Airbnb objects to this Request because it seeks private information protected by South Carolina's constitutional right to privacy, S.C. Const. Art. 1, § 10; the South Carolina Personal Financial Security Act, S.C. Code Ann. § 16-13-500 *et seq.*; the Stored Communications Act; California's constitutional right to privacy, Cal. Const. Art. I, § 1; the California Consumer Privacy Act, Cal. Civ. Code § 1798, *et seq.*; the California Financial Information Privacy Act, Cal. Fin. Code § 4052, *et*

seq.; and any other applicable constitutional, statutory, and/or common-law privacy rights of entities or persons to the extent it calls for communications from third parties, or personally identifiable or otherwise sensitive information about third parties. The information requested is about third parties who bear no relevance to this lawsuit and have not consented to the disclosure of their personal information to Plaintiff's attorneys.

Airbnb objects to this Request as unintelligible insofar as it requests information regarding certain "confirmation code[s]" purportedly listed in "Exhibit A" to Plaintiff's Requests; "Exhibit A" does not refer to any "confirmation code[s]." Airbnb interprets this Request as instead referring to the "confirmation_code[s]" listed in "Exhibit B" to Plaintiff's Requests. Airbnb also objects to this Request as seeking information not reasonably calculated to lead to relevant information. Airbnb further objects to this Request to the extent it seeks documents already in Plaintiff's possession, custody, or control; Airbnb will not produce such documents. Airbnb also objects to this Request on the grounds that it is overbroad, unduly burdensome, not proportionate to the needs of the case because it seeks "all contact information" for Guests other than Michelle Jain, the guest who booked Plaintiff's stay at 115 Third Ave SW, Aiken, South Carolina on May 17 and 18, 2019. Information regarding guests and reservations made by anyone other than Ms. Jain or Plaintiff is not likely to lead to evidence that is related to a claim or defense of any party in this case. Nor is such information regarding entirely unrelated guests and reservations relevant to any of the acts or omissions Plaintiff alleges to have taken place on May 17 and 18, 2019 during Plaintiff's stay

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at 115 Third Ave SW, Aiken, South Carolina. Airbnb also objects to this Request as compound. Airbnb also objects to this Request as duplicative of Request No. 45, which seeks the same information regarding the same guests referenced in this Request.

47. Provide all contact information in the possession of Airbnb for each and every Guest associated with the **id product** which is listed in the attached **Exhibit B**. At a minimum, provide the following information for the Guest associated with the id product:

a. The Guest(s) user id(s);

b. All names associated with the Guest(s)' user id; and

c. All contact information associated with the Guest(s) in the possession or control of Airbnb.

RESPONSE: Airbnb objects to this Request for the reasons stated in its general objections, which it incorporates by reference here.

Airbnb objects to this Request because it seeks private information protected by South Carolina's constitutional right to privacy, S.C. Const. Art. 1, § 10; the South Carolina Personal Financial Security Act, S.C. Code Ann. § 16-13-500 *et seq.*; the Stored Communications Act; California's constitutional right to privacy, Cal. Const. Art. I, § 1; the California Consumer Privacy Act, Cal. Civ. Code § 1798, *et seq.*; the California Financial Information Privacy Act, Cal. Fin. Code § 4052, *et seq.*; and any other applicable constitutional, statutory, and/or common-law privacy rights of entities or persons to the extent it calls for communications from third parties, or personally identifiable or otherwise sensitive information about third parties. The information requested is about third parties who bear no

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relevance to this lawsuit and have not consented to the disclosure of their personal information to Plaintiff's attorneys.

Airbnb objects to this Request as unintelligible insofar as it requests information regarding certain "id product[s]" purportedly listed in "Exhibit B" to Plaintiff's Requests; "Exhibit B" does not refer to any "id product[s]." Airbnb interprets this Request as instead referring to the "id_product[s]" listed in "Exhibit A" to Plaintiff's Requests. Airbnb also objects to this Request as seeking information not reasonably calculated to lead to relevant information. Airbnb further objects to this Request to the extent it seeks documents already in Plaintiff's possession, custody, or control; Airbnb will not produce such documents. Airbnb also objects to this Request on the grounds that it is overbroad, unduly burdensome, not proportionate to the needs of the case because it seeks "all contact information" for Guests other than Michelle Jain, the guest who booked Plaintiff's stay at 115 Third Ave SW, Aiken, South Carolina on May 17 and 18, 2019. Information regarding guests and reservations made by anyone other than Ms. Jain or Plaintiff is not likely to lead to evidence that is related to a claim or defense of any party in this case. Nor is such information regarding entirely unrelated guests and reservations relevant to any of the acts or omissions Plaintiff alleges to have taken place on May 17 and 18, 2019 during Plaintiff's stay at 115 Third Ave SW, Aiken, South Carolina. Airbnb also objects to this Request as compound.

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48. Provide all documents which identify any individual who has been an Airbnb Host during the time period of December 1, 2013 until the present who has been convicted of any of the following offenses:[1]

1. **Inchoate and Secondary Offenses**:
   a. Aiding and abetting
   b. Conspiracy
   c. Accessory
   d. Accessory after the fact
   e. Attempt to Commit Sexual Offense
   f. Attempt to Commit Violent Offense
   g. Intent to Commit Sexual Offense
   h. Intent to Commit Violent Offense
2. **Adjudicatory Offenses and Dispositions**
   a. Probation Violation
   b. Bail Jumping
   c. Obstruction of Justice/Contempt of Court
   d. Deferred Imposition of Sentence
3. **Sexual Offenses**
   a. Bestiality
   b. Lewd and Lacivious Acts
   c. Incest
   d. Prostitution

[1] These offenses are listed in the "Violation Categorization" of Airbnb's Background Check Policy (Last Updated: 1/6/2018) See **Attached Exhibit C - AIRBNB 0001335 – 1345**.

e. Sexual Harassment

4. **Violent Offenses**

a. Manslaughter (Involuntary, Vehicular)

b. Threats of Violence (including Terroristic Threats)

c. Violating a restraining/protection order

d. Having a restraining/protection order taken out against you

e. Simple Assault

f. Conspiracy to Commit Assault

g. Battery (Misdemeanor)

h. Non-Violent Weapons charges (possession, illegal possession, non-firearm weapons charges)

i. Harassment

j. Stalking

k. Organized Crime/RICO

l. Elder Abuse

m. Child Abuse

n. Animal Abuse

o. Child Neglect

p. Disorderly Conduct

q. Resisting Arrest without violence

r. Resisting Arrest with Violent Component

s. Fleeing Police without Violence

t. Fleeing Police with Violent Component

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5. **Fraud and Dishonesty**

   a. Embezzlement

   b. Hacking/Computer Crime

   c. Fraud

   d. Credit Card Fraud

   e. Mail/Wire Fraud

   f. Tax Fraud

   g. Extortion

   h. Blackmail

   i. Forgery

   j. Counterfeiting

   k. Online Impersonation

   l. Bribery

   m. Perjury

   n. Use of a False Identity (e.g. underage drinking, using a fake ID to get into club, election fraud)

   o. Insider Trading

   p. Fraudulently obtaining food stamps or other public benefit

6. **Property Damage and Theft**

   a. Robbery (Misdemeanor)

   b. Burglary (Felony)

   c. Burglary (Misdemeanor)

   d. Property Damage (Felony)

e. Theft (Felony)

f. Theft (Misdemeanor)

g. Breaking and Entering (Misdemeanor)

h. Property Damage/ Vandalism (Misdemeanor)

i. Larceny (Felony)

j. Petit Larceny/Theft

k. Shoplifting

l. Theft by Check/Theft by Credit Card

m. Theft of Services

n. Trespassing

7. **Drug Offenses**

a. Distribution (under Drug Offenses)

b. Maintaining a Drug House

c. Manufacturing, Production, Cultivation – Not marijuana

d. Manufacturing/Delivery Combined

e. Manufacturing, Production, Cultivation for marijuana for NON personal use

f. Sale or Delivery

g. Chil

h. Possession – Not Marjuana

i. Possession of Drug Paraphernalia

j. Attempted possession with intent to distribute

8. **Privacy**

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a. Voyeurism

b. Unlawful Surveillance

c. Indecent Exposure

d. Public Lewdness

e. Eavesdropping

RESPONSE: Airbnb objects to this Request for the reasons stated in its general objections, which it incorporates by reference here.

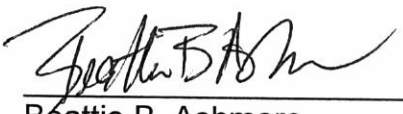
Airbnb objects to this Request because it seeks private information protected by South Carolina's constitutional right to privacy, S.C. Const. Art. 1, § 10; the South Carolina Freedom of Information Act, S.C. Code Ann. § 30-4-10 *et seq.*; S.C. Code Ann. § 17-1-10 *et seq.*; the Stored Communications Act; California's constitutional right to privacy, Cal. Const. Art. I, § 1; the California Consumer Privacy Act, Cal. Civ. Code § 1798, et seq.; the California Financial Information Privacy Act, Cal. Fin. Code § 4052, et seq.; and any other applicable constitutional, statutory, and/or common-law privacy rights of entities or persons to the extent it calls for communications from third parties, or personally identifiable or otherwise sensitive information about third parties. The information requested is about third parties who bear no relevance to this lawsuit and have not consented to the disclosure of their personal information to Plaintiff's attorneys.

Airbnb also objects to this Request as seeking information not reasonably calculated to lead to relevant information. Airbnb further objects to this Request to the extent it seeks documents already in Plaintiff's possession, custody, or control; Airbnb will not produce such documents. Airbnb also objects to this

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Request on the grounds that it is overbroad, unduly burdensome, not proportionate to the needs of the case because it seeks "all documents" that "identify any individual who has been an Airbnb Host" during nearly a decade-long period and "who has been convicted" of any of a number of offences without any limitation in geographic scope. Information regarding all hosts using Airbnb's online marketplace other than co-defendants Katherine Thomas or Rhett Riviere involved in Plaintiff's stay at 115 Third Ave SW, Aiken, South Carolina on May 17 and 18, 2019 is not likely to lead to evidence that is related to a claim or defense of any party in this case. Nor is such information about hosts other than Ms. Thomas or Mr. Riviere, regardless of the host's location and for a nearly decade-long period for over 80 offenses that are not at issue in this case, relevant to any of the acts or omissions Plaintiff alleges to have taken place on May 17 and 18, 2019 during Plaintiff's stay at 115 Third Ave SW, Aiken, South Carolina. Airbnb also objects to this Request as compound.

BEATTIE B. ASHMORE, P.A.



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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing **AIRBNB, INC.'s RESPONSES TO PLAINTIFF'S REQUESTS FOR PRODUCTION TO DEFENDANT AIRBNB, INC. – NOS. 45-48** was served this 22nd day of December, 2022 by placing the same in the U.S. Mail, postage pre-paid and via email, to the following:

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Beattie B. Ashmore

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Defendant Airbnb, Inc.'s Privilege Log

Message Thread ID	Start Date of Message Thread	Description	Basis
38545646	5/16/2019	Communications thread on Airbnb platform between Katherine Thomas as Host and an Airbnb User.	Stored Communications Act
66439759	7/1/2019	Communications thread on Airbnb platform between Katherine Thomas as Host and an Airbnb User.	Stored Communications Act
99918022	8/9/2019	Communications thread on Airbnb platform between Katherine Thomas as Host and an Airbnb User.	Stored Communications Act
101767923	12/31/2017	Communications thread on Airbnb platform between Katherine Thomas as Host and an Airbnb User.	Stored Communications Act
105935742	10/12/2017	Communications thread on Airbnb platform between Katherine Thomas as Host and an Airbnb User.	Stored Communications Act

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117938069	9/3/2017	Communications thread on Airbnb platform between Katherine Thomas as Host and an Airbnb User.	Stored Communications Act
127219685	4/12/2019	Communications thread on Airbnb platform between Katherine Thomas as Host and an Airbnb User.	Stored Communications Act
154565188	3/15/2019	Communications thread on Airbnb platform between Katherine Thomas as Host and an Airbnb User.	Stored Communications Act
277952528	2/13/2019	Communications thread on Airbnb platform between Katherine Thomas as Host and an Airbnb User.	Stored Communications Act
292772646	3/16/2019	Communications thread on Airbnb platform between Katherine Thomas as Host and an Airbnb User.	Stored Communications Act
292780497	3/16/2019	Communications thread on Airbnb platform between Katherine Thomas as Host and an Airbnb User.	Stored Communications Act

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326760651	6/23/2018	Communications thread on Airbnb platform between Katherine Thomas as Host and an Airbnb User.	Stored Communications Act
419866160	8/6/2017	Communications thread on Airbnb platform between Katherine Thomas as Host and an Airbnb User.	Stored Communications Act
425044674	3/30/2017	Communications thread on Airbnb platform between Katherine Thomas as Host and an Airbnb User.	Stored Communications Act
434956917	10/25/2017	Communications thread on Airbnb platform between Katherine Thomas as Host and an Airbnb User.	Stored Communications Act
438070769	10/31/2017	Communications thread on Airbnb platform between Katherine Thomas as Host and an Airbnb User.	Stored Communications Act
438524143	11/2/2017	Communications thread on Airbnb platform between Katherine Thomas as Host and an Airbnb User.	Stored Communications Act

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439675506	11/4/2017	Communications thread on Airbnb platform between Katherine Thomas as Host and an Airbnb User.	Stored Communications Act
442550602	11/12/2017	Communications thread on Airbnb platform between Katherine Thomas as Host and an Airbnb User.	Stored Communications Act
443441315	3/28/2017	Communications thread on Airbnb platform between Katherine Thomas as Host and an Airbnb User.	Stored Communications Act
448682288	7/6/2017	Communications thread on Airbnb platform between Katherine Thomas as Host and an Airbnb User.	Stored Communications Act
460721568	1/1/2018	Communications thread on Airbnb platform between Katherine Thomas as Host and an Airbnb User.	Stored Communications Act
466140293	1/13/2018	Communications thread on Airbnb platform between Katherine Thomas as Host and an Airbnb User.	Stored Communications Act

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470005203	1/23/2018	Communications thread on Airbnb platform between Katherine Thomas as Host and an Airbnb User.	Stored Communications Act
470476308	1/25/2018	Communications thread on Airbnb platform between Katherine Thomas as Host and an Airbnb User.	Stored Communications Act
474884005	2/5/2018	Communications thread on Airbnb platform between Katherine Thomas as Host and an Airbnb User.	Stored Communications Act
478340516	2/15/2018	Communications thread on Airbnb platform between Katherine Thomas as Host and an Airbnb User.	Stored Communications Act
480823841	4/18/2017	Communications thread on Airbnb platform between Katherine Thomas as Host and an Airbnb User.	Stored Communications Act
497441504	4/1/2018	Communications thread on Airbnb platform between Katherine Thomas as Host and an Airbnb User.	Stored Communications Act

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512526580	5/9/2018	Communications thread on Airbnb platform between Katherine Thomas as Host and an Airbnb User.	Stored Communications Act
534206011	4/10/2017	Communications thread on Airbnb platform between Katherine Thomas as Host and an Airbnb User.	Stored Communications Act
544810144	7/2/2017	Communications thread on Airbnb platform between Katherine Thomas as Host and an Airbnb User.	Stored Communications Act
546238941	5/4/2017	Communications thread on Airbnb platform between Katherine Thomas as Host and an Airbnb User.	Stored Communications Act
563890839	6/6/2017	Communications thread on Airbnb platform between Katherine Thomas as Host and an Airbnb User.	Stored Communications Act
585151507	7/11/2017	Communications thread on Airbnb platform between Katherine Thomas as Host and an Airbnb User.	Stored Communications Act

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585252400	7/11/2017	Communications thread on Airbnb platform between Katherine Thomas as Host and an Airbnb User.	Stored Communications Act
585577023	7/12/2017	Communications thread on Airbnb platform between Katherine Thomas as Host and an Airbnb User.	Stored Communications Act
592728333	7/23/2017	Communications thread on Airbnb platform between Katherine Thomas as Host and an Airbnb User.	Stored Communications Act
593074230	7/24/2017	Communications thread on Airbnb platform between Katherine Thomas as Host and an Airbnb User.	Stored Communications Act
596788545	7/29/2017	Communications thread on Airbnb platform between Katherine Thomas as Host and an Airbnb User.	Stored Communications Act
603915157	8/9/2017	Communications thread on Airbnb platform between Katherine Thomas as Host and an Airbnb User.	Stored Communications Act

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606453040	8/13/2017	Communications thread on Airbnb platform between Katherine Thomas as Host and an Airbnb User.	Stored Communications Act
606571333	8/13/2017	Communications thread on Airbnb platform between Katherine Thomas as Host and an Airbnb User.	Stored Communications Act
608529589	8/17/2017	Communications thread on Airbnb platform between Katherine Thomas as Host and an Airbnb User.	Stored Communications Act
621849881	9/11/2017	Communications thread on Airbnb platform between Katherine Thomas as Host and an Airbnb User.	Stored Communications Act
686609547	12/25/2016	Communications thread on Airbnb platform between Katherine Thomas as Host and an Airbnb User.	Stored Communications Act
689722895	1/7/2017	Communications thread on Airbnb platform between Katherine Thomas as Host and an Airbnb User.	Stored Communications Act

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690415816	1/10/2017	Communications thread on Airbnb platform between Katherine Thomas as Host and an Airbnb User.	Stored Communications Act
692222816	1/16/2017	Communications thread on Airbnb platform between Katherine Thomas as Host and an Airbnb User.	Stored Communications Act
698090682	2/8/2017	Communications thread on Airbnb platform between Katherine Thomas as Host and an Airbnb User.	Stored Communications Act
705088293	3/6/2017	Communications thread on Airbnb platform between Katherine Thomas as Host and an Airbnb User.	Stored Communications Act
709663941	3/23/2017	Communications thread on Airbnb platform between Katherine Thomas as Host and an Airbnb User.	Stored Communications Act

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STATE OF SOUTH CAROLINA	
	COURT OF COMMON PLEAS
COUNTY OF AIKEN	2021-CP-02-00889
JULIANNE FOSTER, PLAINTIFF,	
vs.	TRANSCRIPT OF RECORD
RHETT RIVIERE, KATHERINE A. THOMAS, CHASE ENTERPRISES, LLC OF SOUTH CAROLINA, AND AIRBNB, INC., DEFENDANTS.	

May 31, 2022
Aiken South Carolina

B E F O R E:

THE HONORABLE MARKLEY R. DENNIS, JUDGE.

A P P E A R A N C E S:

WES FEW, ESQ.
DEBORAH BARBIER, ESQ.
Attorneys for the Plaintiff

JULIE MOOSE, ESQ.
DAMON WLODARCZYK, ESQ.
RYAN DUFFY, ESQ.
Attorney for the Defendants

Proceedings Recorded by DCRP
Transcribed by Penny M. Johnson

THE COURT: Tell your third party vendor you better hire some people, you've got 30 days.

MS. MOORE: Okay, Your Honor. Thank you.

MS. BARBIER: Your Honor, just briefly, I just want to make sure we are clear on a couple of fundamental issues in this case, especially with respect to the discovery that they are going to produce. First of all, Your Honor, we have interviewed witnesses who say there are other --

THE COURT: I appreciate all that. That's going to be great when you get something that they produce and they say this is it and you can say, well, wait a minute. That's precisely what I'm talking about. I'm not going to deal in abstracts.

MS. BARBIER: Okay, I understand that. But --

THE COURT: Well, if you understand that, then you're getting the cart before the horse.

MS. BARBIER: Ms. Moose said this morning that they believed this was only about one videotape and that's not correct.

THE COURT: Well, y'all have told them that.

MS. BARBIER: I just wanted to put that on the record, Your Honor.

THE COURT: Well, you can put it on the record. You've made a Motion. As I said, it's very simple, if you find something -- after they've given you an Affidavit that says

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this is it and you find something out, then we're talking about some serious sanctions. And I don't think the lawyers want to be going to the office of disciplinary counsel nor do I think the companies want to be penalized. But the bottom line is, that's what's going to happen, folks, so let's quit playing the games, let's do something.

Yes, sir?

MR. WLODARCZYK: May it please, Your Honor. Damon Wlodarczyk, the prior law firm was relieved and I was hired on Wednesday. I just represent Katherine Thomas in this action. I don't know anything about what's been changed. I don't have any depositions or anything.

THE COURT: Well, you know what, that's what -- I used to -- when I first started, we actually went to lawyers' offices and sat down and talked to people face-to-face. Then we got real sophisticated and we started using conference calls. Then we get really sophisticated with e-mails and we end up texting. Y'all need to talk to each other. That's simple how to do that. I mean, it's not rocket science, folks.

MR. WLODARCZYK: No, I understand, Judge. I was just asking for some time to actually get the file and speak to them.

THE COURT: I would suggest that you speak to counsel. You got him here right now. You speak to him and find out

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ELECTRONICALLY FILED - 2023 Feb 10 10:54 AM - AIKEN - COMMON PLEAS - CASE#2021CP020889

STATE OF SOUTHCAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

JULIANNE FOSTER,

Plaintiff,

v.

RHETT RIVIERE, KATHERINE A. THOMAS, CHASE ENTERPRISES, LLC OF SOUTH CAROLINA, AND AIRBNB, INC,

Defendants.

C/A No. 2021-CP-02-00889

PLAINTIFF'S MOTION TO COMPEL DEFENDANT AIRBNB, INC. TO RESPOND TO PLAINTIFF'S AMENDED REQUEST TO PRODUCE NUMBERS 16-44.

Plaintiff Julianne Foster, by and through her undersigned attorneys, under Rules 26, 33, 34, 36 and 37, SCRCP, respectfully moves the Court for an order requiring Defendant Airbnb, Inc. ("Airbnb") to fully and properly respond to Plaintiff's Amended Requests for Production ("RFP") – Nos. 16-44. (Ex. A, Pl.'s Am. RFP to Defendant Airbnb, Inc. - Nos. 16-44). Under Rule 37 of the South Carolina Rules of Civil Procedure, a party seeking discovery may move for an order compelling disclosure or discovery. As discussed below, the Court has already considered and rejected Airbnb's similar objections to the corresponding Rule 30(b)(6) deposition topics. Accordingly, the Court should again overrule these objections to every discovery request and require Airbnb to produce these documents in discovery.

I. BACKGROUND

Plaintiff filed this lawsuit on April 28, 2021, alleging, inter alia, "wrongful invasion into her private affairs [in May 2019] caused by Defendants' negligent and/or willful, wanton and reckless conduct." Am. Comp. ¶ 1. Plaintiff was in Aiken to participate in a tennis tournament. *Id.*

¶ 99. Plaintiff's tennis teammate, Michele Jain, arranged for three of the tennis team members to stay in "Stirrup Cottage" at 115 Third Avenue in Aiken through Airbnb. *Id.* ¶ 89, 93, 99. Riviere/Chase owned the Stirrup Cottage. Riviere's former fiancé, Defendant Katherine Thomas, managed it. *Id.* ¶ 95.

On June 7, 2022, Plaintiff served Airbnb RFP Nos. 16-44. Plaintiff sought, inter alia:

- All documents reflecting the organizational, leadership and management of Airbnb from January 1, 2019 through the present. (RFP No. 16).
- All non-privileged information of Airbnb regarding the factual allegations in the case of *Foster v. Riviere,* et.al – 2021-CP-02-00889. (RFP No. 17).
- All records, reports, documents, correspondence, handwritten notes or otherwise, materials of any kind that concern, reference or relate to any of the following: Rhett Riviere, Chase Enterprises, LLC of South Carolina, Katherine Thomas and/or Julianne Foster. (RFP No. 19).
- All documents related to Airbnb's governance of their privacy policies as they relate to disclosed or concealed monitoring devices in AIRBNB properties including data supporting removal, reinstatement, and appeals of hosts who violate the policy. (RFP No. 27).
- All documents related to Airbnb and its hosts' compliance with state statutes concerning real estate property management licensure to hosts and potential hosts. (RFP No. 28).
- All communications between "Michele" and Defendant Katherine Thomas via Airbnb's online booking program since April 12, 2019. (RFP No. 29).
- All Protocols, manuals, memoranda, or other written standards of care or instructions that reference or concern the vetting of hosts by Airbnb during the time period of December 1, 2013 through the present. (RFP No. 31).
- All Protocols, manuals, memoranda, or other written standards of care or instructions that reference or concern the use of video cameras by Airbnb hosts during the time period of December 1, 2013 through the present. (RFP No. 33).
- All reports and/or complaints made to Airbnb of guests being secretly videotaped between December 1, 2013, through the present. (RFP No. 34).

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On July 8, 2022, Airbnb responded objecting to every request. (Ex. B, Airbnb's Responses to Plaintiff's Am. RFP Nos. 16-44). In its general objections, Airbnb included a laundry list of objections to the RFP, including that the RFP seek privileged information and personal information about non-parties. *Id.* at 1. Airbnb then objects to each specific request "for the reasons stated in its general objections," and to most of the requests because it contends that plaintiff is seeking private information protected by the Stored Communications Act ("SCA") or other applicable statutory or regulation "to the extent it calls for communications from third parties, or personally identifiable or otherwise sensitive information about third parties." Airbnb also contends that every request, except RFP No. 40, is "overly broad, unduly burdensome, and not proportionate to the needs of the case."[1]

In its response to Plaintiff's RFP, Airbnb acknowledges that many of Plaintiff's requests overlap with the topics raised in Plaintiff's 30(b)(6) topics. (Ex. B, Airbnb's Responses to Plaintiff's Am. RFP Nos. 16-44 at 2).[2] As the Court may recall, Airbnb objected to every single 30(b)(6) topic and sought reconsideration after the Court denied its motion for a protective order as to the topics noticed. (Ex. C, Court's Order Aug. 3, 2022). After extensive briefing, the Court denied the motion for reconsideration and ordered that the deposition take place on all of the noticed topics. (Ex. D, Court Order filed Oct. 11, 2022). Thus, the Court has already considered (and re-considered) and rejected most of Airbnb's similar objections to the analogous 30(b)(6) deposition topics.

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[1]Of course, the requirement that discovery be "proportionate to the needs of the case" is the standard under Federal Rule of Civil Procedure 26(b)(1). Unlike its federal counterpart, however, South Carolina Rule of Civil Procedure 26(b) does not include a proportionality requirement.

[2]The main difference being that the RFP Nos. 16-44 include four additional requests, Nos. 41-44, which were not part of the 30(b)(6) topics and, thus, not addressed in the previous ruling on the 30(b)(6) topics.

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II. LEGAL STANDARD

In South Carolina the scope of discovery is very broad and 'an objection on relevance grounds is likely to limit only the most excessive discovery request.'" *Samples v. Mitchell*, 329 S.C. 105, 110, 495 S.E.2d 213, 215 (Ct. App. 1997) (quoting J. Flanagan, South Carolina Civil Procedure 216 (2d ed.1996)); *see also Oncology & Hematology Assocs. of S.C., LLC v. S.C. Dep't of Health & Env't Control*, 387 S.C. 380, 387, 692 S.E.2d 920, 924 (2010) ("We are keenly aware that the scope of discovery is broad."). Rule 26 governs the scope of discovery:

> Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

Rule 26(b)(1), SCRCP; *In re Mt. Hawley Ins. Co.*, 427 S.C. 159, 166–67, 829 S.E.2d 707, 712 (2019) ("The scope of discovery in South Carolina is generally broad. . . . As a result, parties may obtain discovery regarding any matter that is not privileged so long as it is relevant to the subject matter involved in the pending claim.").

The party submitting a request for production "may move for an order under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested." Rule 34(b), SCRCP. An evasive or incomplete answer is treated the same as a failure to answer. Rule 37(a)(3), SCRCP. If the Court grants the motion and issues an order compelling discovery, failure to comply with such discovery can result in sanctions on the non-complying party. Rule 37(b), SCRCP.

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III. ARGUMENT

A. Airbnb is Purposefully Evading its Obligations to Produce Relevant, But Likely Damaging Documents to the Plaintiff.

Airbnb is purposely evading its discovery obligations and is withholding relevant documents that are responsive to Plaintiff's discovery requests. Airbnb's refusal to produce relevant discovery became apparent during the recent Rule 30(b)(6) deposition when Airbnb acknowledged there are tens of thousands of documents which are responsive to Plaintiff's requests. Yet, Airbnb has not produced a single one of these document to Plaintiff. These documents are critical to Plaintiff's case.

Specifically, Request to Produce No. 34 requested the following:

> **RFP No. 34: All reports and/or complaints made to Airbnb of guests being secretly videotaped between December 1, 2013, through the present.**

Airbnb objected to a substantially similar Rule 30(b)(6) topic, and the Court expressly *rejected* its objections and allowed the deposition topic. Despite the fact that Airbnb had been ordered to give testimony on this topic, during the initial Rule 30(b)(6) witness deposition, the witness was unprepared and non-responsive on this topic and she refused to provide the number of complaints of guests being recorded that Airbnb had received from December 1, 2013 through the present. (Ex. E, Airbnb's 30(b)(6) Witness Depo. Oct. 26, 2023 Tr. 13-36; 55-65).[3] The representative initially testified it would take someone at Airbnb "months or years" to review customer contacts and determine that number. *Id.*at 56-58. However, at the recent continuation of the Rule 30(b)(6) deposition on January 25, 2023, Airbnb's Rule 30(b)(6) witness testified that, following approximately an hour with an IT colleague, she was able to determine that there were over 35,000

[3] Airbnb has asserted that a portion of these Rule 30(b)(6) deposition excerpts are "Confidential". Plaintiff has objected to these designations as there is no confidential information in this testimony. Plaintiff will submit these deposition excerpts to the Court.

customer support tickets where a guest had contacted Airbnb regarding a surveillance device issue. (Ex. F, Airbnb's 30(b)(6) Witness Depo. Jan. 23, 2023 Tr. 127-129). She testified that she did not review these tickets to prepare for her testimony on this topic. *Id.* at 129, 146-47. However, she also testified that she personally had worked some cases and knew that the 35,000 tickets "would include issues like [counsel] described of somebody reporting that they found a surveillance device in a shower." *Id.* at 144. So, clearly Airbnb has identified more than 35,000 complaints regarding surveillance issues and admitted that at least some include complaints of guests being secretly recorded in private areas, but Airbnb has not produced *any* of these complaints to Plaintiff.

Airbnb objects to this RFP because it contends that it seeks information protected by attorney/client privilege and/or the work product doctrine or the SCA to the extent it seeks communications from third parties or other sensitive information about third parties. Plaintiff is perplexed as to how customer complaints would implicate the attorney/client or work product doctrine. In any event, Airbnb has not produced a privilege log identifying these documents allegedly subject to privileges even though Airbnb was expressly ordered by this Court to produce a privilege log on June 6, 2022. *See* Ex. G - Order of June 6, 2022, P. 3, Para. 8.

Further, despite raising the attorney-client and/or work product doctrine in its objections, Airbnb has failed to offer anything which would establish a prima facie showing that the information requested is privileged, nor has it produced a privilege log. *In Mt. Hawley Ins.*, 427 S.C. at 169, 829 S.E.2d at 713. Thus, Airbnb has not meet it initial burden regarding its objections based on claims of privilege or work product. Further, the Court has previously rejected Airbnb's arguments with respect to the Stored Communications Act. Airbnb is permitted to divulge communications when it was the "addressee or intended recipient" without violating the SCA. *See* 18 U.S.C. § 27-2(a)(1).

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Airbnb also objects to this request as overbroad, unduly burdensome, and not proportionate to the needs of the case by seeking testimony about every single "report[] and/or complaint[]" over the course of nearly a decade without any limitation in geographic scope. The requirement that discovery be limited to information proportionate to the needs of the case, as noted above, is not a requirement under Rule 26(b), SCRCP. Further, Airbnb's objections that this request is overbroad and unduly burdensome is without merit. *See, e.g.*, *Burrow*, 2017 WL 2620067, *6. Accordingly, the Court should overrule these objections.

Airbnb also argues that the discovery of the requested information would infringe on the constitutional right to privacy of third parties. Rule 26(b)(1), SCRCP, provides, unless otherwise limited by order of the court, "[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action . . . It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." Rule 26 SCRCP.

Furthermore, even if retrieving the 35,000 complaints regarding surveillance devices would be time consuming, it is not proper to object to discovery merely because answering it may require expending considerable time. *See* The Honorable Roger Young, *Memorandum RE: Preparation for Discovery Motions* (Aug. 29, 2019) at 2 (citing *Roesburg v. Johns-Manville Corp.*, 85 F.R.D. 292, 296 (E.D. Pa. 1980)) (attached as Ex. H). Accordingly, the Court should overrule Airbnb's objections and order Airbnb to fully respond to Plaintiff's RFP No. 34 and produce all complaints made to Airbnb of guests being secretly videotaped between December 1, 2013, through the present.

Another prime example of Airbnb's refusal to produce relevant documents and even acknowledge that they exist, also occurred during the Rule 30(b)(6) deposition when Airbnb's

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designee refused to provide any testimony on Topic 38. Specifically, Request to Produce No. 38 requested the following:

> **RFP No. 38: The internal reports and/or external reports and/or audits during the last ten years of Airbnb that relate to guests safety during the time period of December 1, 2013, through the present.**

Before delving into Airbnb's objections as to this RFP, Plaintiff notes that Airbnb's Rule 30(b)(6) witness was *specifically ordered* by this Court to testify on this very topic. When asked at the deposition about internal or external reports or audits related to guest safety, Airbnb's Rule 30(b)(6) witness testified that she personally was not "aware of any," but she also testified that that she had not spoken with anyone to determine if Airbnb had any such reports or audits. (Ex. F, Airbnb's Rule 30(b)(6) Witness Depo. Jan. 23, 2023 Tr. at 152-53). She repeated this refrain in response to numerous questions. *Id.* at 153-59. She was asked point blank if she was denying that these reports exist, and she responded that "based on [her] experience and understanding of where to look for information, [she] reviewed the policy document. [She] didn't find any indication of additional reports or audits." *Id*. at 159. She repeated this answer, or slight variations of it, numerous times and refused to directly answer whether Airbnb has any such reports or audits.[4]

In its response to the instant RFP, Airbnb objects to this request because it contends that it seeks information protected by attorney/client privilege and/or the work product doctrine. Again, Airbnb is expressly in violation of the June 6, 2022 Order of this Court because they have not provided a privilege log listing any of these documents. Indeed, Airbnb fails to offer anything which would establish a prima facie showing that the information requested is privileged. *In Mt.*

[4] Airbnb's refusal to testify on numerous topics and failure to prepare for the Rule 30(b)(6) deposition topics is the subject of a motion for sanctions which is also being filed by Plaintiff.

Hawley Ins., 427 S.C. at 169, 829 S.E.2d at 713. Thus, Airbnb has not meet its initial burden regarding its objections based on claims of privilege or work product.

Airbnb also objects to this request as being overbroad, unduly burdensome, and not proportionate to the needs of the case because this request is seeking "testimony about every 'internal and/or external report[] and/or audit[]' relating to any form of 'guest safety' for the past decade." Plaintiff is not seeking testimony–only reports and audits. Further, the requirement that discovery be limited to information proportionate to the needs of the case, as noted above, is not part of Rule 26(b), SCRCP. Additionally, Airbnb's objections that this RFP is overbroad and unduly burdensome are generic and boilerplate. *Curtis*, 2013 WL 2099496, *2.

Airbnb also objects to this request to the extent that it seeks reports from the past ten years because it contends that a report from April 2012 could not possibly be relevant to the incident which occurred in May 2019. Even assuming this argument has merit, Airbnb does not object to the extent that this request also seeks later more recent reports from anytime in the past ten years.

Plaintiff is simply trying to get a proper response to a fairly basic request – does Airbnb have any audits or reports related to guest safety? If so, Airbnb should produce these documents. If there are not any documents that fall within this description, Airbnb should state that definitively and not hide behind evasive or non-responsive answers given by a 30(b)(6) witness or meritless objections to a RFP. The Court should overrule Airbnb's objections and order Airbnb to completely and fully respond to Plaintiff's RFP No. 38.

B. The Court should overrule Airbnb's objections to the Requests and order Airbnb to produce the documents and information requested by Plaintiff.

The Court should compel production of the material requested in the RFP because the scope of discovery in South Carolina is broad, and the requests are specifically related to the

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subject matter involved in this litigation and reasonably calculated to lead to the discovery of admissible materials. Rule 26(b)(1), SCRCP. Moreover, as noted above, the Court has already considered and rejected parallel objections which Airbnb raised in the context of substantially similar 30(b)(6) deposition topics. (Compare Airbnb's objections to Plaintiff's 30(b)(6) topics and its Response to Plaintiff's Am. RFP Nos. 16-40). The Court has already held that the information sought in theses RFP is relevant and discoverable, and, much like the law of the case, this decision should be applied consistently throughout this litigation. It would be untenable after the 30(b)(6) deposition to now hold that the same information is not relevant or discoverable in the context of Plaintiff's RFP. Accordingly, the Court should once again reject Airbnb's analogous objections to the RFP and order Airbnb to fully respond to -all of Plaintiff's RFP Nos. 16-44. The other specific document requests which Airbnb refuses to provide any documents are the following:[5]

1. **RFP No. 16: All documents reflecting the organizational, leadership and management structure of Airbnb during the time period of January 1, 2019 through the present.**

Airbnb objects to this RFP because it is overly broad; not proportionate to the needs of the case; not likely to lead to evidence related to any claim or defense; seeks privileged information; and "has nothing to do with Plaintiff's claims." (Response at 2-3). "[P]arties may obtain discovery regarding any matter that is not privileged so long as it is relevant to the subject matter involved in the pending claim." *In re Mt. Hawley Ins.*, 427 S.C. 159, 167, 829 S.E.2d 707, 712 (2019) (citing Rule 26(b)(1), SCRCP). A defendant's organizational, leadership, and management structure is clearly relevant in discovery. *See, e.g., Howard v. Hartford Life & Acc. Ins. Co.*, No. 3:10–CV–192–J, 2011 WL 2533800, at *6 (M.D. Fla. June 27, 2011) (ruling on deposition topics and holding

[5] It is impossible to tell whether Airbnb is withholding the production of documents on all of these requests. Airbnb is a multi-billion dollar publicly-held corporation doing business all over the world and they have produced approximately 500 pages of discovery in this litigation that are not publicly available. They have produced approximately 800 pages of discovery that are already publicly available.

"[w]ith respect to defendant's organizational structure, courts have typically found that such information is relevant.").

Additionally, the party claiming privilege has the initial burden to make a prima facie showing that the communications in question are privileged. *In Mt. Hawley Ins.*, 427 S.C. at 169, 829 S.E.2d at 713. Airbnb has failed to offer anything which would establish a prima facie showing that the information requested is privileged nor has it produced a privilege log with this information. Accordingly, Airbnb's objections based on claims of privilege or work product should be overruled.

Moreover, Airbnb has not elaborated on how the request is overly broad or unduly burdensome.

> Objections that state that the discovery request is "vague, overly broad, or unduly burdensome" are, standing alone, meaningless and will be found meritless by this court. A party objecting on these grounds must explain the specific and particular way in which a given request is vague, overly broad, or unduly burdensome. See Fed. R. Civ. P. 33(b)(4); *Josephs v. Harris Corp.*, 677 F.2d 985, 992 (3d Cir.1982) ("[T]he mere statement by a party that the interrogatory was 'overly broad, burdensome, oppressive and irrelevant' is not adequate to voice a successful objection to an interrogatory. On the contrary, the party resisting discovery 'must show specifically how . . . each interrogatory is not relevant or how each question is overly broad, burdensome or oppressive.' " (citation omitted)).

Curtis v. Time Warner Entm't Advance/Newhous P'ship, C/A No. 3:12-cv-2370-JFA, 2013 WL 2099496, *2 (D.S.C. 2013). Airbnb's generic and boilerplate objections, which do not provide any explanation as to how the requested discovery is irrelevant, overly broad, burdensome, or privileged, should be overruled. Thus, the Court should order Airbnb to fully respond to Plaintiff's RFP No. 16.

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2. RFP No. 17: All non-privileged information of Airbnb regarding the factual allegations in the case of Foster v. Riviere, et.al – 2021-CP-02-00889.

Airbnb objects to this RFP on the grounds that is vague and ambiguous as to what "factual allegations" means. The phrase "factual allegations" need not be defined – it is clear on its face. Further, Airbnb's objections that the RFP is overbroad and unduly burdensome are generic and boilerplate and do not provide any explanation. *Curtis*, 2013 WL 2099496, *2. Accordingly, these objections should be overruled.

Airbnb also objects to this request because it contends that it seeks information protected by attorney/client privilege and/or the work product doctrine or the SCA. Airbnb is permitted to divulge communications when it was the "addressee or intended recipient" without violating the SCA. 18 U.S.C. § 27-2(a)(1). Disclosure is permitted "to an addressee or intended recipient" or "with the lawful consent of the originator or an addressee or intended recipience. . . . " 18 U.S.C. § 2702(b)(1) and (2). Accordingly, courts have held that a defendant cannot be liable under the SCA for disclosing communications where the defendant was itself the "addressee or intended recipient" of those communications. *See, e.g., In re Am. Airlines, Inc., Privacy Litig.*, 370 F.Supp.2d 552, 560–61 (N.D.Tex.2005) (holding that a defendant was not liable under the Stored Communications Act for disclosing personal information of which it was the intended recipient, even if the defendant was "contractually bound by its privacy policy not to disclose [such] information" and could be held liable for breach of contract for doing so). Therefore, as far as communications sent to Airbnb, Airbnb as the "addressee or intended recipient" is permitted to divulge the communications.

Further, despite raising the attorney-client and/or work product doctrine in its objections, Airbnb has failed to offer anything which would establish a prima facie showing that the information requested is privileged nor has it produced a privilege log with this information. *In*

Mt. Hawley Ins., 427 S.C. at 169, 829 S.E.2d at 713. Thus, Airbnb has not meet it initial burden regarding its objections based on claims of privilege or work product.

Finally, Airbnb states it will produce responsive, non-privileged documents created before May 2019 concerning video cameras at the subject property and camera and background checks policies prior to May 2019. This limitation unreasonably limits Plaintiff's request. Plaintiff is entitled to discovery of documents and information which were created after the incident that occurred in May 2019. Plaintiff did not discover the invasion of her privacy until 2020. There is no reason to limit this request to documents created before May 2019. Accordingly, the Court should overrule Airbnb's objections and order Airbnb to fully respond to Plaintiff's RFP No. 17 without any limitations.

3. **RFP No. 19: All records, reports, documents, correspondence, handwritten notes or otherwise, materials of any kind that concern, reference or relate to any of the following: Rhett Riviere, Chase Enterprises, LLC of South Carolina, Katherine Thomas and/or Julianne Foster.**

Airbnb objects to this RFP because it contends that it seeks information protected by attorney/client privilege and/or the work product doctrine or the SCA. Airbnb is permitted to divulge communications when it was the "addressee or intended recipient" without violating the SCA. *See* 18 U.S.C. § 27-2(a)(1). Further, despite raising the attorney-client and/or work product doctrine in its objections, Airbnb has failed to offer anything which would establish a prima facie showing that the information requested is privileged nor has it produced a privilege log. *In Mt. Hawley Ins.*, 427 S.C. at 169, 829 S.E.2d at 713. Thus, Airbnb has not meet it initial burden regarding its claims of privilege or work product.

Airbnb further objects to this request as overbroad, unduly burdensome, and not proportionate to the needs of the case. The requirement that discovery be limited to information proportionate to the needs of the case, as noted above, is not part of Rule 26(b), SCRCP. Further,

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Airbnb's objections that this request is overbroad and unduly burdensome are generic and boilerplate and do not provide any explanation. *Curtis,* 2013 WL 2099496, *2. Airbnb also objects because the phrase "concern, reference or relate" is vague and ambiguous. This phrase is simply not vague and ambiguous.

Airbnb then lists the information it has already provided regarding Ms. Thomas and Mr. Riviere to include account registration for both Ms. Thomas and Mr. Riviere, a list of Ms. Thomas' reservations, and communications between community support agents and Ms. Thomas through May 2019, and states that it has not located any other relevant records regarding Ms. Thomas or Mr. Riviere.

4. **RFP No. 27: All documents related to AIRBNB's governance of their privacy policies as they relate to disclosed or concealed monitoring devices in AIRBNB properties including data supporting removal, reinstatement, and appeals of hosts who violate the policy.**

Airbnb objects to this RFP because it contends that it seeks information protected by attorney/client privilege and/or the work product doctrine or the SCA to the extent it seeks communications from third parties or other sensitive information about third parties. Airbnb is permitted to divulge communications when it was the "addressee or intended recipient" without violating the SCA. *See* 18 U.S.C. § 27-2(a)(1). Further, despite raising the attorney-client and/or work product doctrine in its objections, Airbnb has failed to offer anything which would establish a prima facie showing that the information requested is privileged nor has it produced a privilege log. *In Mt. Hawley Ins.*, 427 S.C. at 169, 829 S.E.2d at 713. Thus, Airbnb has not meet it initial burden regarding its objections based on claims of privilege or work product.

Airbnb further objects to this request as seeking information not reasonably calculated to lead to relevant information. Airbnb also objects to this request as overbroad, unduly burdensome, and not proportionate to the needs of the case because it is seeking "[a]ll" documents—including

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data—"related" to any governance of privacy policies related to any type of monitoring device and this case does not involve any reinstatement or appeal of a host who violated a privacy policy. However, the requirement that discovery be limited to information proportionate to the needs of the case, as noted above, is not part of Rule 26(b), SCRCP. Moreover, Airbnb's objections because this RFP seeks "all" documents is without merit. The use of the term "all" does not make this discovery request too broad. *See, e.g.*, *Burrow v. Forjas Taurus S.A.*, No. 16-21606-Civ-Torres, 2017 WL 2620067, *6 (S.D. Fl. June 16, 2017). Accordingly, the Court should overrule Airbnb's objections and order Airbnb to fully respond to Plaintiff's RFP No. 27.

5. **RFP No. 28: All documents related to AIRBNB and its hosts' compliance with state statutes concerning real estate property management licensure to hosts and potential hosts.**

Airbnb objects to this RFP because it contends that it seeks information protected by attorney/client privilege and/or the work product doctrine or the SCA to the extent it seeks communications from third parties or other sensitive information about third parties. Airbnb is permitted to divulge communications when it was the "addressee or intended recipient" without violating the SCA. *See* 18 U.S.C. § 27-2(a)(1). Further, despite raising the attorney-client and/or work product doctrine in its objections, Airbnb has failed to offer anything which would establish a prima facie showing that the information requested is privileged nor has it produced a privilege log. *In Mt. Hawley Ins.*, 427 S.C. at 169, 829 S.E.2d at 713. Thus, Airbnb has not meet it initial burden regarding its objections based on claims of privilege or work product.

Airbnb also objects to the phrase "state statutes concerning real estate property management licensure" stating that it does not understand the specific statutes about which Plaintiff asks. This phrase is not clearly not ambiguous. Airbnb further objects to this request as seeking information not reasonably calculated to lead to relevant information. Airbnb contends

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that it "does not provide legal advice to Hosts, nor does it have any responsibility to keep abreast of state and local properties where Hosts maintain properties, which is the responsibility of Hosts alone." This is not a proper objection. If Airbnb is contending that there are no documents which are responsive, it should simply affirmatively state that.

Airbnb also objects to this request as being overbroad, unduly burdensome, and not proportionate to the needs of the case by seeking "[a]ll" documents regarding the statutes in all 50 states and without any limitation as to time period. The requirement that discovery be limited to information proportionate to the needs of the case, as noted above, is not part of Rule 26(b), SCRCP. Further, Airbnb's objections that the RFP is overbroad and unduly burdensome are generic and boilerplate and do not provide any explanation. *Curtis*, 2013 WL 2099496, *2. Further, Airbnb's objections that the RFP is overbroad and unduly burdensome because it seeks "all" documents is without merit. The use of the term "all" does not make this discovery request too broad. *See, e.g., Burrow*, 2017 WL 2620067, *6. Accordingly, the Court should overrule Airbnb's objections and order Airbnb to fully respond to Plaintiff's RFP No. 28.

6. RFP No. 29: All communications between "Michele" and Defendant Katherine Thomas via Airbnb's online booking program since April 12, 2019.

Airbnb objects to this RFP because it contends that it seeks information protected by attorney/client privilege and/or the work product doctrine or the SCA to the extent it seeks communications from third parties or other sensitive information about third parties. Ms. Thomas has already produced responsive communications thereby waiving the prohibition of disclosure under the SCA. Finally, the Court can direct Thomas to consent to any disclosure. *Al Noaimi v. Zaid*, No. 11-1156-EFM, 2012 WL 4758048 (D. Kan. Oct. 5, 2012), the court held that it had the authority to require a party to execute consent to permit the disclosure of his emails by his service provider. *See also Glazer v. Firemen's Fund Ins. Co.*, No. 11-civ-4374 (PGG) (FM), 2012 WL

1197167 (S.D.N.Y. Apr. 5, 2012) (holding that court had the authority to direct a party to consent to a service provider's disclosure of online chats); *Flagg v. City of Detroit*, 252 F.R.D. 346 (E.D. Mich. 2008) (court directed party to provide his consent under the SCA for service provider to produce stored text messages). Further, Airbnb's objections that the RFP is overbroad and unduly burdensome are generic because it seeks "all" communications. The use of the term "all" does not make this discovery request too broad. *See, e.g.*, *Burrow*, 2017 WL 2620067, *6. Accordingly, the Court should overrule Airbnb's objections and order Airbnb to fully respond to Plaintiff's RFP No. 29.

7. **RFP No. 31: All Protocols, manuals, memoranda, or other written standards of care or instructions that reference or concern the vetting of hosts by AIRBNB during the time period of December 1, 2013 through the present.**

Airbnb objects to this RFP because it contends that it seeks information protected by attorney/client privilege and/or the work product doctrine or the SCA to the extent it seeks communications from third parties or other sensitive information about third parties. Airbnb is permitted to divulge communications when it was the "addressee or intended recipient" without violating the SCA. *See* 18 U.S.C. § 27-2(a)(1). Further, despite raising the attorney-client and/or work product doctrine in its objections, Airbnb has failed to offer anything which would establish a prima facie showing that the information requested is privileged nor has it produced a privilege log. *In Mt. Hawley Ins.*, 427 S.C. at 169, 829 S.E.2d at 713. Thus, Airbnb has not meet it initial burden regarding its objections based on claims of privilege or work product.

Airbnb also objects to this request as overbroad, unduly burdensome, and not proportionate to the needs of the case by seeking "[a]ll" instructions that "reference or concern the vetting of hosts" for nearly a decade. The requirement that discovery be limited to information proportionate to the needs of the case, as noted above, is not part of Rule 26(b), SCRCP. Further, Airbnb's

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objections that this request is overbroad and unduly burdensome because it seeks "all" instructions is without merit. The use of the term "all" does not make this discovery request too broad. *See, e.g., Burrow,* 2017 WL 2620067, *6. Airbnb also objects to the phrases "vetting of hosts" and "Protocols, manuals, memoranda, or other written standards of care" as vague and ambiguous. These phrases are not vague or ambiguous; Airbnb clearly understands what these phrases mean and the information that Plaintiff is seeking.

Subject to its stated objections, Airbnb states it will search for and produce any responsive Airbnb background check policies effective between the summer of 2016 and May 2019 it identifies in a reasonably diligent search, and any policies governing the use of video cameras by hosts that were in effect in May 2019 it identities in a reasonably diligent search. Airbnb unreasonably limits this request to specific dates. However, there is no reason to limit this topic to the specific years that Airbnb suggests as the vetting procedure and policies that Airbnb has utilized and whether the crime was foreseeable to Airbnb are clearly relevant to the subject matter in this case. Accordingly, the Court should overrule Airbnb's objections and order Airbnb to fully respond to Plaintiff's RFP No. 31.

8. **RFP No. 33: All Protocols, manuals, memoranda, or other written standards of care or instructions that reference or concern the use of video cameras by AIRBNB hosts during the time period of December 1, 2013 through the present.**

Airbnb objects to this RFP because it contends that it seeks information protected by attorney/client privilege and/or the work product doctrine. Airbnb, however, has failed to offer anything which would establish a prima facie showing that the information requested is privileged nor has it produced a privilege log. *In Mt. Hawley Ins.*, 427 S.C. at 169, 829 S.E.2d at 713. Thus, Airbnb has not meet it initial burden regarding its objections based on claims of privilege or work

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product. Further, the requirement that discovery be limited to information proportionate to the needs of the case, as noted above, is not part of Rule 26(b), SCRCP.

Further, Airbnb's objections that this request is overbroad and unduly burdensome because it seeks "all" protocols, manuals and memorandum or other written standards of care is without merit. However, the use of the term "all" does not make this discovery request too broad. *See, e.g., Burrow*, 2017 WL 2620067, *6. Accordingly, these objections should be overruled.

Subject to its stated objections, Airbnb states that it will produce responsive policies governing the use of video cameras by hosts that were in effect in May 2019 identified in a reasonably diligent search. Again, Airbnb unreasonably (and unilaterally) limits the scope this request. The policies that Airbnb has utilized in regard to cameras and how they have evolved over time are clearly relevant to the subject matter in this case. Accordingly, the Court should overrule Airbnb's objections and order Airbnb to fully respond to Plaintiff's RFP No. 33.

IV. CONCLUSION

Airbnb continues its delay tactics, and Plaintiff is once again forced to turn to the Court to obtain the discovery she is rightfully due. Plaintiff respectfully requests that the Court grant her Motion to Compel and order Airbnb to fully respond to Plaintiff's Am. Requests for Production Nos. 16, 17, 19, 27, 28, 29, 31, 33, and 34.

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Respectfully submitted,

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February 10, 2023
Greenville, South Carolina

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STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS

2ND JUDICIAL CIRCUIT

JULIANNE FOSTER,

Plaintiff,

v.

RHETT RIVIERE, KATHERINE A. THOMAS, CHASE ENTERPRISES, LLC OF SOUTH CAROLINA, AND AIRBNB, INC,

Defendants.

C/A No. 2021-CP-02-00889

ORDER GRANTING PLAINTIFF'S MOTION TO COMPEL

Before the Court is Plaintiff Julianne Foster's Motion to Compel the Defendants Airbnb Inc. and Rhett Riviere pursuant to South Carolina Rule of Civil Procedure 37. The matter has been fully briefed, and a hearing was held on the matter on May 31, 2022. Plaintiff Julianne Foster ("Foster"), represented by Wes Few and Deborah Barbier; Defendants Rhett Riviere ("Riviere") and Chase Enterprises, LLC of South Carolina ("Chase") represented by Julie Moose; Defendant Katherine Thomas represented by Damon Wlodarczyk; and Defendant Airbnb, Inc. ("Airbnb"), represented by Ryan Duffy, were present at the hearing. Having considered the matter, including the motion, the parties' briefs and memoranda, exhibits, and oral arguments, it is hereby **ORDERED** that Plaintiff's Motion to Compel is **GRANTED** as outlined below**.**

BACKGROUND

In her Complaint, Foster alleges two claims against Defendant Airbnb: negligence in Count I, and *per se* negligence in Count V. The claims concern her May 2019 stay at a property owned by Defendant Chase Enterprises, LLC ("Chase") of South Carolina that had been reserved

using the Airbnb online platform. Foster alleges that, unbeknownst to her, one or more of the Defendants, including Chase's principal, Rhett Riviere installed a video recording device in the bedroom she was using. Riviere is facing criminal charges for his conduct, which included recording private images of Foster during her stay. Plaintiff alleges that in some of the images recorded by Defendants, she was unclothed. Foster only learned of this conduct after a SLED agent notified her about the recordings. Plaintiff filed her Summons and Complaint on April 28, 2021. Plaintiff served discovery requests on defense counsel with the service of the Complaint. Service upon Riviere of the Summons and Complaint, and Plaintiff's initial discovery was made on April 30, 2021. These discovery requests are the subject of this Motion to Compel.

Plaintiff seeks an Order from this Court ordering Defendants Rhett Riviere, Chase and AirBnb to fully respond to the discovery requests at issue. Counsel was ordered to confer during the hearing held on May 31, 2022. The Court hereby orders the following:

The Defendant AirBnb, Inc., is hereby ordered to do the following:

1. Identify all AirBnb employees involved in any background checks run on Rhett Riviere and/or Katherine Thomas and or Chase Enterprises. Produce all documents related to any background checks performed.

2. Identify all Airbnb employees who have any knowledge of the facts related to Katherine Thomas serving as an Airbnb host. Produce all documents related to Katherine Thomas serving as an AirBnb host, including but not limited to all data requested from her at the time of her application / registration with Airbnb to become a host, and all data submitted by her.

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3. Identify all Airbnb employees who performed any review of the information submitted by Katherine Thomas to serve as an Airbnb host. Produce all documents related to any review of the information submitted by Katherine Thomas to serve as an Airbnb host.

4. Identify all AirBnb employees that were responsible for guest safety during the time period of April 2019 through the present.

5. Identify all Airbnb employees who have any knowledge of the facts related to Michelle Jain being an AirBnb guest. Produce all documents related to Michelle Jain being an Airbnb guest.

6. Identify all AirBnb employees who took any actions to determine whether Katherine Thomas and/or Rhett Riviere videotaped AirBnb guests. Produce all documents related to any actions taken to determine whether Katherine Thomas and/or Rhett Riviere videotaped AirBnb guests.

7. Identify all AirBnb employees who took any actions to determine the actual owners of the properties for which Katherine Thomas served as an Airbnb host. Produce all documents related to any actions taken to determine the actual owners of the properties for which Katherine Thomas served as an Airbnb host.

8. Produce a privilege log for any documents or information withheld based on a claim of an applicable privilege.

Defendant AirBnb shall comply with this Order within 30 days from the date the Order is entered and shall submit an Affidavit from an authorized representative of AirBnb that all information has been accurately and completely provided.

The Defendants Rhett Rivière and Chase are hereby ordered to do the following:

1. Produce all communications between Rhett Riviere and any person related to the videotaping of any person;

2. Produce all documents related to the videotaping of any person staying in a rental property owned (at any point in time) by Rhett Riviere and/or Chase Enterprises, including but not limited to text messages and emails;

3. Identify and produce all videotapes and pictures of any person staying in any rental property owned (at any point in time) by Rhett Rivere and/or Chase Enterprises.

4. Produce a privilege log for any documents or information withheld based on a claim of an applicable privilege.

Counsel for Defendants Rhett Riviere and Chase has indicated that she intends to have a third-party vendor use search terms to search the electronic devices of Mr. Riviere. The use of this methodology does not relieve counsel of the obligation to produce relevant and responsive documents. Defendants Rhett Riviere and Chase shall comply with this Order within 30 days from the date the Order is entered and shall submit an Affidavit from a representative the corporate defendants and the third party vendor that all information has been accurately and completely provided.

In addition to the above requirements, Defendants Riviere and Chase shall produce all documents or information that their counsel stated at the hearing on May 31, 2022, were already identified as being responsive within 30 days of this Order. This includes specifically, but is not limited to all text messages already gathered as represented by counsel at the hearing and conferences on May 31, 2022.

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Further, Defendant Katherine Thomas recently obtained new counsel, Damon Wlodarczyk. Plaintiff's counsel has agreed to give Ms. Thomas until July 15, 2022 to supplement her discovery responses, so that Mr. Wlodarczyk has ample time to become acquainted with the facts of the case and the procedural history. Defendant Katherine Thomas shall supplement her discovery responses by July 15, 2022 and shall submit an Affidavit from Katherine Thomas that all information has been accurately and completely provided.

If the foregoing is not fully complied with by the Defendants Rhett Riviere, Chase Enterprises, AirBnb, and Katherine Thomas, the Court will consider a motions for sanctions with monetary penalties.

CONCLUSION

Accordingly, the Court GRANT**S** Plaintiff's Motion to Compel as set forth above.

_____
The Honorable R. Markley Dennis, Jr.
Presiding Circuit Court Judge, 2nd Circuit

June 6, 2022
Aiken, South Carolina

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Aiken Common Pleas

Case Caption: Julianne Foster VS Rhett Riviere , defendant, et al

Case Number: 2021CP0200889

Type: Order/Other

R. Markley Dennis Jr., 2060

R. Markley Dennis Jr., 2060

Transcript of the Testimony of
Monique Chauvet

Date: January 25, 2023



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Condensed Transcript and Word Index

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STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
)
COUNTY OF AIKEN) C/A #: 2019-CP-02-00889

Julianne Foster,)
)
Plaintiff,)
)
v.)
)
Rhett Riviere, Katherine A. Thomas, Chase Enterprises, LLC of South Carolina, and AIRBNB Inc.,)
)
Defendants.)
_____)

CONTINUED VIRTUAL 30(b)(6) DEPOSITION OF
AIRBNB, INC.
MONIQUE CHAUVET
****
Wednesday, January 25, 2023
11:06 a.m. - 5:28 p.m.

The continued virtual Rule 30(b)(6) deposition of AIRBNB Inc.'s Representative, Monique Chauvet, taken on behalf of the Plaintiff, on the 25th day of January, 20233, before Amanda Creel Godfrey, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition and/or agreement of counsel.

VIRTUAL APPEARANCES

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ALSO PRESENT:
Ian Chen, Esquire (AIRBNB in-house counsel)
James K. Rothstein, Esquire
Damali Taylor, Esquire

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STIPULATIONS

It is stipulated and agreed that this deposition is being taken pursuant to the South Carolina Rules of Civil Procedure.

It is stipulated by and between counsel and the witness that the deposition is being conducted by remote means and the court reporter is not present with the witness.

It is stipulated by and between counsel and the witness that the reading and signing of the following deposition be, and the same are, hereby not waived. The signature page is attached hereto at page 236.

COURT REPORTER: Ms. Chauvet, raise your right hand, please. Do you solemnly swear the testimony you're about to give in this matter is the truth, the whole truth, and nothing but the truth, so help you God?
MS. CHAUVET: Yes.
COURT REPORTER: Okay. Before we get started -- you can put your hand down. My name is Amanda Godfrey. I'm your court reporter today. I am not present with the witness. Does anyone have any objection to that?
MS. BARBIER: No.
COURT REPORTER: And, Ms. Chauvet, I would just ask you and instruct you, please, to keep in mind that Zoom will cut off people who are speaking over each other, so if we could just all be mindful of making sure that the question is completed before we start an answer and the answer is completed before the next question, that way the Zoom doesn't cut off any words and the transcript doesn't reflect that. Okay. Thank you.
MONIQUE CHAUVET, having been duly sworn, deposes and testifies as follows:

MS. CHAUVET - EXAMINATION BY MS. BARBIER:
Q: Good morning, Ms. Chauvet. You understand you're still under oath as you were in your last deposition?
A: Yes.
Q: Okay. Do you recall your last deposition on October 26, 2022?
MS. TAYLOR: Counsel, just so we have the witness' name clear, it's Ms. Chauvet. I just wanted -- didn't want the record to be muddied.
MS. BARBIER: Okay. Ms. Chauvet. Sorry about that.
Q: Do you recall October 26, 2022, when we started this 30(b)(6) deposition?
A: Yes.
Q: Okay. And do you recall during that deposition that you didn't know the answers to some of my questions?
A: I -- I believe there were questions that I wasn't sure about the answers to.
Q: Right. And you -- do you recall me asking you what you did to prepare on those -- on particular topics?
A: I -- I believe so, yeah. We -- you had asked about what I had done to prepare for some of

the topics, yes.
Q: Okay. And do you recall saying in response to some of my questions that you would need to review some documents in order to answer certain questions?
MS. TAYLOR: Objection.
A: I would have to double-check my -- my responses.
Q: Did you get a copy of your last -- of the transcript of the beginning of this deposition?
A: I have a copy of the transcript. I just -- I don't have it memorized.
Q: Right. Did you read it?
A: Yes.
Q: Okay. And did you note that there were questions that I asked you that you said in order to answer them, you'd have to review certain documents? Do you recall that?
MS. TAYLOR: Objection.
A: Again, I don't have it memorized, but I -- I can review my copy of the transcript to confirm.
Q: Okay. We can do that. Do you have a lawyer with you sitting in the room today?
A: Yes.

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Q: And who is that?
A: Damali Taylor.
Q: Okay. And where in location to where you're sitting is she sitting?
A: She's sitting next to me.
Q: Okay. Now, what have you done since we -- since October 26, 2022, to prepare for the topics that were noticed in this case?
A: For any specific topic? Are you asking about a specific one?
Q: I'm asking you what you've done since October 26, 2022, to prepare for the topics that you were unable to answer some questions on.
MS. TAYLOR: Objection.
A: So, again, without understanding if you're asking about a specific topic, I have met with some individuals at AIRBNB to ask about information that they are familiar about.
Q: Who did you meet with at AIRBNB?
A: I met with members of different teams who could provide some additional information regarding the deposition topics.
Q: Okay. What teams did you meet with?
A: The Trust Team, the ---
Q: Who did you meet with on the Trust Team?

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MS. TAYLOR: Objection. Let the witness finish answering the question.
A: Just to kind of go back. Again, I met with the Trust Team. A -- let's see, the Luxe Team ---
Q: I'm sorry, the what team?
A: Luxe.
Q: Luxe Team?
A: Yes.
Q: How do you spell that?
A: L-U-X-E.
Q: Okay.
A: The Plus Team and the Data Science Team.
Q: Okay. Who on the Trust Team did you meet with?
A: On the Trust Team I met with Ryan Johnston.
Q: What's his title?
A: I don't know his exact title name, but I believe he's involved in product management.
Q: What does that entail?
A: My understanding of his role is that he works on -- he works on and is familiar with different products, different products and processes that are implemented by the Trust Team.
Q: What types of product does he work on?
A: Things that would involve like identity

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verification, third-party vendors performing background check processes.
Q: Did you meet with anybody else besides Mr. Johnston on the Trust Team?
A: I don't believe so, no.
Q: All right. Who did you meet with on the Luxe Team?
A: I believe their name is Emily Lai.
Q: How do you spell that last name?
A: L-A-I.
Q: And what topics did you meet with her about?
A: I met with her to discuss the general process for onboarding new Luxe properties.
Q: What's a Luxe property?
A: It is a property that is -- they're typically higher priced than a regular listing, include some elevated amenities.
Q: Okay. How many times did you meet with Mr. Johnston on the Trust Team between now and October 26?
A: I met with him once.
Q: How many times did you meet with Ms. Lai on the Luxe Team?
A: Once.
Q: Okay. And who did you meet with on the Plus

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Team?
A: I don't rec- -- apologies. I don't recall their name.
Q: What does the Plus Team do?
A: The Plus Team oversees listings that may be -- may be more expensive or may be similar priced to other listings, but typically include an expanded list of amenities and comfort features.
Q: And what did you meet with them -- this person to discuss?
A: We discussed -- or they -- they gave me more information about the onboarding of new Plus properties.
Q: And you don't remember the person's name?
A: No. Apologies, I don't remember their name.
Q: Do you know anybody that works on the Plus Team?
A: I -- again, I met with one -- one individual. Their name I just don't recall off the top of my head.
Q: Okay. Who did you meet with on the Data Science Team?
A: Heesu Kim.
Q: And what did you meet with him (sic) about?

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A: I just talked with Ms. Kim about how -- numbers of -- volumes of CS contact tickets and how those are categorized.
Q: And how many times did you meet with Ms. Kim?
A: Once.
Q: So, you met with each of these individuals on one occasion?
A: Yes.
Q: Did you meet with them individually or did you meet with every -- did you all meet together?
A: Individually.
Q: And how long did you meet with each one?
A: I don't recall how -- how long it was.
Q: Well, was it an hour or was it eight hours?
A: I would estimate it to be closer to about an hour, but I -- again, I don't recall how long each of those meetings would have been.
Q: And when did you meet with them?
A: I don't recall the specific dates off the top of my head.
Q: Well, was it recently?
A: I -- it was within the last few weeks.
Q: Do you recall when I asked you about the organizational structure of AIRBNB, you told me that Mr. Baer was the chief of legal

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investigations?
MS. TAYLOR: Objection.
A: He is the chief legal officer.
Q: Yes. Do you recall when I asked you about that?
A: I -- I believe we discussed Mr. Baer.
Q: Where is his office?
A: I believe that he's based in San Francisco, but I -- I don't know if he has a set office location.
Q: What does being based in San Francisco mean?
A: That he -- his sort of home -- home office would be the San Francisco office.
Q: Okay. How about Ms. Bunch, where is her office?
A: I believe she's also based in San Francisco.
Q: Are the officers -- I mean, the company's officers of AIRBNB based -- all based in San Francisco?
A: I'm not certain. There is a -- you're not obligated to -- to work in an office, so I'm not sure where each of them might be based.
Q: Okay.
COURT REPORTER: May I just interrupt? I hate to, but there's someone named Stephanie Gray

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requesting to enter the room.
MS. BARBIER: That's okay. She's with Mr. Ashmore's office.
COURT REPORTER: Okay. I'm going to admit her now.
MR. ASHMORE: Thank you.
(Ms. Gray entered the meeting.)
Q: Okay. We're going to go to Topic 3, all agreements and/or contracts between Rhett Riviere, Chase Enterprises, LLC, of South Carolina, and/or Katherine Thomas.
MS. TAYLOR: Do you have an exhibit number, Ms. Barbier?
MS. BARBIER: There's no exhibit. I haven't referenced an exhibit. I said I'm going to Topic 3.
Q: So, Ms. Chauvet, when did Ms. Thomas first list any rental properties on AIRBNB?
A: I would double-check. I believe this document has been produced. I don't recall the exact date. I -- can I see the document that was produced for the dates that Ms. Thomas listed the property?
Q: Well, I'm not -- I'm not as familiar with your documents -- with your documents as you are. I'm not referring to a specific document. I'm

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just asking you when she applied or when she signed on to be a host.
A: I would need to double-check the exact -- the exact date. I don't recall the exact date off the top of my head.
MS. TAYLOR: Objection.
Q: Okay. When Ms. Thomas signed up, gave her e-mail address to be a host on AIRBNB, did she agree to a background check or risk assessment that you're aware of?
A: When a user, this would include Ms. Thomas, creates an AIRBNB account, they're agreeing to the terms of service. The terms of service include information about background check processes that may be run on a user account.
Q: Okay. When a company or an LLC signs up to be a host, who does a background check get done on?
MS. TAYLOR: Objection.
A: When a user account is created, the -- again, the -- in creating a user account, whoever is, you know, performing that activity is agreeing to the terms of service which describes how -- how background checks are performed and the background check process. The information

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associated with that user account will be used to perform a background check.
Q: That doesn't respond to my question, Ms. Chauvet. When a -- when a company, such as Chase Enterprises, LLC, signs up to be a host on AIRBNB, who would AIRBNB do the background check on? What -- what individual?
MS. TAYLOR: Objection.
A: Air -- the background check process utilizes user account information, so whatever user account information has been provided by the individual that created that account, that was what will be used for any background check processes.
Q: Are LLCs and companies allowed to create accounts?
A: An individual -- an individual person, you know, performs the account creation process. That person is the individual who is adding any sort of details about the name of the account or other information.
Q: Okay. Well, if an LLC or a corporation forms an account and doesn't give the name of an individual, who do they do a background check on?

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MS. TAYLOR: Objection.
A: Again, the background check process will utilize the information that was provided by the individual, whoever that person is, that is performing the account creation process.
Q: So, if I apply for an account in the name of an LLC and I do not provide the name of an individual, is it correct that you don't do a background check?
MS. TAYLOR: Objection.
A: Background check processes will be performed based on certain types of -- like user activity, so if a user's activity -- a user account activity triggers a background check, that will still be automatically performed using the information provided on the user account.
Q: But you didn't answer my question. My question is if an account is formed by an LLC or a corporation and the name of an individual is not given, is there a background check done, yes or no?
MS. TAYLOR: Objection.
A: Again, whether or not a background -- a background check is performed by the third-

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party vendor is dependent on the activity of the account. If the activity of the user account triggers a background check process, then that information from that user account will be used by the third-party vendor to perform a background check.
Q: Ms. Chauvet, are you aware that AIRBNB is making public statements that they are doing 100 percent background checks and verifications on every user?
MS. TAYLOR: Objection.
Q: 'Cause that's inconsistent with what you -- you said in your previous testimony and what you just said, which is that it's triggered by activity.
MS. TAYLOR: Objection.
A: I'm -- I'm not -- I'm not sure I recall what -- what document or communication that you're citing. Is that something I can see?
Q: Well, sure, if you get e-mails from your CEO and you look on the internet, you can see articles that AIRBNB is making public statements that they verify 100 percent of their hosts ---
MS. TAYLOR: Objection.

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Q: --- have you seen that?
MS. TAYLOR: Objection.
A: Again, I'm not familiar with all of those documents or communication. Can you -- I'd be happy to take a look at the -- the messaging that you're referencing.
Q: So -- so, let me make sure I'm clear on what you are testifying to as the Rule 30(b)(6) designee for AIRBNB. You are testifying under oath that background checks are only performed when there is an activity that triggers it, is that right?
MS. TAYLOR: Objection.
A: The background check process is dependent on user activity. Different types of activity can trigger a background check, at which point the user account information will be used by the third-party vendor to perform a background check.
Q: So, background checks are not automatically done for every single person that signs up on AIRBNB, isn't that right?
MS. TAYLOR: Objection.
A: Just creating a user account doesn't necessarily trigger a background check to be

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performed. Account -- background checks are triggered based on user account activity. Just creating a user account isn't -- isn't performing sort of platform activity.
Q: Are you aware as the Rule 30(b)(6) designee of AIRBNB that when you have executives making statements to the public that aren't true, that that's consumer fraud?
MS. TAYLOR: Objection.
A: Again, I'm not really sure what statements you're referencing. If there's a specific one ---
Q: Well, if your executives are out there saying that there's 100 percent verification of every host, that wouldn't be accurate, would it?
MS. TAYLOR: Objection.
A: Again, I'm not sure -- I'm not familiar with the language that you're talking about, so I can't really speak to that. But if there's a document you'd like me to look at, I can.
Q: Okay. Let's go to Topic 4, all records, reports, documents, correspondence, handwritten notes or otherwise material of any kind that concern, reference or relate to any of the following, Rhett Riviere, Chase Enterprises,

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LLC of South Carolina, Katherine Thomas, and/or Julianne Foster. Are you familiar with that topic?
A: Yes.
Q: Did you prepare for it?
A: Yes.
Q: So, when was the property at 115 Third Avenue Southwest, Aiken, South Carolina first listed on AIRBNB?
A: I -- again, I don't have the date memorized. I -- I can double-check the business record that I believe has been produced.
Q: Do you know whether AIRBNB inquired at the time as to whether the person who applied as the host legally owned or controlled the property?
A: When a user creates an account, they are agreeing to the terms of service, which include that they are authorized to -- to list a property on the platform. Therefore, by listing a property, they're -- they're agreeing that they're authorized to do so.
Q: Did AIRBNB, other than ask someone to sign a term of service, do anything to verify the ownership of the property?
MS. TAYLOR: Objection.

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A: Verifying ownership of a property is not part of a AIRBNB normal business process.
Q: Okay. Does AIRBNB require any documentation to confirm who legally owns or controls the property?
MS. TAYLOR: Objection.
A: The is not part of the normal business process and, again, if a user has created a user account, they are agreeing and affirming that they are authorized to -- to list any property that they list on their -- on their user account.
Q: Does AIRBNB ask to see a deed from the person who signs up as the host?
MS. TAYLOR: Objection.
Q: Yes or no, then you can explain.
A: The -- no, that's not ---
MS. TAYLOR: Objection.
A: --- it's not part of a normal business process to ask for a deed.
Q: Well, whose normal business process are you referring to? AIRBNB's or are you talking about some other industry standard?
A: I was -- excuse me, apologies. I was explaining that it's not part of AIRBNB's

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normal process to ask for a deed when a user is creating a listing on their account.
Q: Okay. Does AIRBNB ask to see a tax bill when somebody's creating a listing?
MS. TAYLOR: Objection.
A: No, that is not part of the -- the listing process.
Q: Okay. Does AIRBNB ask to see a property tax record?
MS. TAYLOR: Objection.
A: That is not part of the -- the listing process.
Q: Does AIRBNB inquire as to whether other persons may have access to the property?
A: Make sure I understand your question. Are you asking if they ask whether people have access to the property as part of the listing process?
Q: Yes.
A: No, that's not part of the listing process, but it is an expectation under AIRBNB's community standards that a host is clear with guests about who will be present during a reservation and observing the AIRBNB community standards with respect to -- to privacy.
Q: As part of the listing process, does AIRBNB require someone to list the people that have

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access to the property?
MS. TAYLOR: Objection.
A: No, that is not part of the listing process.
Q: Okay. Why not?
MS. TAYLOR: Objection.
A: As -- hosts are responsible for, again, ensuring that the community standards with respect to privacy are observed throughout the reservation, it is a host's responsibility to ensure that they communicate with guests about who may be present during a reservation and, again, just observe and -- any -- any guest privacy expectations as described in our community standards.
Q: How long does the background check that -- how long did the background check that AIRBNB did on Katherine Thomas, how long did that take?
MS. TAYLOR: Objection.
A: Again, I don't have that memorized. I would need to refer to the business record, but it is -- it is an automated process.
Q: So, did you testify last time it took like three seconds, does something like that sound right?
MS. TAYLOR: Objection.

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A: Again, I need to refer to the business record to -- to confirm, but as an automated process, it can be done fairly quickly.
Q: And what databases or records is that background check reviewing?
A: So, AIRBNB's third-party background check vendor for all states is reviewing a number of -- a number of sources. This can include national sex offender registries; it can include corrections information, local court information. It can -- for example, for a single state, it can include more than 100 sources.
Q: Okay. And so other than the documents that you've produced to us, did AIRBNB do any other background checks or criminal record checks or arrest record checks on either Katherine Thomas or Rhett Rievere?
MS. TAYLOR: Objection.
A: AIRBNB performs background check processes using the -- you know, our -- one third-party offender. I don't believe there would be any other processes other than those that have been described and produced.
Q: So, the answer is no, they did not?

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MS. TAYLOR: Objection.
A: I'm not a -- I'm not aware of any other processes.
Q: Okay. Does anybody -- you testified in your -- in the beginning of this deposition that AIRBNB does not review guest reviews or comments, is that right?
MS. TAYLOR: Objection.
A: It does not review them as part of a normal business process.
Q: Okay. And when is it acceptable or under what circumstances does AIRBNB delete reviews and comments that have been made on properties?
MS. TAYLOR: Objection.
Q: Or I should say remove them.
MS. TAYLOR: Objection.
A: AIRBNB has review standards. These are published on the website and visible to users. They describe the expectations for reviews and information that may not be acceptable for a listing review or a review of another user.
Q: And what type of information's not acceptable for a review?
A: It -- if there were, for example, sensitive identifying information or potentially

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derogatory information from a user who did not stay at a property or information that violates AIRBNB's non-discrimination policy.
Q: Has AIRBNB ever just removed negative or unflattering comments about properties ---
MS. TAYLOR: Objection.
Q: --- because it was negative and unflattering?
MS. TAYLOR: Objection.
A: A negative review alone would not be a reason to remove a review. The review system is meant to give users an opportunity to accurately display their experience, whether that was negative or positive.
Q: So, are you aware of any instances where AIRBNB has removed negative comments because either AIRBNB or the host just didn't want the negative comments on the review?
MS. TAYLOR: Objection.
A: I'm not aware of an instance when that -- that has happened. My understanding is that just being a negative review is within the scope of the review guidelines and would be acceptable to have published on a listing or user's profile.
Q: Are you familiar with an investigation that was

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done in 2021 and published in the Chicago Tribune about AIRBNB removing negative comments for people that got bad reviews ---
MS. TAYLOR: Objection.
Q: --- for things like garbage being piled up in the driveway and not being in conformance with the pictures on the website?
MS. TAYLOR: Objection.
A: I -- I'm not familiar with the -- with the document you're describing, but, again, there are multiple factors that are considered if a user is disputing a review. So -- but from my experience and from what I'm aware of, just a negative review alone would not be a reason to remove a review.
Q: Are you familiar with AIRBNB condensing or modifying or taking down negative reviews?
MS. TAYLOR: Objection.
A: A negative -- again, a negative review is within the review guidelines and is something that if a user had a negative experience with another user or a listing would be important to give them the opportunity to -- to express. I'm not familiar with a situation in which a user's review would be modified because it was

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negative.
Q: Are you saying that doesn't happen or you're not familiar with it?
MS. TAYLOR: Objection.
A: I'm not -- I don't oversee all of the instances when a user is -- is not in agreement with a review and contacts the Customer Support Team, but from my understanding and experience with the review pol- -- the review guidelines, a negative review is something that would not be removed or otherwise altered.
Q: Do you know if any reviews or comments were taken down from the reviews of the properties owned by Mr. Rievere?
A: I'm -- I'm not aware of reviews that were taken down, no.
Q: Have you checked?
MS. TAYLOR: Objection.
A: I have -- I believe I've looked at the reviews and I -- again, I'm not aware of any that were removed.
Q: Are you aware of any that were modified?
A: Not that I'm aware of.
Q: Well, how would we find that out?
MS. TAYLOR: Objection.

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A: I -- I believe the review -- the reviews would have been -- that's something that's been produced, I believe, so that information as it was written should be reflected in those business records.
Q: Well, do you keep business records of reviews that have been modified or condensed or deleted?
MS. TAYLOR: Objection.
A: In the instance that a review is removed from visibility for a listing or user account, it isn't -- the review has not been deleted, so that information is still present in a business record. I'm not aware of an instance when it would be appropriate for a review to be modified, so the original review content, again, should be reflected in the business record.
Q: Are you saying that AIRBNB's never modified a review?
MS. TAYLOR: Objection.
A: I'm not aware of an instance in which a review would be modified. That isn't consistent with the review guidelines.
Q: So, if there are people out there saying that

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their reviews were modified or condensed or deleted, they're not telling the truth?
MS. TAYLOR: Objection.
A: Again, I'm not familiar with -- with every instance when a user has not been in agreement with a review and I -- I don't know if there's a specific situation that you're describing. I'm certainly not familiar with it.
Q: Okay. You testified previously that -- that AIRBNB has never had any contact with South Carolina law enforcement about Mr. Riviere or Ms. Thomas, is that correct?
MS. TAYLOR: Objection.
A: I'm -- I'm not aware of contact with South Carolina law enforcement.
Q: Did you verify that?
MS. TAYLOR: Objection.
A: If you're asking if I -- if I contacted -- if I verified with South Carolina law enforcement, I've -- I've -- no, I (technical break in audio) ---
Q: I'm asking if as the 30(b)(6) designee if you verified whether that there was no contact between AIRBNB and law -- South Carolina law enforcement regarding Mr. Riviere and his

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rental properties.
MS. TAYLOR: Objection.
A: Again, I'm -- I'm not -- I'm not aware of any.
Q: Well, when did -- when did AIRBNB first learn that Mr. Riviere was videotaping people in his properties?
A: I believe AIRBNB learned about it as a result of the -- of the Complaint.
Q: So, it's your testimony that AIRBNB had no knowledge of these incidents prior to our Complaint being filed?
A: Correct.
Q: Okay. What -- what action did AIRBNB take in response to that?
MS. TAYLOR: Objection.
A: My understanding is that in res- -- after learning about the -- the information in the Complaint, Ms. Thomas' account was removed from the platform and Mr. Riviere's account was similarly removed from the platform.
Q: Did AIRBNB do anything to investigate the allegations in the Complaint?
MS. TAYLOR: Objection.
A: AIRBNB isn't a law enforcement agency. All AIRBNB can do is enforce -- conduct enforcement

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on its platform, which it carried out.
Q: Well, how do you know whether to remove a host or a guest from your platform if you haven't done anything to review what the allegations are and the veracity of them?
MS. TAYLOR: Objection.
A: My understanding is that the information in the Complaint was reviewed, which described information that was in violation of AIRBNB's policies and AIRBNB carried out conduct -- or carried out enforcement accordingly.
Q: So, did AIRBNB accept those allegations as being true?
MS. TAYLOR: Objection. And Ms. Chauvet knows this, but, of course, the witness should be careful about disclosing privileged information.
Q: I'm not asking you for privileged information. I'm asking about AIRBNB's position on this Complaint. If you dismissed a host and a guest as a result of it, I want to know why.
MS. TAYLOR: Same objection. You can answer.
A: Again, my understanding is that the information in the Complaint was reviewed by the teams that carry out enforcement and it was determined

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that it was appropriate to remove Ms. Thomas' and Mr. Riviere's user accounts.
Q: And did AIRBNB do anything to contact any of the other people, the AIRBNB guests, who had stayed in Mr. Riviere's rental properties?
MS. TAYLOR: Objection.
Q: Yes or no?
A: No.
Q: Did AIRBNB reach out to law enforcement to assist in their investigation?
MS. TAYLOR: Objection.
A: I don't believe so.
Q: Does Mr. Riviere currently have any rental properties listed with AIRBNB?
A: Not that I'm aware of.
Q: And how would you be aware of it?
A: I -- I have reviewed the business records for the user accounts involved in this situation. The accounts belonging to Mr. Riviere and the account -- Ms. Thomas' account that had previously listed properties.
Q: Did you review the information for Chase Enterprises?
MS. TAYLOR: Objection.
A: I'm not aware of a user account belonging to

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Chase Enterprises.
Q: Are you aware of all the user accounts that AIRBNB has?
MS. TAYLOR: Objection.
A: I'm not familiar with every user account on the platform, no.
Q: Okay. So, if Mr. Riviere has submitted a -- has created an account with an LLC, you wouldn't know, would you?
MS. TAYLOR: Objection.
A: The -- you mean, would I just know that they had done that? No, there's -- if there were information about a user account that should be reviewed, there are -- it is possible to search for a user account, but I'm not aware of a user account for Chase Enterprises, LLC.
Q: Okay. Well, if I didn't want to give my name and I wanted to create an account and call it ABC, Inc., does AIRBNB do anything to determine who is the owner or the operator or the management of ABC, Inc.?
MS. TAYLOR: Objection.
A: So, there -- again, there are sort of different verification processes for user accounts and they're dependent on different user account

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activity. Some user -- some user accounts, for example, if they are a host account, are prompted to perform a -- additional verification steps that list an individual who is associated with a company or company operations. But, again, that is specific to user accounts based on activity.
Q: Right. My question to you is what does AIRBNB do to determine who is behind a corporate entity that creates an account?
MS. TAYLOR: Objection.
Q: What do they do in all circumstances of that nature? What do they do?
MS. TAYLOR: Objection.
A: So, a user -- when a user account is created, the individual who is creating that account is the individual who's giving information associated with it. Depending on the activity, the user activity of a certain account, a user may be prompted to perform different verification processes that might include uploading a government issued ID. It may include providing a selfie to demonstrate that the ID belongs to the person operating the account. It may also include information about

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specifying an individual who is associated with a business process. It just depends on the -- the activity of a certain user account.
Q: Ms. Chauvet, I'm not asking you what might happen or what may happen. I'm asking you what happens when someone creates account using a corporate entity, how is that entity's ownership or the individual associated with that entity identified and what is done? I'm not asking you about what happens in -- what might happen. I'm asking you what does happen.
MS. TAYLOR: Objection.
A: Again, what kind of verification processes may be performed is unique to the -- it is unique and triggered by a user account behavior, so there isn't necessarily a one -- one-size fits all just because a user account is created.
Q: So, Ms. Chauvet, would you be surprised if I told you that a corporate account was created and that no verification was done and that that allowed someone to just immediately start listing a property?
MS. TAYLOR: Objection.
A: I -- again, I -- I don't know if I would describe myself as surprised. My understanding

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is that different account activity will create -- will trigger different verification processes, so depending on what kind of activity account performs, that will determine what kind of verification they are prompted to complete.
Q: Well, I'm not -- if you wouldn't describe yourself as surprised, how would you describe yourself?
MS. TAYLOR: Objection.
Q: Would you dispute that somebody could create an account using a corporate entity and that no verification may be done? Would you dispute that?
MS. TAYLOR: Objection.
A: Again, just creating a user account doesn't necessarily trigger any specific verification processes, so a individual can create a user account and specify the user account name, you know, of their choosing. That isn't necessarily going to prompt them to complete a specific verification process.
Q: How does AIRBNB -- if someone's background check comes back and it is -- contains something that would preclude it from being a

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host, how does AIRBNB notify that person that they won't be able to be a host?
MS. TAYLOR: Objection.
A: If a user's -- if a user's background check returns information that is actionable under AIRBNB's policies, that user will be notified via e-mail that they are not eligible to use the platform either as a host or a guest and they will be provided with the contact details for the vendor that performed the background check.
Q: And what is the appeal process for that?
A: If a user is -- disputes the information in a background check, they will appeal that information directly to the background check vendor.
Q: So, it doesn't go -- there's not an appeal process through AIRBNB?
MS. TAYLOR: Objection.
A: When a user has been notified that they're not eligible to use the platform, they're informed that a background check was conducted and advised that if they disagree with the information in that background check, then they may appeal that directly with the vendor that

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performed the background check.
Q: Do you run background checks anywhere besides the United States and India?
MS. TAYLOR: Objection.
A: I'm not aware of all of the locations that are -- I know that in the United States and India that is part of the normal business process. I'm not aware of details of background checks performed necessarily outside of those areas, if any.
Q: And on your website it indicates to people that they don't guarantee they've conducted a background check on everyone, doesn't it?
A: The AIRBNB website includes help center articles that describe the limitations of background checks.
Q: Right. And do you know why those limitations are not being discussed by your CEO when he indicates that 100 percent of the people are getting background checks and 100 percent of the people are being verified?
MS. TAYLOR: Objection.
A: I'm not aware of the statement that you're referencing from -- from the CEO. Is there something I could -- I could review?

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Q: Do you recall an e-mail in November of 2019 that Mr. Chesky sent to global employees and posted it on the website where he said that by December 15th of 2020 every home and every host on AIRBNB will be reviewed with the objective of 100 percent verification?
MS. TAYLOR: Objection.
Q: Do you remember that?
A: I don't -- I don't remember the specific language in it. I'd have to see the document and review it.
Q: Well, do you get -- do you get e-mails from Mr. Chesky?
A: I -- I mean, honestly, I get -- I get a number of e-mails from -- from a lot of people in the years since 2019. I can't recall every -- every e-mail or every statement that was issued.
Q: How many e-mails do you get from Mr. Chesky?
MS. TAYLOR: Objection.
A: I -- again, this is -- this would have been something that was sort of sent out as a -- a public statement, not a direct communication specifically targeting employees.
Q: Well, that's a public statement that's

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inaccurate, isn't it, because your testifying today as the AIRBNB representative and you are telling me that there is not 100 percent verification of every host and every home, isn't that right?
MS. TAYLOR: Objection.
A: I'm -- again, I don't -- I don't know that I -- I need to review the document that you're referencing, but I -- I -- again, I think I would just need to look at that document. That's not language that I am off the top of my head familiar with, but I believe you said it was in November of 2019. My recollection of communication in that time period was in response to issues involving parties -- parties and listings. So, I don't know if -- if that's something that was specific to issues around noise and number of guests.
Q: Well, there is not 100 percent verification, isn't that right?
MS. TAYLOR: Objection.
A: Again, I don't know -- I need to review that document to respond to -- to what you're describing.
Q: Okay. Well, let's forget about the document,

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okay. You've already testified there's not 100 percent verification of every host or every home, correct?
MS. TAYLOR: Objection.
A: What I advised -- what I explained is that user accounts will be prompted to complete different verification processes based on the behavior of that user account.
Q: And every user account is not verified, isn't that correct?
MS. TAYLOR: Objection.
A: Again, verification processes are dependent on user account behavior, so ---
Q: I'm not asking you about behavior. I'm asking you, yes or no, is every user account verified?
MS. TAYLOR: Objection. Let the witness finish answering the question. Go ahead, Ms. Chauvet.
A: So, in order to descri- -- to determine if a user account has completed different verification processes, you would need to understand the behavior of that user account. Creating a user account in and of itself is not necessarily something that will prompt the user to complete a verification process. It depends on the overall behavior and activity of that

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account.
Q: So, AIRBNB might verify the account and they might not, right?
A: Again, whether or not and what verification process a user may be prompted to complete is based on the behavior of that user account.
Q: Right. So, they might -- AIRBNB might verify it, right?
MS. TAYLOR: Objection.
A: Again, this is something that a user is prompted to complete, so ---
Q: Right. No, that's not answering my question, okay. My question is AIRBNB might verify a user account, correct?
MS. TAYLOR: Same objection. Ms. Chauvet, answer the question and the witness should be allowed to answer the question before being interrupted.
A: I just want to contextualize the -- the verification process. This is something that a user would be prompted to complete whether or not they're prompted and what they're prompted to complete will be based on their activity and whether that's completed will be based on the user's decision to complete that process or

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not.
Q: Right. So, some accounts are verified, correct?
A: Different user accounts may be prompted to complete different types of verification.
Q: Right. And some accounts may not be prompted to complete a verification, correct?
A: Based on account activity, that's what would determine whether or not a user is prompted to complete any veri- -- any specific verification process.
Q: So, the answer to my question is yes, some accounts are not verified, is that right?
MS. TAYLOR: Objection.
A: Again, I think that it's important to understand that just creating an account isn't necessarily enough to prompt a user to complete a verification process. Depends on the behavior of that user account.
Q: AIRBNB is the one who does the verification process, correct?
MS. TAYLOR: Objection.
A: AIRBNB has processes that are in place for a user to con- -- different identity verification. But, again, it requires the

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user's cooperation in completing that process. If a user chooses not to complete that process, they may be limited in the account -- or the activity their -- their user account is permitted to perform, but it is still -- the user is still prompted to fulfill the -- the steps to complete the process.
Q: Are there instances where AIRBNB doesn't request them to provide any verification?
MS. TAYLOR: Objection.
A: So, that's, again, dependent on the account behavior. It depends on what kind of activity the account is trying to perform.
Q: Are there instances where AIRBNB does not request additional verification?
MS. TAYLOR: Objection.
A: There are -- again, it's just based on account behavior, so not all activities will necessarily prompt a user to complete a certain verification process, depends on what activities the account is involved in.
Q: And besides background checks, criminal background checks, what else does AIRBNB do to verify someone's suitability to be a host?
A: AIRBNB isn't evaluating an individual's

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qualifications as a host. AIRBNB is -- will prompt a user to complete certain verification processes depending on their activity and a user is agreeing when they create their account with the terms of service and community standards in terms of how they conduct themselves on the platform and during reservations. And if AIRBNB becomes aware of an issue, they will review that issue accordingly.
Q: What kind of predictive analytics and machine learning is AIRBNB using?
MS. TAYLOR: Objection.
A: Are you -- is there something specific that you're referencing?
Q: Well, on your website it says we use predictive analytics and machine learning to instantly evaluate hundreds of signals that help us flag and investigate suspicious activity before it happens. What are you referring to?
A: My understanding is that is referring to signals associated with fraudulent financial behavior, so an indication that a payment instrument may be being used fraudulently, or -- or an individual is trying to conduct

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fraudulent financial activity through the platform.
Q: Haven't -- hasn't AIRBNB represented that this risk assessment is used to predict behavior and identify personality traits?
MS. TAYLOR: Objection.
A: I'm not familiar with that language. If that's a document, I can take a look.
Q: Well, let me ask you this, is AIRBNB evaluating peoples' personality traits before they allow them to be hosts?
MS. TAYLOR: Objection.
A: I -- I'm not aware of any product or process that would -- would or could accurately evaluate a personality trait.
Q: Do you know why AIRBNB has represented they do that?
MS. TAYLOR: Objection.
A: I'm not aware of an instance where AIRBNB has said they evaluate personality traits.
Q: Okay. Who is -- are you familiar with AIRBNB's motto, safety is our number one priority?
MS. TAYLOR: Objection.
A: I don't know if I'd describe it as a motto, but I know safety is a -- is a top priority for

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AIRBNB.
Q: Who would be the most knowledgeable person at AIRBNB about that -- that marketing slogan?
MS. TAYLOR: Objection.
A: I'm not sure I understand the question, who -- who is familiar -- who would be most knowledgeable about the language or ---
Q: Who's the most knowledgeable about the representation that safety is AIRBNB's number one priority?
MS. TAYLOR: Objection.
A: I think that AIRBNB just kind of as a -- a general quality of the company, everybody who works here agrees that safety is a top priority for the entire platform community.
Q: Well, who's responsible for implementing that policy of safety being the number one priority? Who's responsible for that?
MS. TAYLOR: Objection.
Q: What person or persons?
MS. TAYLOR: Objection.
A: I think that at a very, you know, wide scale across the board, many individuals at AIRBNB are committed to ensuring that safety is represented as a top priority in how AIRBNB

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creates its community standards, how its Customer Support Team interacts with users, different considerations that are made about how to create processes, I think that's something that's -- that's a priority that's shared by many, many people at AIRBNB.
Q: Well, who's responsible for implementing that company value?
MS. TAYLOR: Objection.
A: I think many people are responsible for implementing that.
Q: Well, give me the name of the person who's -- in chief in charge of it. Is it Ms. Bunch?
MS. TAYLOR: Objection.
Q: The head of the Trust and Safety Division?
MS. TAYLOR: Objection.
A: My understanding is that Ms. Bunch is -- oversees the Customer Support Team, but, again, the Customer Support Team and many other teams across the company are responsible for carrying out their -- their duties with the understanding that safety is a top priority. I don't think it's limited to any one team or individual.
Q: Okay. Well, give me -- give me the names of

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the chiefs of these divisions that are responsible for carrying out safety as the number one priority?
MS. TAYLOR: Objection.
Q: Who's the head of the Trust Team?
MS. TAYLOR: Objection.
A: Again, I don't think this is limited to Trust or any one team. I think that this is a value that is equally prioritized throughout the company. There isn't one individual or one team that is tasked with ensuring that everything is -- is -- tasked with like ensuring that safety is prioritized. That's something that is and has to be shared throughout the company.
Q: Right. So, my question to you is who is over the Trust Team? Who's in charge of the Trust Team?
A: I would need to ---
Q: Who's Ryan Johnston's boss? This goes to Topic 1, the organizational structure.
MS. TAYLOR: Objection.
A: I would need to verify who Ryan Johnston reports to. I am not certain I believe the individual who was overseeing that has recently

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transitioned out of the company. I'm not -- I'm not sure who has currently, like, accepted that position.
Q: Well, what do you need to do to find out, because that's part of the Topic number 1, the organizational structure?
MS. TAYLOR: Objection.
A: I can try to review an organizational -- or a reporting chart, but, again, I don't think that this is something that would be isolated to the trust -- the Trust Team or any one team. I think that if it were to be isolated to a team, it would be difficult to demonstrate safety as a priority across the company.
Q: Why would that be difficult? If safety is your -- is your number one priority and the company's motto, why would it be difficult to name people who are in charge of implementing that motto?
MS. TAYLOR: Objection.
A: Again, I don't know that I would describe safety as a top priority as a company motto. I think it's certainly a value that the company has and I think that if you were to task a single team and to silo safety and the priority

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of safety of the community to just one team, that would make it very difficult for -- for other teams to take into consideration ways in which the community can be -- can be safe and how safety as a priority can be part of everybody's general thought process as they conduct their role.
Q: Who's the most knowledgeable person in the company about safety?
MS. TAYLOR: Objection.
A: Again, I think that because it is essential that safety is taken into consideration across multiple teams ---
Q: Uh-huh.
A: --- the ways in which that is represented are different. So, there isn't a one safety person. Safety should be represented across many teams and the work that is performed by those teams and it'll, like I said, be reflected in different ways depending on what those teams do.
Q: How about Katherine Powell, what is her title?
A: My understanding is that Katherine Powell oversees operations involved in working with users with the experiences product and general

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marketplace products.
Q: Is her title global head of hosting?
A: I would need to double-check the exact name, but that would encompass the things I've described.
Q: Would somebody who's in charge of hosting also be knowledgeable about safety issues?
MS. TAYLOR: Objection.
A: Since safety is something that's taken into consideration by many teams, I'm sure that safety is taken into consideration in the work performed by the teams overseen by Katherine Powell, as well. Again, it's -- it'll -- it'll be consistent with how best to incorporate safety as a priority into their work.
Q: How about Heroki Asai (ph), the global head of marketing, would he have knowledge about safety issues?
MS. TAYLOR: Objection.
A: I don't believe that he would be familiar with individual safety issues or contact about instances involving issues of safety. But, again, safety is something that is taken into consideration in all the work that's performed. So, I'm sure that that's something that's

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considered and reflected uniquely in the work that's performed, but it'll be specific to that kind of work.
Q: But would someone who's in marketing have knowledge of the representations that AIRBNB is making in its marketing, that safety is their number one priority?
MS. TAYLOR: Objection.
Q: People know about that, right?
MS. TAYLOR: Objection.
A: I -- I -- again, I think that I would need to see -- I'm not sure if you're referring to a statement that was made by somebody or if that was -- in which it was a part of an ad campaign. I'm not really sure what you're referencing, so I -- I just don't know if I could advise if Mr. Asai would be familiar with that.
Q: Are you familiar with the representations on AIRBNB's website that safety is their number one priority?
MS. TAYLOR: Objection.
Q: Are you familiar with that?
MS. TAYLOR: Objection.
A: I know that there is messaging on the website

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that describes safety as a priority.
Q: You're not familiar with the fact that it says it's number one priority?
A: I would need -- again, I'm not familiar with -- you know, I haven't memorized everything that's published on the platform, but I'm happy to take a look at any specific document.
Q: So, just answer yes or no. Are you familiar with the fact that AIRBNB represents that safety is its number one priority?
MS. TAYLOR: Objection.
A: Again, I don't have all the language on the website memorized, but safety is certainly a top priority for AIRBNB.
Q: Is it number one?
MS. TAYLOR: Objection.
A: I -- again, I don't have all the language on the website memorized. I've been ---
Q: Well, I'm not asking you about the website. I'm just asking you is safety the number one priority of AIRBNB?
MS. TAYLOR: Objection.
A: Safety is a top priority. I think that AIRBNB understands that there's a balance of priorities that have to be considered and

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accounted for. Safety is certainly a high level priority among those -- among those considerations.
Q: Well, if it's a high level priority, why isn't that your slogan? Why is your slogan, safety is our number one priority?
MS. TAYLOR: Objection.
A: I -- I don't believe that is a slogan. It sounds like that is maybe part of a statement or language on the website, but I don't think that's something I would describe as a slogan.
Q: Okay. Let's look at Topic number 7, all facts and information upon which AIRBNB's background check practices cause a host to be rejected from utilizing AIRBNB's online booking program or guest reservation canceling due to background check findings. So, let me ask you this first. Does AIRBNB reject or cancel reservations based on the background checks of hosts?
A: If a user's background check information returns details that indicate they're not eligible to use the platform, regardless of whether they're a host or a guest, the -- if they have a reservation, that reservation is

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typically cancelled and the user is informed that they are not eligible to use the platform.
Q: Okay. And you say it's typically cancelled. Does that -- I mean, is always cancelled or sometimes?
MS. TAYLOR: Objection.
A: If a user's background check information determines they're not eligible to use the platform, their reservations -- reservation or reservations will be canceled.
Q: Does that happen all the time?
A: I believe so, yes.
Q: Okay. How many times has AIRBNB rejected a potential host or cancelled a reservation based on background checks?
MS. TAYLOR: Objection.
A: I am not familiar with the specific number of times a user has been -- has had a reservation cancel that's a result of a background check.
Q: Well, does AIRBNB keep statistics on that information?
MS. TAYLOR: Objection.
A: I don't -- I don't know if that information is -- is categorized in a way that is specific to reservations being canceled because of certain

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enforcement actions. I know it -- there are business records that show, you know, if a reservation is canceled or not, but I don't know if that would indicate that it was canceled because of a specific enforcement.
Q: Where are the business records maintained that would indicate that a reservation was cancelled based on the findings of a background check?
MS. TAYLOR: Objection.
A: Again, I don't know if cancel -- reservation cancellations would necessarily reflect that they were cancelled because of any one enforcement action. There are -- the business records are kept electronically and it certainly reflects the status of a reservation, but I don't now if it's possible to determine without reviewing an individual reservation whether or not it was canceled for one reason or another.
Q: So, there's no reason put in the cancellation as to why it's been canceled?
MS. TAYLOR: Objection; scope.
A: When a reservation is canceled, it will update the reservation status. Additional communication may be given to a user, but it

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isn't necessarily -- just cancelling a reservation alone isn't necessarily an indication of a user having enforcement created on their account.
Q: What are the different levels of review of a background check?
A: Can you clarify your question?
Q: Yeah, if a background check comes back with a finding of an arrest, a conviction, something, how many different people review that background check at AIRBNB?
MS. TAYLOR: Objection.
A: If the third-party vendor returns information on a user's background check that might be enforceable under AIRBNB's policy, then that will be reviewed by -- that will trigger a review by an individual, who will review the information from the background check to determine what enforcement, if any, applies. If the individual is unsure about the information from the vendor, like if it's not clear, they may request another person on their team also look at it, but that would be situation specific.
Q: And what team reviews those?

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A: Those are reviewed by the Trust Team.
Q: And who's in charge of the Trust Team?
A: As I explained, the individual who -- who oversaw that team recently transitioned out of the company. I'm not sure who has assumed that position since ---
Q: Who was it that left?
A: I believe their name was Donald Hicks.
Q: Does AIRBNB check for pending criminal cases when people create user accounts?
MS. TAYLOR: Objection.
A: Again, creating a user account isn't necessarily going to trigger a background check. If a background check is triggered by a user's -- user account activity, that is returning information on criminal convictions.
Q: Does AIRBNB -- after someone becomes a host, does AIRBNB do any additional searches or background checks after they've become a host to determine whether or not they have subsequently been convicted of a crime?
A: So, for either a guest or a host, any user on the platform, different activity can prompt a background check to be conducted and that can take place, again, depending on their activity,

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at any time. It might be after they have had a reservation it might be after they've created a listing. The point in time will be dependent on the user's activity.
Q: Okay. Is there any policy that requires subsequent background checks after someone becomes a host on AIRBNB?
MS. TAYLOR: Objection.
A: Again, it's dependent on user behavior, so if a user creates a listing and then, for example, creates a new payout method, that may be -- that's something that would trigger a background check to be performed.
Q: What about if I create an account and I become a host and I rent my property through AIRBNB for a year and then a few months later I'm convicted of rape. Is there any policy that AIRBNB has to subsequently check peoples' backgrounds?
MS. TAYLOR: Objection.
A: So, again, that'll be dependent on the user's behavior.
Q: Well, are they monitoring everybody's behavior?
MS. TAYLOR: Objection and the witness needs to be allowed to answer the question.

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A: So, to clarify, this is a u- -- when I say user behavior, I mean actions that a user's performing on their account. So, they may at any time perform an action that will trigger a background check, even if they've had a background check in the past. Also, if AIRBNB becomes aware, for example, if a user reports that another user has, for example, committed a crime that may be enforceable under our policy, if AIRBNB becomes aware of that information, that's certainly something AIRBNB can review to determine whether or not enforcement is -- is applicable, and that can happen at any point in time.
Q: What is AIRBNB doing to -- to make themselves aware?
MS. TAYLOR: Objection.
A: Again, if as a user conducts activity on their account, that can trigger a background check. It isn't just a one-time situation. So, as they operate their account, different activity can trigger background checks to be completed. AIRBNB will also respond to any contact it receives from users or non-users, third parties, like law enforcement agencies, and

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carry out enforcement appropriately based on the information that it learns.
Q: So, what if there is no activity that triggers a subsequent background check, does AIRBNB do anything to subsequently verify somebody's, a host's, criminal background?
MS. TAYLOR: Objection.
A: AIRBNB's processes for determining whether or not a user has their -- has enforcement on their account and under the background check policies dependent on information received from AIRBNB's background check vendors, those processes are -- again, those are triggered by account behavior, but if AIRBNB learns about anything from, again, a source outside of that, maybe a user or a non-user or -- or law enforcement agency, then AIRBNB will carry out enforcement as -- as is appropriate once they learn that information.
Q: What if they don't learn that information?
MS. TAYLOR: Objection.
Q: Is there any policy to continually review peoples' backgrounds?
MS. TAYLOR: Objection.
A: AIRBNB isn't just running background checks on

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every single user every single day. These are carried out based on account -- different account activity.
Q: Are you aware of any instances where someone who is supposedly prohibited by AIRBNB's criminal conviction policy has been allowed to be an AIRBNB host?
MS. TAYLOR: Objection.
A: I think -- I'm not sure I understand the question. Are you asking if there's a situation in which AIRBNB did not carry out enforcement of the policy?
Q: Yeah. Are you aware of any situations like that?
A: If AIRBNB is -- becomes aware of -- of information that indicate a user's not eligible to use the platform, either through the background check process or from -- from another party like a user or non-user, enforcement will be carried out in accordance with the policy.
Q: Are you aware of a situation in San Francisco where a man who had served ten years in prison for kidnapping and beating a child was an AIRBNB host?

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MS. TAYLOR: Objection.
A: I am not aware of that specific instance.
Q: The man's name was Zameer Azam, are you familiar with that?
A: No, I'm not familiar with Zameer Azam.
Q: Okay. Are you aware that the CBS news did a investigation into that and they found that he was a convicted felon and had just recently been released from prison and was an AIRBNB host?
MS. TAYLOR: Objection.
Q: Are you familiar with that?
MS. TAYLOR: Objection.
A: No, I'm not familiar with a -- you said a CBS investigation or any activity that this individual had on the platform.
Q: Do you -- do you recall Mr. Nick Shapiro being asked about it and indicating that it must've been a very old conviction? Do you recall that?
MS. TAYLOR: Objection.
A: No.
Q: Okay. And do you recall the news organization who did the investigation indicating that it actually wasn't; that he had just been -- he

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had been released three years earlier and they asked Mr. Shapiro about that and he said that AIRBNB was investigating how that person got through?
A: No, I'm not familiar with that.
Q: Okay. So, would that be an example of somebody who was allowed to be an AIRBNB host without being in compliance with AIRBNB's policy on criminal convictions?
MS. TAYLOR: Objection.
A: I'm not -- again, I'm not familiar with that situation, but if a user -- if an individual is not eligible to use the platform and AIRBNB is aware that that individual is using or attempting to use the platform, AIRBNB will conduct enforcement accordingly. Again, I -- I don't know -- I'm not familiar with this situation, so I don't know what information was given to AIRBNB or associated with any user accounts.
Q: Okay. Let's look at Topic 8, all facts and information upon which AIRBNB agrees to filters for background checks with approved providers, i.e., canvassing public records whereby an arrest took place in addition to any

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convictions that follow. So, my first question on this topic is who decides what filters will be used for background checks?
A: Background checks are performed by AIRBNB's third-party vendors and they use -- they do and must use Fair Credit Reporting Act compliance sources.
Q: Okay. What filters does AIRBNB agree to?
A: Again, AIRBNB must and does use sources that are compliant with the Fair Credit Reporting Act.
Q: Okay. Well, that's not my question. I'm not asking you whether you're in compliance with the Fair Credit Reporting Act. I'm asking who talks to the vendor that does your background checks about what filters to use.
MS. TAYLOR: Objection.
A: I -- maybe I'm not understanding what you're -- what you mean when you say filters, but in terms of what information is given to AIRBNB, that would be information from sources that are compliant with Fair Credit Reporting Act that would set the scope for the sources.
Q: Okay. Let's make sure we're talking about the same third-party vendor. Which third-party

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vendor is doing AIRBNB's background checks?
MS. TAYLOR: Objection.
A: The name of the vendor is Inflection.
Q: And how long has Inflection being doing the background checks?
A: My understanding is that Inflection was brought on as the background check vendor in 2016.
Q: And who owns Inflection, do you know?
(Mr. Chen entered the room.)
MS. TAYLOR: Objection.
A: I don't know if I -- I'm not familiar with who owns Inflection.
Q: Okay. Who at AIRBNB is the point person to deal with Inflections?
MS. TAYLOR: Objection.
A: I'm not sure who -- who, if anyone, is having sort of day-to-day conversations with Inflection.
Q: Who negotiates the terms of the background checks?
MS. TAYLOR: Objection.
A: I don't know if that's something that is happening on a regular basis. If that -- if that's been something that's been altered since 2016 when they were brought on.

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Q: Okay. Well, who do you know, what individual, this is under the Topic number 1, under the organizational chart, who at AIRBNB has communications with Inflections about the type and scope of background checks that you want?
MS. TAYLOR: Objection; scope. That is not within Topic 1, but the witness can answer if she knows.
A: I believe that an individual who's, again, no longer with the company named Brian Truebe was involved in communication with Inflection, but I don't know if -- if and what the scope of his communication was with them.
Q: What was Brian Truebe's title?
A: I know that he was within the Trust Team. I don't recall the name of his position.
Q: He's within the Trust Team?
A: He was when he was employed with AIRBNB.
Q: Why did he leave?
MS. TAYLOR: Objection; scope.
A: I -- I don't know why he chose to leave.
Q: Okay. So, back to Topic 8, who determines which specific state offenses will be filtered?
MS. TAYLOR: Objection.
A: Again, I think that the information from

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Inflection is delivered to AIRBNB based on what they get from their sources. After that, it would be reviewed to determine whether it was actual under the policies.
Q: How does Inflections know what information to provide AIRBNB?
MS. TAYLOR: Objection.
A: My understanding is that Inflection will return information on criminal convictions.
Q: And is there any limitation placed on that?
MS. TAYLOR: Objection.
A: I think that primarily the limitations would be based on the limits and restrictions from any sources. I know that sources in any one location may catalog or -- or retain their information differently, so that would be dependent on what source and what area.
Q: Does AIRBNB request information on peoples' arrests?
A: The background check policy is specific to criminal convictions.
Q: That's a yes or no question. Does AIRBNB request information from Inflections on arrests?
MS. TAYLOR: Objection; and the witness does not

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just have to answer yes or no. She can be allowed to answer the question as -- as appropriate.
MS. BARBIER: She has to be responsive and your objections are limited to the form.
Q: So, Ms. Chauvet, does AIRBNB request information from Inflections on arrests?
A: I don't believe that arrests are part of the normal business process of the automated background check.
Q: Does AIRBNB request information about sexual offender registry?
A: National and state sex offender registries are sources that are used by the third-party vendor in performing background checks.
Q: Okay. So, is that inclusive of every locality in the state?
A: My understanding is that Inflection uses -- utilizes a national sex offender registry and any available statewide sex offender registries.
Q: And how do you know what is available?
A: That -- that's something that's performed by Inflection. I believe they're -- they understand what registries exist and can be

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searched.
Q: And does AIRBNB request information from Inflections on current pending criminal cases or criminal charges?
A: My understanding is that the information provided by Inflection as part of the background check process is specific to criminal convictions.
Q: So, do they -- does AIRBNB request information on pending criminal charges?
MS. TAYLOR: Objection.
A: Again, my understanding is that the information that is returned by Inflection for AIRBNB's background check process is associated with a criminal conviction record.
Q: So, a criminal conviction record may not include a pending criminal charge, correct?
MS. TAYLOR: Objection.
A: It -- I think it kind of depends on the situation. It may not include a charge, but it also, again, may be limited to how certain locations store and make accessible their records.
Q: What, if anything, does AIRBNB do to check for pending criminal charges of people who create

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accounts?
A: Criminal -- criminal conviction history is something that is reviewed as part of the background check process. However, if AIRBNB becomes aware of criminal charges or other behavior that may be enforceable under its policies, for example, if something is reported by a -- by a -- by a user or non-user, that's something that would also be reviewed for enforcement under AIRBNB's policies.
Q: Okay. What is the risk assessment that AIRBNB does on every AIRBNB reservation?
MS. TAYLOR: Objection.
Q: And who does it?
MS. TAYLOR: Same objection.
A: So, as explained earlier, there are signals that are reviewed to determine whether a reservation or user account associated with a reservation may be involved in fraudulent financial activity, so if the -- as an example, if they might be using a payment instrument fraudulently.
Q: So, is it fair to say that the risk assessment is done based solely on someone's -- whether someone's committing financial fraud?

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MS. TAYLOR: Objection.
A: It will review a variety of signals and, again, this is something that's done sort of as an automated process to determine if there is possible fraudulent behavior associated with a reservation.
Q: And what are the hundreds of signals that AIRBNB uses?
MS. TAYLOR: Objection.
Q: So, again, these are something that would be specific to an individual reservation, but they could include things like the IP address of a user versus the location where they're booking. It might include the time between when a reservation was booked and when it's scheduled to check-in. It might include number of payment instruments on a user account. There's a -- you know, a number of different factors that would be considered that are sort of unique to each reservation based on the attributes of that reservation.
Q: Well, how does the -- if someone's IP address does not match the property location that they're renting, what does that signal?
MS. TAYLOR: Objection; scope.

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A: It may signal nothing. It might not always be a factor that's considered. Again, each -- each of these sort of automated reviews that are performed are done so based on the unique attributes of that reservation and the user accounts involved.
Q: What personality traits is AIRBNB searching for?
MS. TAYLOR: Objection.
A: I'm not aware of any personality traits that AIRBNB would search for in a way to perform that -- a search of that kind accurately.
Q: You've never heard of AIRBNB saying they search for personality traits?
MS. TAYLOR: Objection.
A: I'm not familiar with any language about searching for personality traits.
Q: Okay. Who performs these risk assessments?
A: So, the signals that are previewed for individual reservations are an automated process.
Q: So, what department's in charge of that?
A: Again, it kind of depends on the signals that are being reviewed. Many of these are within the scope of -- if enforcement's going to be

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carried out, that would be carried out by trust. But as an automated process, this is something that would be developed by engineers.
Q: So, are the engineers that perform the automated process performing the risk assessment?
A: So, the engineers don't perform an automated process. They design a product that, you know, essentially just runs on its own and it will -- it'll run for individual reservations. If the automated process identifies signals indicative of something like fraudulent financial activity, enforcement may be carried out by a member of the Trust Team.
Q: How does AIRBNB make it accessible for guests to find out who a host is?
MS. TAYLOR: Objection.
A: So, before a user books or really at any time before or after booking, a user can contact a host through AIRBNB's messaging system and ask them additional information about who they are as a host or if they work with any -- you know, an additional host, if there's an additional host listed for a property, or any other questions that they have.

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Q: I'm nor asking you what a guest can do to find out more about a host. I'm asking you what information AIRBNB gives a guest about the host. Do you -- for instance, do you give them the host's first and last name?
MS. TAYLOR: Objection.
A: Prior to getting an accepted reservation, all user accounts, hosts and guests, are displayed as a first name with a first initial. A first letter ---
Q: Why don't you give the last name?
MS. TAYLOR: Let the witness answer the question. Go ahead, Ms. Chauvet.
A: Apology. I was just clarifying. The first name and first letter of last name, not first initial.
Q: Okay. Why don't -- why doesn't AIRBNB give the person's last name?
A: It is just a policy, part of the privacy policy regarding personally identifiable information before an accepted reservation.
Q: Why is that the policy?
A: I don't -- I don't know why that decision is part of the policy, but it is part of the terms that are agreed to when creating a user

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account.
Q: Why -- does AIRBNB give the guest the address of the property before a reservation is finalized?
A: No, reservation addresses are provided after a booking is accepted. However, again, a guest doesn't have to have an accepted booking to contact any host and ask them additional information.
Q: Does AIRBNB give the guest the phone number of the host?
MS. TAYLOR: Objection.
A: User phone numbers can be exchanged between a host and a guest once a reservation has been accepted.
Q: No, my question is does AIRBNB give the guest the phone number of the host.
MS. TAYLOR: Objection.
A: I don't believe that a user's contact details or all of a user's contact details are -- are given to another user. However, users can exchange contact information once a reservation has been accepted.
Q: Does AIRBNB give the guest the host's e-mail address?

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MS. TAYLOR: Objection.
A: Again, I -- I -- I don't believe that all, you know, a user's personal contact information is -- is disclosed to another user. When a reservation has been accepted, there is an automized e-mail address where a user can reach a host directly, but they can also just reach them directly through the message -- the messaging system.
Q: Why does AIRBNB require the guest and the host to communicate through the messaging system on AIRBNB's website?
MS. TAYLOR: Objection.
A: Users aren't required to use it. It's -- it's a tool and option that's made available to users. Once a reservation is accepted, if users feel more comfortable communicating in another way, that's their -- that's certainly a choice that they can make.
Q: Why does AIRBNB not make that -- facilitate that and make it easier?
MS. TAYLOR: Objection.
A: I think AIRBNB's provided a pretty easy and readily accessible way for users to communicate via the messaging system. But, again, that's

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a decision for, you know, a user to choose the way that they prefer to communicate.
Q: Well, would you agree with me that it would be easier to communicate with somebody if you knew their last name?
MS. TAYLOR: Objection.
A: I don't know that knowing somebody's last name is necessary. I think it's possible to communicate effectively with somebody as long as you have a channel to reach them.
Q: Would you agree that you would be able to find more information about somebody if you knew their last name?
A: I suppose you could search for information using a last name if you're looking for information on somebody.
Q: That would be helpful, wouldn't it?
MS. TAYLOR: Objection.
A: I don't -- without understanding sort of the context that you're looking for, I mean, certainly you can use somebody's first and/or last name to look for information about them.
Q: Topic number 9, all facts, information and opinions upon which AIRBNB executes removal, reinstatement, criteria for eligibility and

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appeals associated with implications to AIRBNB's background check policies have for hosting guests. Is the -- is the host provided with a summary of their background check?
A: User ---
Q: If one is done.
A: If users are -- have enforcement carried out on their account, and they are going to be removed as a result of a background check, they'll be notified for the reason for the removal and then given the contact details for the third-party vendor that performs the background check. They can request additional details from the vendor.
Q: Prior to 2016 when you say Inflections began doing your background checks, were background checks performed by AIRBNB?
A: I believe so, yes.
Q: Who performed them? What company or did AIRBNB do it?
A: My understanding was a third-party vendor called First Advantage was used.
Q: And why did they stop using First Advantage?
A: I don't -- I don't know.
Q: Has the criminal background check policy

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changed from 2009 to -- or 2008 to the present?
MS. TAYLOR: Objection; scope.
A: I believe that the document that serves as a reference for individuals that carry out enforcement of the policy has been updated.
Q: Made it more inclusive for people with convictions to be AIRBNB hosts?
MS. TAYLOR: Objection.
A: I -- I don't know that I would characterize it as being more inclusive to people with criminal convictions. I think that the updates are mainly to help interpret various types, like descriptors of criminal convictions that may be included in the information returned from a background check.
Q: Well, has AIRBNB made their policy more liberal with respect to allowing people with criminal convictions to be AIRBNB hosts?
MS. TAYLOR: Objection.
A: I don't -- I don't know that the policy has been made more liberal with respect to people with criminal convictions and using the platform.
Q: Well, did it -- was previous- -- were there

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previous policies that precluded people with certain convictions from being hosts?
MS. TAYLOR: Objection to form and scope.
A: I -- I think there are previous version -- like, there's a previous version of the policy document that, again, I think just includes language that might not be as granular as it needs to be to understand the information being returned from the background check vendor, but I believe that the overall considerations that are made with respect to criminal convictions are fairly consistent over time.
Q: Okay. I'm going to ask you about Topic 10, all facts and information related to audiences to whom air cover protection is offered including the circumstances under which hosts can opt out of air cover protection. Tell me what air cover is.
A: Air cover is the name of products offered by AIRBNB to users. They can include things like the host damage protection, which is assistance provided if the host's property is damaged during reservation. It also includes the host liability insurance program that provides liability coverage for third-party claims of

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bodily injury or property damage. It also describes support options available to guests in the event of a travel issue during their reservation.
Q: When did AIRBNB first begin offering this?
MS. TAYLOR: Objection.
A: The -- to be clear, the -- many of the support options available under air cover have been provided by AIRBNB for quite some time. I think that the name air cover -- I'd have to double- -- I'd have to verify when that was launched, but I believe that was launched around 2021, but I would want to double check that date.
Q: And who was air cover designed to protect?
(Mr. Ashmore entered the deposition.)
MS. TAYLOR: Objection. These specific questions were asked and answered last time. You know, it's your time, but I just wanted to make -- make sure that it's being used wisely and that you know that.
MS. BARBIER: I'll be able to use my time wisely. Thanks.
Q: Go ahead, Ms. Chauvet.
A: So, again, air cover describes a variety of

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support options that can be utilized by either a host or a guest.
Q: How many claims have been made under air cover for surveillance issues, as you've called them?
MS. TAYLOR: Objection.
A: So, I think that -- I just want to make sure I understand the situation because the surveillance device -- the surveillance camera recording device policy is not something that would be addressed under the air cover program with respect to like a guest having an issue. The air cover program as it pertains to guests is more of an issue regarding, like, amenities or other things that might impact a stay. For example, like, if there's no WiFi at a listing or the power goes out. If a user is concerned about the presence of -- of a device in a listing, that is something that would be addressed under the surveillance camera recording device policy and those issues are handled by the safety team.
Q: So, if a guest is secretly recorded in a property that they rented through AIRBNB, there is no protection under -- there's no claim that can be made under air cover, is that right?

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MS. TAYLOR: Same objection.
A: I just want to clarify. Air cover is not like an insurance program for guests. It offers different support options, but if there is an issue involving a device at a listing, there's certainly support available for guests. It just -- it isn't something that is -- falls within the scope of what air cover is supposed to provide.
Q: How many specialty trained safety agents -- or, I'm sorry, what do you call them, specially trained safety agents, how many does AIRBNB employ?
MS. TAYLOR: Objection.
A: That would vary by -- by region and kind of at any point in time.
Q: How many does AIRBNB employ in South Carolina?
MS. TAYLOR: Objection.
A: I -- I'm not familiar with any employees specifically employed in South Carolina. As I said before, you know, AIRBNB has a policy of employees being able to work where they live, but there is no South Carolina specific team.
Q: Topic 11, all facts and information related to AIRBNB's governance of their privacy policies

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as they related -- relate to disclosed or concealed monitoring devices, including data supporting removal, reinstatement, and appeals of hosts who violate a policy. How many times has AIRBNB suspended a host for violating AIRBNB's privacy policies due to undisclosed or concealed cameras?
MS. TAYLOR: Objection.
A: I'm not familiar with all of the times in which a host has been suspended. I know that if a -- if a device is reported that is in violation of the policy regardless of whether a user is a host or a guest, enforcement's possible, but I'm not all sure all of the instances in which a device has been reported and that -- that has resulted in some sort of a suspension on user account.
Q: Okay. Well, would it be millions of times? Have hosts been suspended millions of times for violating AIRBNB's privacy policies?
A: I don't believe it would be millions of times. I think that number would be too high.
Q: Would it be hundreds of thousands of times?
MS. TAYLOR: We've been going two hours now. I'd like a restroom break. I think it makes sense

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to take a quick break. You're onto a new topic.
MS. BARBIER: Okay. Well, I'm going to finish my question first and then I'll be glad to give the witness a break. Okay.
Q: So, Ms. Chauvet, how many times approximately has AIRBNB suspended a host for violating AIRBNB's privacy policies?
A: Again, I don't know the specific times in which a report of -- of an issue and a listing or potential violation or something that may be actionable under that policy has resulted in removal of a user account, but as I -- as I was saying, I think that I don't believe that it would be so high as to be in the millions.
Q: What did you do to review information on that topic and prepare?
MS. TAYLOR: Objection.
A: I met with a member of the Data Science Team to discuss how the -- the way in which customer support is notified about issues. It's -- the contact, I just call it a ticket, how those tickets are characterized and the ways in which it's possible to identify those -- those tickets.

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Q: Okay. Let's take a bathroom break. We can take a five-minute break and then we'll come back.
A: Fine with me.
Q: All right.
(A break was taken from 1:00 p.m. until 1:10 p.m.)
Q: So, before we broke, Ms. Chauvet, I asked you whether or not you could tell me how many times approximately an AIRBNB host was suspended for violating AIRBNB's policies on undisclosed or concealed cameras and you indicated you couldn't give me an approximate number, is that correct?
MS. TAYLOR: Objection. And I just want to note for the record, this topic is about the governance of privacy policies and so this is beyond the scope of Topic 11.
MS. BARBIER: Okay. Well, you're free to object to the form and then to anything else later. And we don't have speaking objections in South Carolina, so I would be very careful about that.
Q: Ms. Chauvet, can you tell me approximately how many times a host has been suspended for violating the undisclosed camera policy?

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MS. TAYLOR: Same objection.
A: Well, I don't -- I don't know the number of times that enforcement has resulted in a suspension.
Q: Okay. Can you tell me approximately how many times a minor has been involved where a host has violated AIRBNB's privacy policies relating to undisclosed or concealed cameras?
MS. TAYLOR: Same objection. This is beyond the scope and I would read the topic again. It's beyond the scope of that topic. And I can read the rule, Ms. Barbier.
A: I don't -- I don't know how many times a minor has been involved in an instance in which enforcement was carried out.
Q: Does AIRBNB keep records of when they discover a minor was involved in a matter involving an undisclosed or concealed camera?
Q: When a user contacts AIRBNB about a possible -- an issue that might possibly be enforceable under the security camera recording device policy, the -- that contact record is contained as part of a ticket. But whether or not a minor is involved isn't necessarily something that is always -- can always be known to AIRBNB

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or that would be necessarily reported.
Q: What if AIRBNB does find out that a minor was involved, what do they do?
MS. TAYLOR: Objection.
A: In any situation which a user is found to be in violation of the security camera and recording device policy, enforcement will be carried out under that policy based on the type of violation.
Q: Does AIRBNB contact law enforcement to report a host who has violated the concealed or the undisclosed camera policy?
A: I don't believe that's part of the normal process for handling cases under that policy.
Q: And does AIRBNB contact law enforcement when a minor's been involved and potentially recorded undressing by a host?
MS. TAYLOR: Objection.
A: Again, I don't believe that contacting law enforcement is a normal part of the surveillance camera and recording device policy. There are different -- depending on the situation, if a minor is believed to be in danger, then there are instances in which AIRBNB might contact law enforcement, but that

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isn't specific to the surveillance camera and recording device policy.
Q: Are you aware of any instances where AIRBNB has contacted law enforcement because they felt a minor might be in danger?
MS. TAYLOR: Objection.
A: I'm not aware of a specific instance in which AIRBNB has contacted law enforcement relating to danger and potentially involving a minor.
Q: Okay. So, you can't tell me approximately how many times that's happened that AIRBNB has contacted law enforcement because they had a concern about a minor?
MS. TAYLOR: Objection; scope.
A: I -- that -- I don't know how many times that might have happened. I'm not aware of a specific occasion.
Q: Has AIRBNB ever reinstated a host who has violated the privacy policies regarding undisclosed or concealed cameras?
MS. TAYLOR: Objection.
Q: If a user appeals a suspension under the security camera and recording device policy, that appeal will be considered based on the information that was reported and the violation

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category and any additional information that AIRBNB has learned or that that user is able to provide.
Q: Okay. Well, my question was has AIRBNB ever reinstated a host who was suspended or removed for violating their privacy policy relating to undisclosed cameras?
MS. TAYLOR: Objection.
A: I -- again -- I'm -- I'm sure there's an instance when a user was determine -- was able to provide information or documentation to support that they had not violated the policy in a way that would result in removal, but for an appeal to be successful, that -- that user would have to demonstrate that, in fact, they had not violated the policy in such a way so as to warrant their removal from the platform.
Q: If someone's removed from the platform, what is to prevent them from creating another user account under the name of someone else?
MS. TAYLOR: Objection.
A: I mean, AIRBNB can't control a user's -- a user -- an individual, rather, an individual's behavior. If an individual is -- is determined to create another account using infor- -- you

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know, using another person's information or some other -- some other way to circumvent their removal, I think that, you know, just conducting the initial removal isn't going to change their motivations.
Q: What if AIRBNB required a picture ID, would that prevent someone who was removed from the -- as a host from being able to host again?
MS. TAYLOR: Objection.
A: I mean, there are instances in which a user is prompted t upload a government issued ID, but, as I said before, if somebody is determined to circumvent removal of their account, you know, they may choose to upload a different person's ID. Again, AIRBNB can't control a person's behavior. They can only carry out enforcement on the platform based on the information that AIRBNB knows.
Q: But AIRBNB doesn't require everybody to submit a government picture ID to become -- to create an account, do they?
A: A government issued ID is not required to create an account. It may be a verification step that a user is prompted to complete in order to conduct certain activities on the

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platform.
Q: Does every person who creates an account have to submit a government picture ID?
MS. TAYLOR: Objection.
A: No, I don't believe so. It's -- it's not part of the account creation process, but it is possible, you know, depending on a user's behavior for any user to be prompted to -- to upload an ID in order to continue using the platform.
Q: So, it's possible, but it's not required, correct?
MS. TAYLOR: Objection.
A: If a user is prompted to complete an identity verification process by uploading an ID, in order to keep using the platform, they must complete that process, but it's their decision about whether or not they -- they choose to fulfill the required step of uploading their ID.
Q: But AIRBNB does not require that of everybody who creates an account, do they?
MS. TAYLOR: Objection.
A: Well, as I explained before, simply creating an account does not necessarily require you to

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upload an ID and uploading an ID is not part of the account creation process.
Q: Okay. Thank you. Topic 16, all protocols, manuals, memoranda, or other written standards of care or instructions that reference or concern the inspection of host properties by AIRBNB during the time period of December 1, 2013, to the present. So, in December of 2013, did AIRBNB have any written policy regarding the inspection of host properties?
A: You said in 2013?
Q: In December of 2013, did AIRBNB have any written policy regarding the inspection of host properties?
MS. TAYLOR: Objection.
A: I'm -- I'm not aware of any policy -- or any policy describing inspection of a host's property.
Q: Do they currently have any policy that property must be inspected before it can be rented through AIRBNB?
MS. TAYLOR: Objection.
A: It is not a requirement for a host's property -- property to be conduc- -- to conduct an inspection of a host's property before listing

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just a regular property on the platform.
Q: Are you familiar with the badges or the labels, super host?
A: Yes, I am familiar with the -- the super host designation.
Q: Okay. What about Plus designation?
A: Yes, I'm familiar with that. That applies ---
Q: And how about Luxe?
A: I'm sorry; go ahead.
Q: Are you familiar with Luxe?
MS. TAYLOR: Let the witness answer the question. Go ahead.
A: I'm familiar with Luxe properties.
Q: Okay. And how about the designation identity verified?
A: I'm familiar with that -- that indicator badge on the user profile, yes.
Q: Okay. So, first, tell me what is a super host.
A: So, the -- the super host designation is based on a us- -- actually is associated with hosting so those would be a host's response rate, you know, how quickly and how often they respond to user messages or booking requests, the number of nights booked in a quarterly period. The number of occasions when a host has cancelled

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a reservation, and the overall star rating of the reviews within a quarterly period. And those -- those four factors are at a quarterly interval evaluated automatically to determine whether or not, you know, essentially the cancellation rate was not high, the overall reviews were positive, that a host is timely in responding to user inquiries or messages, and that that is representative of a large enough sample of reservations.
Q: What does an identity verified badge signify?
A: The identity verification -- or identity verified badge describes whether a user has provided a government issued ID.
Q: And when did that -- when did that badge come about?
MS. TAYLOR: Objection; scope and form.
A: I don't recall when that badge -- when that badge was applied to user accounts.
Q: Was it recent?
MS. TAYLOR: Objection.
A: I don't believe it was recent. I believe it's been several, several years at least.
Q: And what does Plus or Luxe badge, what does that mean?

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A: So, Plus or Luxe are different types of listings, different listing brands, that indicate elevated level of comfort, amenities, style, and sometimes, you know, options available to -- to guests who are booking. Luxe also typically are properties that are more expensive to book. And these would be ---
Q: But the Luxe -- I'm sorry; go ahead.
A: And these are considered separate and distinct from the regular marketplace listings.
Q: Does the Luxe badge or the Plus badge indicate that there's been any verification of who owns the property?
A: I don't believe so.
Q: Does it indicate that there's been any verification of how many people have access to the property?
A: No, I don't believe so.
Q: Does it indicate that it's safer than another property?
MS. TAYLOR: Objection.
A: Neither the Luxe or Plus brands are indicative of listing a property that is being identified or is safer than another property. They're mainly to indicate different types of amenities

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and style attributes that a user could expect to find in those properties.
Q: Do you -- are you familiar with video inspections?
MS. TAYLOR: Objection.
A: Video -- I -- I'm not sure I understand video inspections for ---
Q: Does AIRBNB have video inspections of properties?
MS. TAYLOR: Objection.
A: I don't know if -- I mean, I'm not familiar with video inspections. That's not something I'm familiar with.
Q: And you're not familiar with the fact that AIRBNB advertises those as existing with -- with its hosts?
MS. TAYLOR: Objection.
A: I'm not familiar with any sort of -- with that -- with that particular -- what you're describing as an advertisement.
Q: All right. I want to move to Topic 17, which is all protocols, manuals, memoranda or other written standards of care and instructions that reference or concern the user of video cameras by AIRBNB hosts during the time period of

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December 1, 2013, through the present. In December of 2013, what was AIRBNB's written policy regarding the use of cameras by its hosts?
A: I'm not familiar with -- I couldn't, like, recall off the top of my head if, you know, what the exact written language was, but I think that there's been consistency in that there's an expectation that hosts are disclosing what cameras are present and that there are areas where there is no tolerance for a -- any sort of recording device within a listing.
Q: So, are you allowed to have a recording device in a common area?
A: A recording device in a common area is something that may -- may be -- like may be within the scope of the policy. Again, every situation, you know, is different, but as long as a camera is not within an area with an expectation of privacy and is disclosed, that's something that may be permissible.
Q: Okay. What does AIRBNB do to enforce the policy?
MS. TAYLOR: Objection.

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A: So, if AIRBNB becomes aware of a potential violation of the security camera and recording devices policy, AIRBNB will review the information from the individual reporting the potential violation and any additional information from the individual who may be in violation of the policy, and then identify what enforcement, if any, is appropriate and carry out that enforcement.
Q: Who does the review of the complaint?
MS. TAYLOR: Objection.
A: If a potential violation of the policy has been reported, the review and -- would be conducted by the Safety Team.
Q: And is a host immediately suspended based on a complaint of an disclosed camera?
A: I think it definitely depends on the unique issue being reported. For example, within the security camera and recording devices policy, this includes a -- like a very broad scope of potential devices. Like, this could be, you know, a Ring doorbell, you know, on the outside of a listing or a -- a smart home device, like an Alexa or something, you know, along those lines. Or even a noise decibel monitor. So,

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it depends on what's been reported in terms of what -- what immediate actions would be taken when reviewing that report.
Q: Is there a written protocol that AIRBNB has as to how to handle these complaints?
A: AIRBNB has a security camera recording device policy that describes, you know, violation categories and what enforcement may be appropriate in a given situation.
Q: Is there a policy or a protocol that the Safety and Trust Team has to follow when they get one of these complaints?
MS. TAYLOR: Objection.
A: The Safety Team will utilize the security camera and recording device policy to determine what violation category, if any, the report describes and what enforcement may be appropriate in that situation.
Q: Well, what if someone complains that they found a camera in their bathroom aimed at the shower, how is the trust and safety associate supposed to handle or look into that complaint?
MS. TAYLOR: Objection.
A: So, the policy describes the different types of information or evidence that might be provided

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to the safety specialist and how to apply enforcement given the information that they've been told and any additional documents or statements that have been made in identifying appropriate enforcement.
Q: Is the person who's looking into this complaint told to go review the evidence or interview any witnesses?
MS. TAYLOR: Objection.
A: So, the way the -- these issues are reported to AIRBNB is by communication to AIRBNB's Customer Support Team in order to assess what enforcement, if any, would be applicable. The policy describes what info- -- you know, how to utilize information that's been given, so the Safety Team would communicate as part of their process with the user. That's how these things are communicated to AIRBNB and based on what -- what they've been told, they will apply the policy based on the information, any documentation and assess what enforcement they should carry out.
Q: Do they do anything beyond talk to the person who made the complaint?
MS. TAYLOR: Objection.

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A: Well, as it's described as the policy, there's all -- you know, the full scope of information both from the reporting individual and from the accused individual is taken into account in both identifying the cat- -- the violation category and any appropriate enforcement.
Q: How are these people trained to handle these complaints? What kind of -- what kind of training do they get?
MS. TAYLOR: Objection.
Q: When a user -- or when a user, excuse me -- when an individual is undergoing training and joining the Safety Team, there's -- my understanding is that there's a classroom component where they discuss the policy and then they may do some pra- -- I believe they do some practice of, you know, if somebody calls and describes a certain issue, you know, how would you categorize that under the policy and they may discuss, you know, different scenarios in which a user might report a different issue.
Q: Who trains them?
MS. TAYLOR: Objection.
A: There is a training team that covers different -- different scopes of handling within the user

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(technical break in audio) roles.
Q: And how long does this training last?
MS. TAYLOR: Objection.
Q: I'm not sure how long the training lasts.
Q: Well, I mean, is it a day or is it 12 weeks or is it a year, what is it?
MS. TAYLOR: Objection.
A: I -- I don't -- I don't know. You know, it's more than one day, but I -- I don't know how long it is.
Q: What is AIRBNB's Law Enforcement Operations Team?
A: The Law Enforcement Operations Team is a team that communicates directly with law enforcement. If AIRBNB is contacted by law enforcement in relationship to an issue that may have occurred during reservation.
Q: And how many employees are on this team?
A: I don't know the total number of employees on that team.
Q: Approximately?
A: I'm not sure. I think it differs by region. So, I'm not sure how many.
Q: Who's the leader of that team? I mean, who do the people on the Law Enforcement Operations

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Team report to?
MS. TAYLOR: Objection.
A: I'm not sure who they're reporting to. I know they -- I believe they fall under the scope of the -- the Trust Team, but I'm not sure who's overseeing the Law Enforcement Operations Team.
Q: Okay. I want to direct your attention to Topic 20, all settlements entered into by AIRBNB related to guests being secretly videotaped during the time period of December 1, 2013, through the present. How many lawsuits have been filed against AIRBNB based on guests being secretly videotaped during this time period?
MS. TAYLOR: Objection.
A: (Technical break in audio). I -- I believe there's been seven in addition to this matter.
Q: Okay. And are those cases, other than this matter, settled?
A: My understanding is that -- just double-checking my numbers here. Of the seven, my understanding is that there are -- sorry, there are several -- I was going to give you a number, but I realized that one of them, the plaintiffs filed twice, so then that would be one has been dropped; one is not settled; and

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then there are four that are settled, but that accounts for all five because one of them the plaintiffs filed my understanding is two different lawsuits, one that was dismissed.
Q: And the four cases that you say were settled, do you remember testifying previously that you could not provide me with the amounts of those settlements because you had to give notice to the other side because they were confidential? Do you recall that?
MS. TAYLOR: Objection.
A: I -- I believe I recall that. Yes, I could not give information about the -- the settlement details.
Q: Okay. Did you during this time period of October 26, 2022, and some time after that, did you -- did you contact them about providing that information in this deposition?
MS. TAYLOR: Objection.
A: I didn't -- I didn't do that because that's something that AIRBNB's attorneys would have done, but I'm not aware of any of those activities.
Q: Okay. Well, can you provide me with the amounts of those settlements of the cases that

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have settled? Give me the name of the case and the amount of the settlement, please.
MS. TAYLOR: Objection. Same objection.
A: I -- I don't -- I'm unable to give those amounts. I don't know those amounts.
Q: Okay. Well, you understand that this is Topic 20 and a judge ordered you to testify about this topic, about these settlements, and so are you refusing to answer that question?
MS. TAYLOR: Objection. I think I'm objecting to the scope. It's not within topic and also the witness did not -- just -- just testified that she doesn't know the amounts.
MS. BARBIER: Okay.
Q: Well, what did you do to prepare yourself on that topic, Ms. Chauvet?
A: I reviewed the previous lawsuits associated with reports of undisclosed devices in a listing and I reviewed the status of those matters in preparation for the deposition.
Q: Did you review the settlements agreements, because the topic is all settlements entered into by AIRBNB?
A: I'm aware of which of the lawsuits have been settled. I don't know the settlement amounts.

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Q: Did you review the settlement agreements in preparation for this deposition?
A: I have -- I have not reviewed the settlement agreements.
Q: Okay. What did you do to familiarize yourself with the settlements that AIRBNB has entered into during this time period related to guests being secretly videotaped?
A: As explained, I reviewed the previous -- the other instances in which a lawsuit involved a report of an undisclosed device in a listing or being recorded in a listing and determined which of those, based on the records, were settled and which ones were -- were not -- were not settled and the status of those situa- -- those cases.
Q: I understand you reviewed the lawsuits. Did you review the settlement agreements?
MS. TAYLOR: Objection.
A: No, I think I -- I said that before, I did not review the settlement agreements.
Q: Why not?
MS. TAYLOR: Objection.
A: I -- I -- I believe reviewing the lawsuits and the status of those adequately familiarized me

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with the -- the other cases.
Q: So, I'm going to read you the name of the topic again, okay. It's number 20, all settlements entered into by AIRBNB related to guests being secretly videotaped during the time period of December 1, 2013 through the present. Are you familiar with that topic?
A: Yes.
Q: Okay. And so I want you to tell me the amounts of the settlements, the date they were entered into, and the parties to the settlement.
MS. TAYLOR: Objection.
A: Again, I don't know that information, so I couldn't give you the amounts of the settlement.
Q: Why don't you know it?
MS. TAYLOR: Objection.
A: In order to prepare myself for this deposition, I reviewed the previous lawsuits and the -- the status of those lawsuits. I do not have the information about how much lawsuits that ended in a settlement were settled for.
Q: Do you have any information about the settlements?
MS. TAYLOR: Objection.

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A: As I explained, I can advise which of the previous cases had resulted in a settlement.
Q: Okay. Give me the name of the case and the date of the settlement .
MS. TAYLOR: Objection.
Q: And I also want to know the names of the parties that are parties to the settlement agreements.
MS. TAYLOR: Objection.
A: I can give you the names of the cases. As -- as I explained, I didn't review the settlement agreement, so I don't have all dates or party names, but I can give you the names of the cases and which of those -- I can give you the names of the cases for the cases that resulted in settlement.
Q: Okay. But I just want to make sure I'm clear on something, you were designated to testify on a topic related to all settlements entered into by AIRBNB on this topic and you have not reviewed the settlement agreements that exist, is that right?
MS. TAYLOR: Objection.
A: I have not reviewed the settlement agreements, but I am aware of which cases have a settlement

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associated with them.
Q: Okay. Go ahead and tell me the name of the case and the date of the settlement, please.
A: As I explained, I don't know if I -- if I'm going to be able to provide the date of the settlement because I don't have the settlement agreement, but I can give you -- I can certainly give you the dates -- or, excuse me, the name of the case. If I have -- if I have any date here, then I will definitely give it to you. So, the first case is Yvonne Edith Maria Schumacher v. AIRBNB, Inc., a foreign corporation, and Asria Hazim and Jamil Jeeva. And I have a notice of settlement date of March 22nd, 2017. Are you ready for the next one?
Q: Yeah. I'd like you to give them to me, please.
A: All right. So, Collin Marshall, an individual, Caroline Bentol (ph), an individual, Chris Chang, an individual, Ann White, an individual, and Winston Chang, an individual, on behalf of themselves and others similarly situated versus Christopher Kickery (ph) Rogers, an individual, Rogers Holdings II, LLC, a Nevada Limited Liability Company, Barbara L. Rogers, an individual and trustee beneficiary of the true

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-- or of the Rogers Family Trust, and Danny Earl Rogers, an individual and trustee beneficiary of the Rogers Family Trust, the Rogers Family Trust, an unknown entity, AIRBNB, Inc., a Delaware Corporation, and Does 1 through 50 (technical break in audio) and real companies 1 through 50 unknown business entities. And I don't have a settlement notice date for that, but I do have a dismissal date of March 27th, 2019. And then I -- the next one is John Doe and Jane Doe, Individually verse Wayne Gnat and AIRBNB, Inc., a foreign profit corporation. I don't see a date -- settlement date for that one. And then I have the next one is John doe and Jane Doe, individually v. AIRBNB, Inc. Corporation, and Does 1 through 50. And this is -- this one I don't ha- -- this is the one with the plaintiffs who had filed twice, so this one was dismissed. And the next one is -- excuse me, let me give you the date for that, apologies. May 31st, 20- -- or May 30th, 2019. And then the next one is Derrick A. Starnes and Jennifer Starnes v. Wayne Gnat and AIRBNB, Inc. And that doesn't have a notice of settlement date,

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but it does have a dismissal date of June 8, 2021.
Q: Okay. I'm sorry. Go ahead.
A: The next one is Shamona (ph) Alexander Cunningham verse Brian Medinmal (ph) and AIRBNB, Inc. And this one did not result in a -- in a settlement, but it does have a dismissal date of December 10, 2021. The next one is Jane -- Jane H. Doe 1, an individual, Jane E. Doe 2, an individual, and Jane V. Doe 3, an individual, verse AIRBNB, Inc. a Delaware Corporation, and Roes 1 through 20. I do not have a settlement date for this one. The next one is John Doe, an individual, and Jane Doe, an individual, the initials KCJ, an individual, initials MM, an individual, initials DS, an individual, initials MV, an individual, initials DG and the initials LAG, individuals, and as next friends of MVG and JCG, TH, an individual, JH, an individual, and IH, an individual verse AIRBNB, Inc., a Delaware Corporation and Roes 1 through 20. I do not have a settlement date for that. And -- let's see, okay, the final one which did not result in a settlement is Georgia Walker and Ray

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Marillo v. AIRBNB, Inc., a Delaware Corporation, and Does 1 through 50, but, as I said, that one does not have a settlement.
Q: Is it still pending?
A: My understanding is that it is still pending.
Q: Okay. And how many cases have been sent to arbitration that involved allegations of hidden cameras against AIRBNB?
MS. TAYLOR: Objection.
A: I don't know how many have been sent to arbitration. I'm -- I'm aware of the cases I've just described to you.
Q: Okay. And are all the settlements that you just listed, are all of those settlement agreements confidential?
A: That is my understanding, yes.
Q: Why does AIRBNB enter into confidential settlement agreements?
MS. TAYLOR: Objection; scope.
A: I -- I don't know why AIRBNB enters into confidential settlement agreements. I'm not a lawyer. I think that that is probably a question a lawyer could answer.
Q: Well, you're the designee on the topic of all the settlements that have been entered into, so

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I'm asking you. Why is it that AIRBNB does not want to disclose the terms of a settlement to the general public about these issues involving public safety?
MS. TAYLOR: Objection; scope.
A: I think as I explained before, the -- the other parties -- party or parties involved would need to have notice. I think it's sort of a -- a -- a two-party situation with respect to disclosing information about a settlement.
Q: Is it your testimony that the other parties wanted these settlement confidential or that AIRBNB did?
MS. TAYLOR: Objection; scope.
A: I mean, I wasn't part of the settlement process, so I don't -- I don't know what their motivations were. I just know that -- I -- I'm -- I do not have information about the settlement, so I -- I can't provide that.
Q: What did you do to avail yourself of information related to this topic on these settlement agreements?
MS. TAYLOR: Objection.
A: As I explained, I reviewed the other lawsuits associated with reports of undisclosed devices

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or being recorded in a listing, identified which of those resulted in a settlement, and the status of the cases that did not result in a settlement.
Q: So, did you do anything else to review yourself regarding the term -- to review the terms of those settlements?
MS. TAYLOR: Objection.
A: As I explained before, I -- I reviewed the lawsuits and identified which of those resulted in a settlement.
Q: Okay. I've provided you with 36 exhibits and we've already introduced Exhibits 1 through 7, Exhibit 9 through 12, Exhibits 16, 18, 24, 28, 29, and 30. And so I would like you to review Exhibits 8, 13, 14, 15, 17, 19 through 23, 25 through 27 ---
MS. TAYLOR: You've got to slow down for all of us here.
MS. BARBIER: Okay.
MS. TAYLOR: Go ahead.
Q: 25 through 27 ---
MS. TAYLOR: Wait (technical break in audio) 8, 13, 14, can you go from the beginning? You were going very fast.

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Q: Okay. Exhibits 8, 13, 14, 15, 17, and then Exhibits 19 through 23, and then Exhibits 25 through 27, and Exhibits 31 through 36. I want to make all of these 36 exhibits part of the record, so I just want you to tell me whether or not the exhibits that I've just listed for you were documents produced by AIRBNB and were records kept in the ordinary course of their business.
MS. TAYLOR: Okay. We'll take a moment for the witness to go through the exhibits.
MS. BARBIER: Okay. Thank you. Do you want to take a break off the record to do it or what?
MS. TAYLOR: I mean, it doesn't really matter. She just needs to be able obviously to look at the exhibits you're talking about, so.
MS. BARBIER: Okay. She's got copies. I mean, she should have copies of all of them, so if there's something you don't have, just let me know.
MS. TAYLOR: Sure. Does it make sen- -- does it make sense to go off the record for five minutes? I want to make sure -- I mean, you can watch her flip pages, but ...
MS. BARBIER: Yeah, that's fine.

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MS. TAYLOR: Okay. You can go off if you want.
MS. BARBIER: Yes. Madam Court Reporter, we'll go off the record for, I don't know, five or ten minutes, however long the witness needs to review the remaining exhibits to put into the record.
COURT REPORTER: I'll pause the recording now.
MS. BARBIER: Okay. Thank you.
(Off the record from 2:01 p.m. until 2:19 p.m.)
MS. TAYLOR: Everyone on the Zoom knows this, but I just wanted to make clear for the record, we -- I think we went off -- we've been off -- technically off the record for about 17 minutes now, but we've been sitting here while Ms. Chauvet reviewed the exhibits that Ms. Barbier mentioned. So, that is -- that is certainly part of her deposition time even though we were off the record.
MS. BARBIER: Well, as you know, Damali, there are no limitations on time allowed under the South Carolina rules for depositions.
MS. TAYLOR: Well, it's got to be reasonable and Ms. -- Ms. Chauvet's first day was a ten-hour deposition day, and so we're here; we volunteered to be here in good faith, but it's

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got to be a reasonable day.
Q: Okay. Ms. Chauvet, did you have an opportunity to review the exhibits that I asked you about?
A: Yes.
Q: Okay. Are those records that were produced by AIRBNB in this litigation?
A: I believe so, yes.
Q: Okay. And are they records that are kept in the regular course of AIRBNB's business?
A: Most of them are although I noticed that number 22 looks like it is a -- it is a cached version of a web page from Wayback Machine. This isn't an AIRBNB record.
Q: You're saying Exhibit 22 is not an AIRBNB record?
A: No, this is a cached web page that was saved by the Wayback Machine website.
Q: Okay. Do you recognize Exhibit 22 as being part of the AIRBNB website?
A: This looks like -- to me, this looks like a version of the AIRBNB website, but it's -- it looks like some of the page has been cut off, so I don't know how complete it is.
Q: So, do you recognize the Bates stamp number at the bottom, AIRBNB 000386 to 388?

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A:A: Yes.
Q: Is that a record produced by AIRBNB?
A: I believe so.
Q: Okay.
MS. BARBIER: So, we're going to make all of these exhibits, Exhibits 1 through 36, part of the record, Madam Court Reporter.
(Plaintiff's Exhibit Numbers 1 through 36 were entered into evidence.)
Q: So, Ms. Chauvet, I want to follow-up with you on a few things from the deposition that you -- the beginning of this deposition on October 26, 2022. You recall during that deposition there were -- I asked you to give me the approximate number of complaints that had been made to AIRBNB from December 1, 2013, to the present, of people who had been recorded by surveillance devices, that's Topic 18. Do you remember that discussion?
A: I believe so.
Q: Okay. And do you recall during that deposition we called Judge Keesley because you did not provide us with an approximate number of complaints and we called the judge to intervene on that issue? Do you remember that?

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MS. TAYLOR: Objection.
A: Yes, I remember.
Q: Okay. And do you recall hear the judge say that that was an appropriate question and that you needed to answer it?
MS. TAYLOR: Objection.
A: I mean, I -- I recall the phone call with the judge. I don't know if I recall everything the judge said, but I remember the judge being on the phone.
Q: Okay. Do you remember the judge saying that you needed to answer that question?
MS. TAYLOR: Objection.
A: Again, I don't -- I don't remember everything the judge -- the judge said. I do remember calling the judge, like, about this topic. Well, I didn't.
Q: Well, I'm not asking if you remember everything the judge said. What I'm asking you is did the judge tell you that was an appropriate question and that you needed to answer it?
MS. TAYLOR: Same objection.
A: Again, I -- I don't remember -- I don't remember everything that was -- that was being said on the phone. I remember that the call to

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the judge was about this topic. It wasn't information that we had available at the time or that I had available at the time to offer. And that -- unfortunately, that was -- you know, like, that was the situation on that date. Again, I don't remember exactly what the judge said. It's been some -- you know, some time between now and then, but I remember that the judge was called about that topic.
Q: Okay. And do you now have an approximate number of complaints that have been made to AIRBNB during that time frame regarding surveillance devices used?
MS. TAYLOR: Objection.
A: So, I -- I have a num- -- the number of -- as I explained when a user or non-user contacts AIRBNB's Customer Support Team about an issue, it could be to report an issue, that contact I just call a ticket, and I do -- I do have the -- like, about the number of tickets from that time frame, but I would advise that -- that those tickets encompass anything that would have been actionable under the surveillance -- surveillance camera and recording device policy. So, this would have been instances in

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which AIRBNB's Customer Support Team was contacted about anything under that policy and that could be something like a -- you know, that could include everything like a doorbell camera or a smart home device, like a -- the Alexa device, decibel monitors, cell phones, and anything that is capable of recording or detecting motion or noise, but sort of that's what encompass -- is encompassed in the -- in the -- in the number, but I do have the number, which is -- it's -- it's just over 35,000 tickets.
Q: 35,000 customer support tickets and those tickets relate to complaints that were made regarding surveillance devices, is that correct?
A: So, those are tickets that are associated with the contact or Customer Support Team that have the categorization of being related to the security camera and recording devices policy. They -- whether or not, like, they're a complaint, it just -- it's just contact about those. It may -- it might be a -- you know, it could be a complaint, but it could also be just be somebody saying that the doorbell, you know,

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camera -- maybe the doorbell camera wasn't working or something. It's anything that sort of falls within the scope of that policy.
Q: Right, it could include somebody who is not complaining, but just letting you all know they were video recorded, right?
A: I mean, it could be contact about being recorded. It could be contact about questions about a device. It could be contact about, you know, like a -- like a tablet that, you know, was left on a coffee table, but, you know, also contains -- you know, if it has capability for recording something. Anything within the scope of that policy.
Q: Okay. So, the 35,000 complaints that AIRBNB received from December 1, 2013, to the present, are complaints related to the surveillance policy, is that right?
MS. TAYLOR: Objection.
A: Just to clarify, again, I don't know if it's accurate to characterize them all as a complaint, but these are the tickets, you know, the contact instances associated with somebody contacting AIRBNB's Customer Support Team regarding something within the scope of the

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security camera and recording devices policy.
Q: So, AIRBNB has been contacted -- the customer service department has been contacted 35,000 times since December 1, 2013, has regarding these issues?
MS. TAYLOR: Objection.
A: The -- the number that we determined was that there are about 35,000 tickets that represent contact with the Customer Support Team within the scope of the security camera and recording devices policy.
Q: Okay. And how many of those 35,000 tickets have you reviewed?
MS. TAYLOR: Objection.
A: I -- I mean, I haven't reviewed the 35,000 tickets. I'm sure that within that 35,000 ticket number, that would include, you know, based on the time frame, tickets from the time that I -- I was involved in working with users, so I -- I mean, during my time, I would have been familiar with those, but it is impossible for me to review 35,000 tickets.
Q: Well, you're the 30(b)(6) designee on this topic, correct?
A: Yes.

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Q: Okay. And why is it impossible for you to review 35,000 tickets?
MS. TAYLOR: Objection.
A: That's a pretty substantial amount of information. I mean, it would take -- I mean somebody -- in addition to me, it would probably take a team of people a great deal of time to review each and every one of those -- those tickets.
Q: Have those 35,000 tickets been pulled by anybody at AIRBNB?
MS. TAYLOR: Objection.
A: I'm -- I'm not aware that the tickets have been pulled. My understanding is that the tickets that were categorized under handling under the security camera and recording devices policy, the quantity of those for the time frame was determined based on, again, how the ticket is categorized. In this case, that it pertains to an issue within the scope of this policy.
Q: Well, how many of the 35,000 did you attempt to review?
MS. TAYLOR: Objection.
A: I -- again, I wasn't trying to take on a -- you know, a monumental task of reviewing 35,000

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tickets. It wouldn't have been possible for me to do.
Q: Did anybody do it at AIRBNB?
MS. TAYLOR: Objection.
A: Well, each one of these tickets represents communication with customer support, so each one of these tickets would have been an instance in which a member of the Customer Support Team had interacted with a user and communicated with them.
Q: Right. I understand that. Did any- -- my question is did anybody at AIRBNB review any of these 35,000 tickets where people were complaining about being recorded?
MS. TAYLOR: Objection. Objection, form objection; scope. Objection.
A: As I was explaining, certainly the individuals who were communicating with the users would have reviewed the information that was being communicated in the ticket at the time that they were working with that user.
Q: I'm not asking you about at the time that it happened. I'm asking you in preparation for this deposition and to prepare you on this topic as the Rule 30(b)(6) designee for AIRBNB,

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did anybody either assist you or help you or review any of these 35,000 tickets?
A: I'm not aware of -- of anyone like individually reviewing the tickets. As I explained, the -- the total number of tickets with this categorization was -- the total number of tickets was determined based on how many tickets met this categorization based on handling under the policy (technical break in audio)
(Multiple speakers)
Q: And what is the process -- go ahead and finish. I'm sorry.
A: I'm sorry, I was just saying to -- just to arrive at the number within the time period.
Q: What is the process -- describe to me the process to pull one of these tickets.
MS. TAYLOR: Objection.
A: My understanding is that a -- a -- a query, you know, sort of a type of coding language is written that would pull data associated with the ticket because the tickets can't be extracted from the system in which customer support uses to interact with customers. It doesn't allow tickets to be extracted out of

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it, so the -- the option is to -- through a coding language, write a -- write a command or instruction to locate a specific ticket in -- in the system where this information is stored and then try to review whatever data was returned usually through -- not through the form that it looked like when the Customer Support Team was interacting with the user, but just through a return of lot of raw data.
Q: So, are you telling me that somebody at AIRBNB ran a report to identify these 35,000 tickets?
MS. TAYLOR: Objection.
A: My understanding is that they ran a -- like, they wrote a command to identify the number of tickets in the time frame that met the categorization of falling within the scope of the security camera and recording device policy.
Q: Okay. And those -- those -- that data can be printed off, correct?
MS. TAYLOR: Objection.
Q: Or downloaded?
MS. TAYLOR: Objection.
A: I -- I think that the process typically is something that could be downloaded, but this

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quantity of results I -- I don't -- I think that it would, based on my experience, most likely produce a quantity of like data that would exceed most programs that would be used to process that data. So, it wouldn't actually extract like the full scope of the information or the data that was contained for an individual ticket.
Q: My question is very simple, Ms. Chauvet. Is it -- is it possible for AIRBNB to produce the 35,000 tickets that it has identified that relate to complaints regarding surveillance devices?
MS. TAYLOR: Objection.
A: Again, based on my experience, trying to download that amount of data, the form in which it's returned has to be processed in like a specific program and those programs have limits that would actually cut off a lot of the data, so I don't know how -- I mean, I don't know how practical it would be to actually be able to get all the data that way.
Q: Are you saying it's impossible?
MS. TAYLOR: Objection.
A: I mean, I think, you know, I'm not an engineer,

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so maybe they have creative solutions that I don't know, but from my experience, trying to review the amount of data that would be associated with 35,000 customer support tickets would exceed the capacity of most -- most like data -- most programs to interpret the data that it's returned in.
Q: What do you base that conclusion on? What's your training in this area?
A: I mean, I'm not trained as a data scientist, but I do have, you know, experience trying to review and process large quantities of data. And I know that there's -- for example, if you're trying to, you know, review something in Excel spreadsheet, there are limitations to how much data you can actually fill in that program before it starts to cut -- cut portions out.
Q: So, is it your testimony that AIRBNB can pull these 35,000 support -- customer support tickets; it's just hard?
MS. TAYLOR: Objection.
A: What I explained is that there's some logistical limitations in trying to -- in trying to extract that quantity of data. But I mean, I think, they're just -- those are just

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sort of limitations of the -- of the nature of the way the information is stored.
Q: So, is it your testimony that there are so many thousands of complaints about surveillance device issues that it's impossible for AIRBNB to produce those to the plaintiff?
MS. TAYLOR: Objection.
A: I just want to clarify again. These -- these represent customer support tickets. Not every support -- customer support ticket is representative of a complaint. These are -- these are contact touches. There are a lot of tickets, I think 35,000, you know, is a pretty -- pretty large number, and when you consider the fact that, you know, if that is representative of a say a communication instance in which CS, you know, had back and forth communication with a user, that could be a pretty substantial amount of -- of data and the way that date's typically processed, there are just limitations to how much can be -- how much can be exported. Like, if there's a volume -- a volume limit that once you hit things start getting, you know, cut off. I mean, I know that it wouldn't be practical for

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me to try to review more than -- you know, thousands and thousands of rows of data and try to identify, you know, is any of these rows missing data because the program has exceeded its capacity.
Q: So, AIRBNB doesn't have the ability to even review the enormous number of complaints that they get regarding surveillance devices, is that your testimony?
MS. TAYLOR: Objection.
A: I'm -- I'm saying that it would -- it wouldn't be practical or realistic for -- for me or really even -- it would take a great deal of work over many months to review 35,000 contact touches to AIRBNB's Customer Support Team.
Q: Does AIRBNB consider somebody being secretly recorded a significant safety issue?
A: I would -- I would -- yeah, I would say that considering somebody who -- who is being recorded without their knowledge definitely represents a safety issue and a violation of the community standards.
Q: Right. So, what is AIRBNB doing to review these 35,000 complaints to remedy this situation?

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MS. TAYLOR: Objection.
A: So, again, when each of -- when any time -- again, like, first there are 35,000 tickets, it's not 35,000 complaints, but when a user contacts AIRBNB's Customer Support Team, that information, that issue, is reviewed and addressed in real time. They don't just -- it doesn't just go somewhere and then wait for it to maybe be reviewed some day in the future. That information is reviewed and then any appropriate enforcement is carried out under the policy, but with that said, all AIRBNB can do is carry out enforcement on its platform. AIRBNB can't predict if a user is going to choose to violate the terms of service or community standards, if they intend to do that in the future, or if they're planning to do that. AIRBNB can't control an individual's behavior if they're intending to -- to violate the standards or violate the privacy of another user that they're interacting with. All AIRBNB can do is carry out enforcement on its platform once it becomes aware that there may be an issue.
Q: That's your testimony about all AIR- -- that's all AIRBNB can do?
MS. TAYLOR: Objection.
A: AIRBNB, again, can carry ---
Q: Well, let me -- let me rephrase that. You can't think of one other thing that AIRBNB can do to ensure that its guests aren't secretly recorded?
MS. TAYLOR: Objection.
A: Again, AIRBNB is a platform. They're not -- AIRBNB is not a law enforcement agency. AIRBNB can only carry out enforcement on its platform when it knows there is an issue. But if somebody is determined to, without anybody's knowledge or consent, violate somebody's privacy or safety, AIRBNB can't even carry out enforcement unless they know that that's happened. If AIRBNB becomes aware, they certainly can carry out enforcement on the platform.
Q: Ms. Chauvet, thank you for that -- that answer, but it's not responsive to my question. My question is to you as AIRBNB's Rule 30(b)(6) designee on this topic, are you testifying under oath that you can't think of one other action that AIRBNB could take to ensure the

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safety of its guests and preclude them from being secretly recorded?
MS. TAYLOR: Objection.
A: Again, if somebody is trying to violate AIRBNB's terms of service and AIRBNB becomes aware of that, AIRBNB can carry out enforcement on somebody who's violating those community standards on its platform. That is the scope and area where AIRBNB can be -- can take action. AIRBNB can -- you know, through these 35,000 tickets, I think it makes -- it's clear that AIRBNB's Customer Support Team is available for users to contact and report these issues. If a user is reporting an issue involving violation of the surveillance device -- or surveillance camera recording device policy, they're provided with a method for law enforcement to contact AIRBNB directly that they can provide directly to law enforcement and AIRBNB will make itself available to law enforcement if they're contacted, but AIRBNB can't predict what somebody is going to do in the future and AIRBNB can only carry out enforcement on its platform when it's made aware of an issue.

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Q: So, you're telling me that AIRBNB after receiving 35,000 complaints over the last decade can't predict what somebody's going to do with hidden cameras?
MS. TAYLOR: Objection.
Q: Is that your testimony?
MS. TAYLOR: Objection.
A: No, I think what -- what this shows is that, again, this isn't 35,000 complaints. These are 35,000 tickets to AIRBNB's customer support team and this might be a ticket of somebody saying, hey, their Ring doorbell is -- it won't stop ringing. You know, it's just -- it's pressed down and I can't hit stop. Yes, the Ring doorbell. I'm communicating with the host through the Ring doorbell. None of us can do it. I don't want to stay here because it won't stop ringing. This could be anything, you know, from that scope to somebody reporting that, you know, the -- they're not sure how to turn off the Alexa smart home device. These aren't necessarily complaints. These are contact touches to AIRBNB's Customer Support Team. But even within those contact touches, you know, AIRBNB can't -- unless somebody

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contacts AIRBNB to report that somebody is recording them without their knowledge, then AIRBNB can't know or predict that something like that is happening. If AIRBNB's made aware of an issue, they'll certainly carry out enforcement under the policy, but, you know, it isn't possible to -- to carry out enforcement on something you don't know is happening.
Q: So, AIRBNB doesn't know it's happening, yet they've only received 35,000 complaints in a decade?
MS. TAYLOR: Objection.
(Multiple speakers)
A: Well, again, they're not 35,000 complaints. These are 35,000 contact touches to CS that represent a vast number of reasons for contact and different situations and issues. And, again, if a user reports to AIRBNB a violation of the policy and AIRBNB knows because a user has reported or somebody has reported it, then AIRBNB can take action and carry out enforcement.
Q: So, Ms. Chauvet, you understand the topic is the approximate number of complaints made to AIRBNB from December 1, 2013 to present of

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people who have been recorded by surveillance devices. You understand that?
MS. TAYLOR: Objection. I actually want to read the topic. It doesn't say the approximate number of complaints. It says all reports and/or complaints made to AIRBNB of guests being secretly videotaped while staying at an AIRBNB during the time period December 1, 2013 through the present.
Q: Do you understand that to be the topic, Ms. Chauvet?
A: Yes.
Q: And you understand the judge ordered you to answer the question regarding the approximate number of complaints made during that time period, right?
MS. TAYLOR: Objection.
A: Again, I don't recall everything that was said during the conversation with the judge, but I understand this is a topic for this deposition.
Q: And you understand that you keep using a Ring doorbell as an example, but a surveillance device complaint could also include somebody being videotaped having sex, right?
A: I mean this -- a surveillance device can --

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like, can include a number of things that might be actionable under the policy. Anything that could potentially be actionable under this policy.
Q: It could include somebody calling and saying, I was videotaped in the bedroom having sex, right? It could include that?
A: Yeah, it could -- it could include that. Like I said, it can include anything that's enforceable under the security camera recording devices policy.
Q: It could include somebody being in the shower being recorded, right?
A: It could -- it could include that.
Q: And some of those 35,000 customer support tickets that you identified have those complaints in them, don't they?
MS. TAYLOR: Objection.
Q: Within the -- the 35,000 ticket amount, I believe that, like I said, you know, that would pro- -- that would encompass instances I have worked when I was working with users, so I know that it would include issues like you described of somebody reporting that they found a device recording in a shower.

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Q: How many times -- and let me just make sure I'm clear on this. How many customer support tickets of those 35,000 that were identified did you review to testify on this topic?
MS. TAYLOR: Objection.
A: As I explained before, it wouldn't have been realistic for me to try to -- to go through 35,000 customer support tickets. I have -- I am familiar with, you know, the tickets that are represented by my past work with users, but I didn't try to review all 35,000 tickets.
Q: How many did you review?
MS. TAYLOR: Objection.
A: Again, I didn't try to sort of take on this pretty huge task of trying to review these tickets. I ---
Q: How many did you review?
MS. TAYLOR: Let the witness answer. Objection.
A: I would be familiar with the tickets that, you know, are represented by my work previously working with users. I -- through my -- through my experience at AIRBNB, I'm certainly familiar with the types of issues that would have been included in -- in that 35,000 ticket amount, but I didn't review 35,000 tickets in order to

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-- to identify each and every situation.
Q: I want to make sure you're clear on my question. I'm not asking you about how many you reviewed during the course of your previous position. I'm asking you in preparation for this deposition as the Rule 30(b)(6) designee, how many of the 35,000 customer support tickets did you review?
MS. TAYLOR: Objection.
A: Again, I wasn't reviewing these tickets. I am familiar with the tickets in this amount that I've previously worked on, but I -- I wasn't reviewing these tickets.
Q: So, the answer is zero?
MS. TAYLOR: Objection.
A: I -- again, I wasn't reviewing these tickets. The ones I am familiar with and that I have personally seen in the past are certainly represented by tickets that were part of my previous work. But I was reviewing the number of tickets that fell within this categorization of enforcement under this policy.
Q: How many did you review to prepare for this deposition?
MS. TAYLOR: Same objection.

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A: Again, I -- I didn't go through these tickets. I was reviewing how many tickets met this categorization identifier of being enforceable under the security camera and recording devices policy.
Q: Okay. How many times has law enforcement contacted AIRBNB regarding a guest being recorded in a property rented through AIRBNB?
A: I ---
MS. TAYLOR: Objection.
A: I don't know how many times law enforcement has contacted AIRBNB about that.
Q: And wouldn't that be sometimes indicated on those customer support tickets?
MS. TAYLOR: Objection.
A: I'm -- I -- it might be. It also may not be. As I explained before, the Law Enforcement Operations Team has a dedicated support -- or contact channel for law enforcement that is separate from CS contact tickets, so I don't know how many times or whether that would be recorded in a ticket.
MS. TAYLOR: Counsel?
Q: I also asked you ---
MS. BARBIER: I'm sorry.

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MS. TAYLOR: I was going to say we -- she's been going about four hours now and this might be a good time to take another break and let her get something to eat for about 20 minutes and come back on.
MS. BARBIER: Okay.
MS. TAYLOR: Does that work?
MS. BARBIER: We can do that. What -- how much time do y'all need to get something to eat?
MS. TAYLOR: Really 20 minutes. We don't need -- what do you think?
MS. CHAUVET: Yeah.
MS. TAYLOR: I'm sorry; I don't want to speak for you. Is that okay?
MS. CHAUVET: That's fine with me.
MS. TAYLOR: So you want to do -- I mean ---
MS. BARBIER: Yeah. So, it's 2:55 and why don't we just come back at 3:30.
MS. TAYLOR: Do we need that much time? I mean, sure. Okay. All right.
MS. BARBIER: Or we can come back at 3:15, it doesn't matter to me.
MS. TAYLOR: I mean, again, I don't want to -- you tell me. Sorry.
MS. CHAUVET: I think it will just depend on how

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quickly we could get food and eat it.
MS. BARBIER: And I'm obviously talking about Eastern Standard Time. I understand y'all are ---
MS. TAYLOR: Yeah.
MS. BARBIER: Yeah. So, you just -- you let me know, because I'll be ready to go back whenever you are.
MS. CHAUVET: I think (technical break in audio) after, but then I just -- if it doesn't take us that long, we can always come back earlier.
MS. TAYLOR: Okay.
MS. CHAUVET: Does that sound okay?
MS. TAYLOR: Okay. All right. So we'll come back at 12:30 our time and then do you have a sense of how long you plan to go today?
MS. BARBIER: I -- I probably don't have -- I don't know. I don't have too much more.
MS. TAYLOR: Okay. All right. So, we'll eat as fast as we can. If we get back earlier, I'll ping somebody. But we'll just be sitting in here having food, so.
MS. BARBIER: Okay. Thank you.
MS. TAYLOR: Thank you.
(Off the record from 2:54 p.m. until 3:28 p.m.)

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Q: Ms. Chauvet, we're back on the record after our lunch break. Do you recall during the beginning of the deposition that took place October 26 of 2022 that I asked you whether AIRBNB had prepared any reports or any audits or any internal or external reviews in the last ten years related to surveillance issues?
A: I mean I recall that -- that topic.
Q: Okay. And you indicated that you did not -- you were not aware of any reports, do you recall that?
A: Yes.
Q: Okay. And I asked you what you had done to -- to inquire or educate yourself on that topic and you indicated you had just reviewed the policy. Do you remember that?
A: Yes.
Q: Okay. Since our last meeting in October of 2022, have you done anything to educate yourself on that topic?
A: As I previously explained, I reviewed the policy document that describes how AIRBNB enforces surveillance -- surveillance camera and recording device violations and expectations for users on its platform.

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Q: Right. But my question to you is have you asked anyone at AIRBNB whether there are any reports or any audits that exist on this topic?
MS. TAYLOR: Objection.
A: I haven't spoken to anyone about audits or reports about this topic. I'm not aware of any of those documents.
Q: Okay. Why did you not do that in preparation for Topic number 23 to prepare yourself for the deposition?
MS. TAYLOR: Objection.
A: My understanding is that the community -- the community policy on surveillance cameras and recording devices represents AIRBNB's approach to handling issues involving those matters.
Q: Okay. But Topic 23 says this, the internal reports and/or external reports and/or audits during the last ten years of AIRBNB that concern or relate to the secret video recording of AIRBNB guests during the time period of December 1, 2013 through the present. You're familiar with that topic?
A: Yes.
Q: Okay. And I asked you what reports, if any, exist on this topic and you're telling me you

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don't know?
MS. TAYLOR: Objection.
A: I was ---
Q: Is that right?
A: I was saying that I'm not aware of any -- any reports or other documents besides the policy.
Q: And who have you asked?
A: My understanding of this is based on my -- my experience at AIRBNB which -- over the number of years, which -- from which I understand that the community policy, the security camera and recording devices policy represents the work that the community policy did -- team did with industry subject matter experts on how to approach issues involving cameras or other devices that can detect motion or sound and that those are -- that is represented in that policy document.
Q: Right. But did you ask anybody at AIRBNB in order to educate yourself on that topic about whether any such reports exist?
A: As I explained before I haven't -- I haven't spoken to anyone about -- about audits or other reports.
Q: So, the answer is no?

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MS. TAYLOR: Objection.
A: What I explained was that I haven't spoken to anyone about audits or reports. I'm not aware of any that are -- any audits or reports or documents other than the community policy for security cameras and recording devices.
Q: Okay. Since October 26 of 2022, have you asked anyone at AIRBNB whether any such reports exist?
A: I -- again, I haven't spoken to anyone about other reports or audits or documents and my understanding is that the information about how AIRBNB addresses surveillance device and recording -- excuse me, surveillance camera and recording device issues is represented by the community policy.
Q: Okay. But you understand I'm not asking you about the community policy. I'm asking you about audit reports or internal review reports that have been done since 2013. That's what this topic's about. It's not about the policy. There's other topics that relate to the policy. I just want to make sure we're clear on this because I just want you to understand the importance of this. If you have not adequately

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prepared for these topics and you have not availed yourself of the information that you need to be to be educated on these topics, we are going to move for sanctions and that's -- you know, you need to understand that. And there's a number of topics that you have not been adequately prepared for and this is one of them. So, I want to make sure that you understand my question. Have you done anything to determine whether or not any reports or audits, either internal or external, exist at AIRBNB on the topics of surveillance issues?
MS. TAYLOR: Objection. The witness knows she should be careful about ---
MS. BARBIER: Objection to speaking objections. You can object to the form and that's it.
MS. TAYLOR: The witness knows she should be careful about disclosing privileged information. Otherwise she can answer the question if she knows.
MS. BARBIER: You haven't provided a privilege log and listed any internal reviews or audits on it, so I -- I'm assuming there are no privileged reports or you would have provided us with a privilege log pursuant to the rules.

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Q: Ms. Chauvet, do you understand the question?
MS. TAYLOR: Same objection.
A: I understand the question and the deposition topic.
Q: Okay. And have you done anything other than look at the policy to prepare for that topic?
A: I -- my preparation for this topic has been to review the policy which would indicate AIRBNB's approach to security cameras and recording devices and all of the work and -- and consideration that was made with respect to generally issues involving security cameras and recording devices because that's the document that I'm aware of and I didn't see any additional information indicating that there were further -- further documents.
Q: Where did you look?
A: Again, I looked at the community policy for security cameras and recording devices.
Q: No, no, no. My question to you is where did you search, where did you physically look for documents that would perhaps constitute an audit or a report, either internal or external, that relate to surveillance issues? Where did you search?

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MS. TAYLOR: Objection.
A: The community policies are stored electronically. Anything -- any additional documents would -- my expectation is that they would be indicated in the policy document. In review of that electronically stored document, I didn't see anything else indicating audits or reports other than the document itself.
Q: Where did you look?
A: I looked in the actual -- the electronically stored document that describes AIRBNB's security camera or recording devices policy.
Q: So, your testimony is you looked at the policy and you didn't see any audit reports, so you think they don't exist?
MS. TAYLOR: Objection.
Q: My understanding is that the policy represents all the work that has been done in consideration of how AIRBNB approaches handling these issues and that there were no other indica- -- no other documents indicated other than the policy as being the result of, you know, the work on how AIRBNB approaches the issue generally of security cameras and recording devices.

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Q: Okay. But other than that, other than look at the policy, you haven't looked anywhere, have you?
MS. TAYLOR: Objection.
A: Again, I looked at the policy. There was no indication that there were additional documents other than the policy document itself, so that is -- that is what I reviewed.
Q: And you didn't speak to anybody else at AIRBNB about whether any of those reports exist, correct?
MS. TAYLOR: Objection.
Q: Again, I reviewed the policy document. There was no indication of anything outside of the document itself and I -- I haven't spoken to anyone about additional documents 'cause, again, the policy document didn't indicate that there was anything further.
Q: Who advised you about how to prepare for that topic?
MS. TAYLOR: Objection.
A: I mean, my -- I think that my experience at AIRBNB over a number of years has given me the -- you know, the sort of ex- -- like the experience of working here and knowledge of

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what documents exist and where to -- where to review to -- to determine whether there are additional documents that you should be aware of or that might approach an issue. So, based on my -- my experience and understanding, I reviewed the policy document. I didn't find anything in that document indicating there were further reports or audits.
Q: So, you relied on yourself and yourself alone?
MS. TAYLOR: Objection.
A: I mean, I -- I relied on my experience and the experience I have working with a number of other individuals over the course of several years working at AIRBNB.
Q: Did you -- did you meet with AIRBNB's attorneys to prepare for these topics?
MS. TAYLOR: Objection.
MS. BARBIER: I'm not asking what the communications were. I'm asking if she met with AIRBNB's attorneys.
A: I mean, I met with AIRBNB's attorneys.
MS. TAYLOR: Okay.
Q: And I'm assuming that you would have sought advice about how to prepare on these topics, is that a correct assumption?

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MS. TAYLOR: Objection.
A: I -- I mean, I met with AIRBNB's attorneys. I relied on my experience over a number of years at AIRBNB and the information I know that is available. In this case, that was the policy document.
(Mr. Chen re-entered the deposition.)
Q: Okay. Okay. So, are you denying that these reports exist?
MS. TAYLOR: Objection.
A: What I am saying is that based on my experience and understanding of where to look for information, I reviewed the policy document. I didn't find any indication of additional reports or audits.
Q: Have you ever worked in the audit department at AIRBNB?
MS. TAYLOR: Objection.
A: I -- I don't know that there's a specific -- there's something specifically called an audit department.
Q: Is there a compliance department?
MS. TAYLOR: Objection.
A: There is a compliance department, but it's unique to like financial fraud related

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activities and compliance around that.
Q: Okay. So, when you say your vast experience, how long have you worked at AIRBNB?
A: I began working at AIRBNB in 2014.
Q: Okay. And how many times has someone consulted with you about whether or not an external or internal audit is being conducted.
MS. TAYLOR: Objection.
A: I mean, I don't know if anybody has asked me if an external or an internal audit has been conducted in those words, but over the years, I have reviewed -- I have collaborated with a lot of people; I have asked people where to find documents. If I were looking for information on a topic, where I would look for that information, either as a starting point to find additional information in documents or as the source of knowledge. And based on my experience, I've -- I reviewed the policy document. It didn't indicate that there were any other additional documents.
Q: Okay. So, I want to be sure because this is a topic that's going to be -- we're going to move for sanctions on, okay. I want to be sure I understand your answer. You did not speak with

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one other person at AIRBNB about whether or not internal or external audits exist on the topic of surveillance devices, is that correct?
MS. TAYLOR: Objection.
A: Again, based on my experience, the communication I've had with people in the past and knowledge about this issue and where to find information about it, I reviewed the policy document. I didn't find there to be any additional information besides that -- the document itself or additional directions on who to pursue for additional information or that additional information was available.
Q: So, Ms. Chauvet, you indicate based on your experience, so let's go -- let's go through your experience. How many internal reports or audits have you reviewed since you've been at AIRBNB?
MS. TAYLOR: Objection.
A: I mean, I'm not sure what you -- what would constitute exactly an internal report or audit in this context. You know, like I -- like I said, I've worked with a lot of people on a number of different topics, reviewing a lot of, like, information, a lot of different document

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types and literature. I feel confident that I could -- I would know where to start for looking for something like -- like a -- like a report or other sort of document of knowledge that would inform on certain topic.
Q: How many audits has AIRBNB done in the last -- since 2014 on any topic that you're aware of?
MS. TAYLOR: Objection; scope.
A: I mean, I -- I think that it's -- I mean, it's kind of difficult to quantify that because I don't know what I would consider ---
Q: How many are you aware of?
A: Again, I don't know of something that I would consider to be an audit is really meeting your definition of the word audit. I mean, if you reviewed -- for example, you know, looking in preparation for this deposition, we determined how many tickets in that time period of De- -- of 2013 through present had the ticket category (technical break in audio) the security camera and recording device policy. So, I mean, that's reviewing a number of -- of -- of factors there. But is that -- I don't -- like I said, I think that there's a lot of different processes. I don't know if they're all meeting

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that definition.
Q: So, are you saying that you don't understand the topic, you don't understand what an internal or external audit is?
MS. TAYLOR: Objection.
A: What I'm saying is I don't know if everything, you know, that I would consider to be maybe like an audit or something is -- is aligning with the definition in this deposition topic.
Q: Okay. Well, tell me of your vast experience at AIRBNB how many audits exist on surveillance device issues.
MS. TAYLOR: Objection; scope. The topic calls for a more specific category than that, but go ahead.
A: Again, like, for example, in preparation for this deposition, we identified a number of tickets that meet a certain categorization within the context of this policy, but my understanding is that the, you know, cumulative bodies of work about how AIRBNB handles security camera and recording device policy cases is represented by the policy document.
Q: So, is it your understanding that there are no audits that exist on this topic? Is that what

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you're testifying to under oath?
MS. TAYLOR: Objection.
A: Again, I am aware of the policy document and that that represents the body of work pertaining specifically to the topic of surveillance devices -- or surveillance cameras and recording devices.
Q: So, Ms. Chauvet, it's clear to me that you're not going to answer my question on this topic, so we're going to -- I'm going to move on and I'm -- but I just want you to understand though that is one of the several topics we're going to be moving for sanctions on. I'm now going to move back to Topic 12 because you refused to answer my question on this topic in the October 26th session of the deposition, as well.
MS. TAYLOR: Objection.
Q: And the question is has AIRBNB ever been accused in any jurisdiction of not being in compliance with the state's real estate laws. Do you recall that topic and that question?
MS. TAYLOR: Objection.
Q: Topic 12?
A: I recall Topic 12, yes.
Q: Okay. So, is it your testimony that AIRBNB has

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never been accused of not being in compliance with the state's real estate laws?
MS. TAYLOR: Objection; scope.
A: My understanding is that -- I understand that there's -- there's a component of the real estate law related to this matter, but that AIRB- -- that that particular law applies to individuals, not companies, and AIRBNB is a company. My understanding is that the compliance with that law doesn't apply to AIRBNB.
Q: That's not my question. My question to you is you testified previously under oath that AIRBNB's not been accused in any jurisdiction of not being in compliance with the state's real estate laws. Is that your testimony?
MS. TAYLOR: Objection.
Q: Are you saying you're unaware of AIRBNB ever being accused of not being in compliance with the real estate laws of a state?
MS. TAYLOR: Objection; scope. And objection; form.
A: I mean outside of the -- the discussion about it in this matter, I'm not aware of any instances in which AIRBNB's been accused of not

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being in compliance with the real estate laws in this state.
Q: I'm not asking you about this state. I'm asking you about in any of the 50 states.
MS. TAYLOR: Same objection.
A: Again, I'm not aware of a specific issue involving like a specific real estate law. I know that there are, like, regulations involved in short term rentals, but whether or not that - that's related to a real estate law, I don't -- I don't believe so.
Q: Do you consider regulations and licensing issues part of real estate law?
MS. TAYLOR: Objection.
A: I think -- I wouldn't rule out that there may be regulation and licensing issues as part of real estate laws, but I don't think that those are exclusive to real estate laws.
Q: So, you say that you're unaware of AIRBNB ever being accused of not being in compliance. What did you do to educate yourself on this topic?
MS. TAYLOR: Objection.
A: I reviewed the discussion about the real estate -- apologies if I get these words turned around, real estate property management

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licensure referenced in the documents about this matter, and reviewed the language describing what entities or what entities are applicable to that matter and that they are individuals and that -- and understood that the property manager -- property management real estate licensure compliance does not apply to AIRBNB as an organization or a business.
Q: What did you do to educate yourself on the topic of whether AIRBNB has been accused of not being in compliance with the real state licensure laws? What did you do?
MS. TAYLOR: Objection. That's beyond the scope. The topic is real estate property management licensure.
MS. BARBIER: You can object to the form and then you can object to scope issues outside of this deposition.
Q: What did you do, Ms. Chauvet, to educate yourself on that topic?
A: Again, I reviewed the language of -- of the real estate property management licensure and, like, who that applies to, as well as the reference to that licensure in the documents for this matter.

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Q: You reviewed the South Carolina Annotated Code, is that what you're saying?
A: I'm sorry; can you repeat it? I -- I didn't hear everything you said.
Q: I'm saying what did you do to educate yours- -- are you -- I'm trying to understand what you're saying you did. You reviewed the South Carolina Code of Laws, is that what you're saying?
A: I reviewed the language in the licensure -- in literature that describes to whom that applies and there -- and the reference to that same licensure information related to this matter to the documents in this matter.
Q: Did you rev- -- did you consult with AIRBNB's legal department as to whether or not they've ever received allegations that AIRBNB wasn't in compliance with real estate laws?
MS. TAYLOR: Objection; that's not the topic.
Q: Did you?
A: Again ---
MS. TAYLOR: Same objection.
A: --- my understanding was that the topic is applying to this property management real estate licensure law. So, I reviewed the

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language that describes who is -- who that law applies to and the reference to that discussion in the documents related to this matter.
Q: Let me read the topic to you, Ms. Chauvet. It says, all facts and information related to AIRBNB and its host compliance with state statutes concerning real estate property management licensure to hosts and potential hosts. It doesn't say anything about South Carolina, does it?
A: No, the -- South Carolina's not in the -- in the name of the topic.
Q: Correct. And the judge ordered AIRBNB to answer questions on that topic, didn't he?
(Ms. Gray re-entered the deposition.)
A: Again, I don't recall everything the judge said. I just remember that there was a phone call with the judge and I am aware that this is a deposition topic.
Q: And you're aware that AIRBNB objected to every single topic prior to this deposition taking place, aren't you?
MS. TAYLOR: Objection.
A: I'm aware that there -- there was a response in which there was objection to -- to amounts of

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the deposition topics.
Q: And the judge ruled that you had to answer questions on these topics, do you recall that?
MS. TAYLOR: Objection.
Q: There was an order issued. We talked about that in your first deposition. Do you recall that?
MS. TAYLOR: Objection.
A: I -- I -- I recall our previous discussion, yeah.
Q: Okay. So, what did you do to educate yourself on Topic 12 which talks about AIRBNB -- all the facts and information related to AIRBNB and its hosts' compliance with state statutes concerning real estate property management licensure to hosts and potential hosts? What did you do to educate yourself on that topic?
A: So, as I explained before, I had reviewed some language in -- in documents related to this matter. I reviewed the previous language of that particular licensure requirement that I referenced earlier. I'm -- I'm also aware that there's -- there are documents on AIRBNB's website that inform users that if they're hosting on AIRBNB, there are responsibilities

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for complying with any applicable laws and regulations and educating themselves on any applicable laws and regulations. That would be documents in the terms of -- or language in the terms of service, as well as helps and articles that are AIRBNB's website.
Q: So, other than looking at the South Carolina regulations as you say that you did, did you look at any of the other 49 states?
MS. TAYLOR: Objection.
A: I didn't review language in 49 states about property management licensure, real estate licensure.
Q: Did you speak with anybody at AIRBNB about what efforts are undertaken by AIRBNB to comply with states' real estate statutes?
MS. TAYLOR: Objection.
A: Again, I reviewed the -- the documents, including our terms, and help center articles that advise that it's a user's responsibility to educate themselves and ensure they are compliant with any applicable laws and regulations.
Q: That was not responsive to my question. My question is did you speak to anyone at AIRBNB

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about what efforts are undertaken by AIRBNB to comply with the states' real estate laws?
MS. TAYLOR: Objection.
Q: Did you speak to anybody?
MS. TAYLOR: Objection.
A: As I explained before, I -- I -- I reviewed documentation regarding responsibility and expectations for compliance that -- that -- that is where I sought out my knowledge about this topic.
Q: So, you did not speak to anybody at AIRBNB, is that correct?
MS. TAYLOR: Objection.
A: I -- again, I reviewed documentation in order to prepare for that topic.
Q: That's the documentation that you referenced from our Complaint?
MS. TAYLOR: Objection.
A: As well as the terms of service and language that describes a user's responsibility to educate themselves and abide by any applicable laws and regulations and the help center articles that advise what a user's responsibilities are and that they are expected to adequately educate themselves and maintain

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compliance with any applicable laws and regulations.
Q: Other than requiring somebody to sign a terms of service, is AIRBNB doing anything to make sure they're in compliance with state real estate laws?
MS. TAYLOR: Objection.
A: Again, AIRBNB is expecting users, you know, in agreeing to the terms of service and continuing to use the website and agree to subsequent versions of, you know, updated terms of service in order to continue using the website that users are agreeing and compliant with any applicable laws and regulations. That they are adequately educating themselves.
Q: Other than asking a user to sign the terms of service, is AIRBNB doing anything to comply with states' real estate laws?
MS. TAYLOR: Objection.
A: Again, my understanding is that these are things that would apply to individuals in different locations and those individuals are individuals who may be hosting in different locations, that it's their responsibility to understand, seek additional information,

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research and comply with any applicable laws and regulations.
Q: Ms. Chauvet, you're not answering my question, but I don't want there to be any surprises here. We're going to -- this is another topic we're going to move for sanctions on because you have not prepared yourself and you're not responding to my questions. Do you want to offer me any more information on this topic?
MS. TAYLOR: Objection.
A: I mean, I -- I think I've given a pretty good information about how AIRBNB advises individuals to pursue information and make sure that they're adequately informed, they're compliant with applicable laws and regulations, advising that they need to make sure that they are aware of anything that's specific to the location and that they've also agreed to do so in order to be on the platform. That information is -- again, that's available on the platform and those are documents that I reviewed.
Q: I disagree that you've given adequate information on this topic, but we'll move on to the next one. Do you recall testifying

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previously that on Topic number 18 and 19 that AIRBNB learned of a complaint about an Indiana couple, Derrick and Jennifer Starnes, that they had been secretly recorded -- that AIRBNB learned about the complaint when they filed a complaint in December of 2020, do you recall that?
MS. TAYLOR: Objection.
A: I mean, I recall discussing the Starnes. I don't exactly recall -- I wanted to double-check the date because I don't have those memorized.
Q: I can refresh your memory. The complaint was filed on December 11th, 2020 and you testified previously that that is when AIRBNB learned of the complaint.
A: That's my ---
MS. TAYLOR: Objection.
A: That's my understanding.
Q: Well, are you aware that in October of 2017, after an arrest was made, AIRBNB made a public statement in September of 2017?
MS. TAYLOR: Objection.
A: I mean, I'm not -- again, I'm not familiar with -- I think I said this before -- with every

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public statement that's been made. My understanding was that the -- the Starnes were one of two different sets of plaintiffs related to this individual host, so it's -- right, I'm just referencing the Starnes here.
Q: So, Ms. Chauvet, let me ask you this, you've testified multiple times ---
MS. TAYLOR: Let her answer the question.
Q: --- AIRBNB first learned of allegations when -- when complaints were filed, like formal civil complaints.
MS. TAYLOR: The witness was not finished answering the question. Let her (technical break in audio).
MS. BARBIER: She appeared to be finished.
MS. TAYLOR: She was still talking.
Q: What is it you want to say, Ms. Chauvet?
A: Oh, I was just -- I was -- I wanted to reference really quickly the Starnes matter in order to answer you. Okay. So, just to make sure I understood your question to -- just to confirm that you were asking that AIRBNB first became aware of the matter involving Derrick and Jennifer Starnes when they submitted their -- their complaint in 2020, correct?

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Q: My question is you have repeatedly testified that AIRBNB has first become aware of these matters involving secretly -- people being secretly recorded when the civil complaints were filed. Do you recall that from your previous deposition in October?
MS. TAYLOR: Objection.
A: I -- again, I don't recall the -- you know, I don't have it memorized, but I know that there have been instances in which AIRBNB has become aware of a matter when it is -- when they receive a complaint about it, a lawsuit about it. I wouldn't say that's representative of all matters, but that that represents some of them.
Q: Well, did you -- what did you do to review public statements that AIRBNB was making about these matters before you testified?
MS. TAYLOR: Objection.
A: I -- I'm not -- I'm not familiar with every public statement that AIRBNB has made.
Q: Well, why did you testify under oath that the first time AIRBNB heard of these allegations is when a civil complaint was filed?
MS. TAYLOR: Objection.

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A: Again, my understanding was that with respect specifically to Starnes, that AIRBNB became aware that they -- they reported that they had been filmed without their knowledge in their complaint.
Q: Right. Well, AIRBNB was sued in 2020, okay. But they made a public statement about the case three years prior to that.
MS. TAYLOR: Objection.
Q: So, how do you explain that they didn't have acknowledge of the case when they issued a public statement about it?
MS. TAYLOR: Objection.
A: My understanding is that there was a different plaintiff that filed a case regarding the same host prior to Joe -- or Derrick and Jennifer Starnes.
Q: Do you deny that AIRBNB issued a public statement in October of 2017 about the person who was arrested, Mr. -- Mr. Gnat?
A: I'm not directly familiar with that statement, but I understand that Mr. Gnat was -- was arrested prior to Derrick and Jennifer Starnes' lawsuit. I understand that there were -- was a lawsuit involving a different plaintiff who

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was also related to the allegations against Gnat prior to Derrick and Jennifer Starnes' complaint.
Q: Right. So, what do you base your testimony on that AIRBNB first learned of this incident involving Mr. Gnat in 2020?
MS. TAYLOR: Objection.
A: I just want to clarify that that wasn't what I was trying to indicate. I was trying to indicate that AIRBNB would have first become aware of Derrick and Jennifer Starnes reporting that they had been filmed when they submitted their complaint, not that there had been allegations against Gnat.
Q: Okay. And what do you base that on? Are you testifying again under oath that AIRBNB did not know that Mr. and Mrs. Starnes were videotaped until 2020 when a complaint was filed?
MS. TAYLOR: Objection.
A: Well, AIRBNB wasn't reviewing images that may have been found at Mr. Gnat's -- like in Mr. Gnat's possession to identify every person that he may have filmed. That's something that AIRBNB would rely on law enforcement to do. So, if AIRBNB wasn't informed by Derrick

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Starnes and Jennifer Starnes until their complaint that they, in fact, had been filmed, that would be the first ins- -- the first instance in which AIRBNB learned that those individuals had been filmed.
Q: So, are you standing by your testimony that that's the first time AIRBNB learned of that incident involving the Starnes when they filed their complaint?
MS. TAYLOR: Objection.
A: My understanding is that AIRBNB learned about the Starnes reporting that they had been filmed based on their complaint, not that Gnat had been arrested or that there had been allegations against him from different individuals.
Q: My question is are you standing by your testimony under oath that the first time AIRBNB learned that Mr. and Mrs. Starnes were taped is when they filed a complaint in December of 2020?
MS. TAYLOR: Objection.
A: That -- that is my understanding is that is when AIRBNB learned ---
Q: Okay.

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A: --- about when Derrick and Jennifer Starnes reported having been filmed.
Q: Okay. And do you -- are you familiar with a New York Post article in October of 2017 that discussed a homeowner that was secretly recording guest -- AIRBNB guests for years?
MS. TAYLOR: Objection.
A: No, I'm not familiar with a New York Post article.
Q: Okay. Do you know of a person at AIRBNB named Benjamin Bright?
MS. TAYLOR: Objection.
A: Yes, I do.
Q: Okay. And you're aware that he's a spokesperson for AIRBNB or he was at one point?
A: I -- I'm aware that he -- he worked in a communications capacity.
Q: Is he still an employee there?
A: I believe so.
Q: Okay. And do you recall him talking about how they had reached out to local law enforcement to help with an investigation?
MS. TAYLOR: Objection.
A: I mean, no, I am not -- I don't recall that.
Q: Okay. Are you aware that it took law

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enforcement months to identify the victims in that case?
A: I don't know the time frame of the law enforcement investigation, but -- so I guess, no, I don't know how long it took.
Q: Are you familiar with an incident in Longboat Key where there were people video- -- secretly videotaped in an AIRBNB in November of 2017?
A: Yes.
Q: You're familiar with that case?
A: I believe so.
Q: Okay. What did AIRBNB do to aid law enforcement in their investigation in that case?
MS. TAYLOR: Objection.
A: So, I'm not familiar with exactly what AIRBNB did to aid law enforcement, but if AIRBNB is notified of a -- by a user of a potential violation of the surveillance camera or security camera and recording devices policy and they want to -- they intend to contact law enforcement, they are provided with a direct contact channel for law enfor- -- to give to law enforcement so law enforcement can contact AIRBNB directly.

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Q: Right. So, does AIRBNB give law enforcement the names of the people who have stayed in that property?
A: I know that -- that the Law Enforcement Team will respond to law enforcement subpoenas. I don't know exactly what -- what was provided or what was responded to for this case, but that's typically the sort of assistance that the Law Enforcement Operations Team provides to law enforcement.
Q: So, in the Longboat Key case, do you know whether they pro- -- AIRBNB provided law enforcement with the names of the people who had stayed in the property?
A: I am -- I'm not -- no, I don't know what was provided, if anything, to law enforcement for the Longboat Key case.
Q: Are you familiar with a statement that AIRBNB put out at that time in 2017, they said that AIRBNB told investigators they have only ever seen one other case of video voyeurism that they know of at that time?
MS. TAYLOR: Objection.
A: I'm not familiar with that statement.
Q: That wouldn't be accurate, would it?

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MS. TAYLOR: Objection.
A: Again, I'm not familiar with -- with that statement. I -- I don't know in what context that was given.
Q: But there were at least -- I mean, there's 35,000 complaints since 2013 to date, so we have to imagine there would have been thousands in 2017, correct?
MS. TAYLOR: Objection.
A: I mean, there's 35,000 contact tickets in this category. Again, I -- I don't -- I'm not familiar with that statement, so without understanding the context in which it was given or reviewing that, you know, I -- I can't really give additional information about, you know, the meaningfulness of it or how it related to, you know, any other cases.
Q: Are you -- let me ask you this, are you aware of any instances in which AIRBNB has put out statements to the public that weren't accurate?
MS. TAYLOR: Objection; scope.
A: I mean I'm not -- I can't recall a specific instance that I'm familiar with.
Q: What about just specifically to this hidden camera issue, are you aware of any statements

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that AIRBNB has put out that weren't correct?
MS. TAYLOR: Objection.
A: I'm not -- I'm not aware of any.
Q: Do you know of anybody else who's aware of any?
MS. TAYLOR: Objection; scope.
A: No, I don't -- I don't believe so.
A: What -- you testified previously in your -- in the first part of your deposition when you were asked whether AIRBNB did anything to verify the description of the property as being accurate, do you recall that?
MS. TAYLOR: Objection.
A: I -- I think I generally recall that -- that discussion.
Q: Okay. And you said that AIRBNB doesn't proactively review the content to determine if it's consistent, is that right?
A: I believe so.
Q: Okay. So, you testified that unless somebody reports a significant inconsistency with who a host is, that AIRBNB just relies on the host to accurately represent who's present, is that right?
MS. TAYLOR: Objection.
A: Hosts are responsible for all of the listing

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content that's associated with the listing page that's generated by a host. And unless -- yeah, unless AIRBNB becomes aware of an issue if they're -- if, for example, the Customer Support Team is contacted about an issue, then -- I mean, I guess, yeah, so if a host is -- a host is not representing their listing accurately, AIRBNB would rely on being informed about that in order to -- to further review.
Q: Do you recall an incident in -- in November of 2019 that was a -- a shooting at an AIRBNB that left five people dead, it was on Halloween?
MS. TAYLOR: Objection; scope.
A: Just to make sure I understand, you said it was in November -- it was on Hallow- -- it was in October or ---
Q: I'm sorry, Octo- -- it was a -- it was a shooting at an AIRBNB where five people were killed. Do you recall that?
MS. TAYLOR: Objection; scope.
A: If -- if this -- if it happened in October, I believe -- I mean, I recall a shooting. I'm not sure if we're talking about the same thing, but I recall a shooting in which multiple people were killed in October of 2019.

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Q: Okay. And do you recall a statement that Brian Chesky issued after that?
MS. TAYLOR: Objection.
A: I -- I don't know if there's a specific statement you're referring to. I recall there was -- there was a number of -- a number of different pieces of information and communication from AIRBNB about the incident. So, I'm not sure if you're referring to a specific one.
Q: Do you recall the public being informed that AIRBNB was going to verify every single property and every single host after that incident?
MS. TAYLOR: Objection.
A: Again, I'd have to review the statement that you're -- that you're referencing.
Q: I'm just asking if you recall it. You don't need to review it. I'm asking do you recall that representation being made to the public?
MS. TAYLOR: Objection.
A: I -- I don't recall -- I don't know if I recall that exactly. Again, I remember that there was a statement that was made in response to -- to an October 2019 shooting that included, you

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know, a sort of plan of additional actions AIRBNB wanted to take in response to -- to the particular incident.
Q: Well, did they execute those additional actions? Did they take them after they said they were going to?
MS. TAYLOR: Objection.
A: So, my understanding is that after that particular incident, AIRBNB took a number of actions. They continue -- you know, the sort of response to issues involving parties or other sort of large scale disturbances during a reservation continues to evolve and AIRBNB continues to -- continues to sort of respond and evolve its -- its actions in order to best find an option that can benefit the whole platform and is scalable and can be applied.
Q: So, your testimony is that AIRBNB may make public statements about what they're going to do, but they -- they don't actually do them; it's just evolving?
MS. TAYLOR: Objection.
A: I mean, I think that -- specifically, I think with respect to this particular communication after the October 2019 incident, AIRBNB wanted

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to make sure that it communicated that this was something that we understood to be an extremely serious issue, something that we wanted to respond to and wanted to express transparency in the steps that, you know, these -- these are steps that we think might help to mitigate these issues going forward. I think we've also been pretty transparent in how we've adjusted our plans and our actions as we've identified better, more scalable solutions that might help to mitigate similar situations in the future.

Q: So, are you denying that Mr. Chesky said he was going to do these things and indicating that AIRBNB just said they were going to try to do some things?

MS. TAYLOR: Objection.

A: Again, I think that what the communication after the October 2019 incident was meant to be part of a record of the steps AIRBNB was taking and a continued ongoing record of communication as we have changed and pivoted and adjusted those plans to ensure that they're actually accomplishing what they -- what we would hope that they would accomplish and that we're able to implement them on a broad scale across the

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platform.

Q: Are you familiar with Mr. Chesky's tweets?

A: I'm ---

MS. TAYLOR: Objection.

A: --- certainly not all of -- not all of them. I couldn't name a -- I couldn't reference a specific tweet off the top of my head.

Q: In November of 2022, November 16th, '22, he tweeted, we are expanding identity verification to 100 percent of guests and hosts. Do you recall that?

MS. TAYLOR: Objection.

A: Again, I don't really reference his -- Mr. Chesky's tweets, so I can't speak to exactly what he tweeted.

Q: So, two years prior to that he had already said they were going to have 100 percent verification, right, but that's not what happened?

MS. TAYLOR: Objection.

A: Again, I think that what -- I think that there was communication after the October 2019 incident that discussed plans to help mitigate similar instances involving large, like, neighborhood impactful disturbances and

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disruptive parties and gatherings and then, more recently, again, I think that this is sort of part of a different evolving approach to ways that we can increase -- increase the way we scale different options across the platform. The plans regarding expectations for verifying identity. I think that those are sort of separate -- separate communications about separate things, but the -- these are communications that AIRBNB wants to make again so that we can be clear with, you know, what steps are we currently taking for actions across the platform.

Q: Have you spoken to Mr. Chesky about his representations and his tweets and his public statements?

MS. TAYLOR: Objection.

A: No.

Q: Okay. And have you reviewed his public statements?

MS. TAYLOR: Objection.

A: Certainly not all of them, but I'm familiar with -- with a number of them. I couldn't -- I couldn't like call one out, I don't have them memorized, but I've reviewed them in the past

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and I can certainly take a look at any one -- any one statement.

Q: Do you know why your CEO is making representations that aren't accurate to the general public ---

MS. TAYLOR: Objection.

Q: --- about what steps AIRBNB is taking to verify hosts?

MS. TAYLOR: Objection.

A: Again, I think that what -- what Mr. Chesky is doing is trying to demonstrate so that people are aware these are the plans that AIRBNB has for different actions to take on the platform and as those plans change or evolve or are replaced or are carried out, that there's an ongoing communication, you know, for -- of where kind of things are at, so that, you know, here's what our initial plan is, and then communicating what we're doing in the future to show, okay, maybe that we had to make adjustments, but we're -- we're continuing to move forward in different efforts to improve the platform and offer new -- new options and new expectations for our users.

Q: So, if you've never spoken to Mr. Chesky about

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what he meant by his statements, how do you know?
MS. TAYLOR: Objection.
A: I mean, I think that the sort of values that the company shares, the people who work here share, and the long term goals for the platform, the community that the platform creates, are shared across the company. We might perform different roles, but, you know, we -- we all have pretty -- pretty consistent objectives. I think that we would agree that in making these statements, we want to communicate what AIRBNB is doing to improve experiences on the platform and as we make additional statements, that shows either how we've implemented those or how we've had to adjust those.
Q: Well, when have you informed people in the general public that you are not going to do 100 percent verification as Mr. Chesky promises in his public statements?
MS. TAYLOR: Objection.
A: Again, so, that was discussing sort of -- I think -- I think what he was discussing was, you know, the sort of reliability of a

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property. I think that that -- how that has, you know, been -- how that has evolved and how that is represented has been communicated in different ways with respect to if a guest experiences an issue regarding the reliability or the quality of a property during a reservation and how they can be supported by AIRBNB, I think that in discussing the -- for example, the neighborhood tool, has provided communities an option to communicate when there is a disturbance to -- to the area around a listing. These are all options that we discussed in the -- in the period since the October 2019 incident, building off of those initial first -- first steps.
Q: Okay. You didn't answer my question. When have you -- when has AIRBNB informed the public that Mr. Chesky's previous statements are not accurate and that there is not 100 percent verification of hosts?
MS. TAYLOR: Objection.
A: I don't think that there -- I don't believe there's any statement that says that, but I -- I don't think that that would -- that would be true since, again, what Mr. Chesky was doing

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was laying out a plan of action and that was our -- that's the sort of first steps as an initial response, but first steps and a plan have to be flexible and adjust to changing situations and if we identify something that's going to better serve the community, to move forward with that and communicate what is the current status, you know, of the plans of those actions.
Q: Is AIRBNB aware that it's fraud to make false representations to consumers about services and products that people -- that companies provide?
MS. TAYLOR: Objection.
Q: Is AIRBNB aware of that?
A: I -- you know, I don't -- I don't think that there's any sort of implication of providing like untruthful information. I think that Mr. Chesky's just trying to lay out a plan of here's some initial first steps, here are things we're going to try and do, and then keeping -- keeping the community updated as we move forward with next steps in improving the platform experience.
Q: That's not the language Mr. Chesky used.
MS. TAYLOR: Counsel, which exhibit is the Chesky --

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Chesky statement you keep referring to?
MS. BARBIER: It's not an Exhibit. She said she was familiar with it after the Halloween shootings.
Q: But you're -- you're creating things that he didn't say. And you've never had a conversation with him about these statements and my question is how do you know what he meant?
MS. TAYLOR: Objection.
A: I mean, I don't think anybody can read anyone's mind, but, I mean, I do work for AIRBNB and I worked for AIRBNB then and I was familiar with the objectives in response to the October 2019 incident, the objectives that were communicated to me and my team, and the continuing commitment to improving the platform experience not just only in response to the October of 2019 incident, but just generally as an objective for the users in our communities.
Q: How many conversations have you had with Mr. Chesky over the time period you worked at AIRBNB?
MS. TAYLOR: Objection.
A: I don't -- I don't know how many conversations.

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More than -- more than two.
Q: More than five?
MS. TAYLOR: Objection.
A: I don't know. I don't recall. I've been here for quite a long time and, honestly, I'm not sure.
Q: Well, how often do you see him?
MS. TAYLOR: Objection; scope.
A: I don't see him often.
Q: And the conversations you've had with him, how long did they last?
MS. TAYLOR: Objection; scope.
A: I -- I don't remember.
Q: Have you ever discussed the Halloween shooting incident with him?
MS. TAYLOR: Objection; well beyond the scope.
A: No.
Q: Okay. Now, you testified previously that you're not aware of any reviews that guests write on the platform being modified, is that correct?
A: I advised that I wasn't -- I think that the conversation we were having was if negative reviews are modified, and I explained that just a review just being a negative review isn't --

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isn't grounds to make any changes to it or to remove it.
Q: What does AIRBNB consider a retaliatory review?
MS. TAYLOR: Objection.
A: So, again, every sort of situation is different and it's reviewed in the context of the situation but, you know, if -- if a user tells another user that, you know, that they are going to intentionally write a negative review because, you know, in order to harm that user and that it is not necessarily reflective of actual experience in a listing, that may constitute a retaliatory review. But, again, every situation is -- is reviewed in the context of the unique circumstances around it.
Q: You testified previously on Topic number 10 regarding the Safety Team and the training they received, do you recall that?
MS. TAYLOR: Objection.
A: Was that just a little while earlier today? I recall that.
Q: Okay. And you also testified -- I've asked you some other questions about it, are you familiar with a twelve-week training program that the Safety Team goes through?

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A: I don't know if I'm familiar with it being called a twelve-week program, but I know that there is a training -- a training program for new members of the Safety Team.
Q: How long does it last?
A: I think as I said before I'm not sure how long it lasts.
Q: Well, what is the agenda or the itinerary in it? What are the topics of training?
MS. TAYLOR: Objection.
A: The training would cover any -- any matters that would fall within the scope of safety handling. So, any of the community policies that are enforced by safety.
Q: And who teaches it?
MS. TAYLOR: Objection.
A: There's a training team that conducts training for user facing teams.
Q: Does AIRBNB have a database of banned or suspended hosts?
MS. TAYLOR: Objection.
A: I don't know if they're -- I don't think it's something you would call a database. If a user's account has been removed from the platform or otherwise suspended, that status,

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you know, would be --- would be noted as part of their account, but I don't think that there's -- there isn't just sort of like a repository of -- place where those accounts go.
Q: Well, how many hosts have been banned to date for violating AIRBNB's camera policy?
A: I -- I don't know how many.
Q: Well, are you familiar with AIRBNB banning users for violating the company's party rules?
MS. TAYLOR: Objection; scope.
A: I know that there is a party and events policy and violation of that policy may result in a user being removed from the platform.
Q: And are you aware that AIRBNB has said they banned 6,000 people -- 6,600 people for violating the company's party rules?
MS. TAYLOR: Objection; this is well beyond the scope.
A: I mean, I'm not familiar with that statement, but, again, I know that there is a community policy regarding parties and events and violation of that policy can -- can result in removal of your account.
Q: Well, my question is why would AIRBNB know how many people have been banned for having

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parties, but not know how many people have been banned for having hidden cameras?
MS. TAYLOR: Objection.
A: I think that -- again, I'm not familiar with that statement. It's possible that there was some sort of specific action being taken that involved like calculating a number, but I'm not -- again, this is something that if a user has a restriction placed on their account, that would be reflected on their account, but it doesn't mean that the account is, you know, going anywhere. The account still is in its same electronic state, just with a -- with restrictions in place to prevent the user from using that account.
Q: So, if AIRBNB terminates a host for having a hidden camera in their property, do they share that information with other short-term rental providers like VRBO?
MS. TAYLOR: Objection.
A: I -- I'm not familiar with sharing that information regarding enforcement of the surveillance device and -- or, excuse me, security camera and recording device policy.
Q: Okay. But are you aware of a policy to share

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information about who had a party at the house with VRBO?
MS. TAYLOR: Objection; scope. This is well beyond the scope of the topics.
A: I mean, I'm familiar with language that AIRBNB wants to communicate with other -- with other platforms when there is a problematic host who is, you know, violating the party and events policy and creating a community disturbance.
Q: Is there a similar policy for people who are secretly recording people having sex and undressing in their properties?
MS. TAYLOR: Objection; scope.
A: I'm not aware of that.
Q: So, it's concerning to AIRBNB that a guest may have a party in a house, but they're not concerned enough to share information related to somebody being a voyeur -- committing voyeurism in the property?
MS. TAYLOR: Objection; form and scope.
Q: I think that these are kind of two different situations. You know, whereas AIRBNB may have a user who is allowing, you know, large events that create a community disturbance to take place at their property, you know, those --

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those are things that, you know, if an individual is committing across multiple platforms, and those platforms are aware, that might be useful to share, but for an individual who is violating a criminal law, which if a user was aware of, you know, they can contact law enforcement, AIRBNB would make themselves available to law enforcement and I -- you know, I would hope another platform would, as well, so that law enforcement can carry out any actions that they need to within the scope of that particular issue whereas, you know, law enforcement isn't really necessarily always involved in like a community disturbance issue. Again, either way, though, in either context, AIRBNB can carry out enforcement on its platform and it certainly would carry out enforcement on its platform.
Q: Well, that's not my question. My question is does AIRBNB feel that information that somebody is committing a crime in one of the properties by committing voyeurism, do they feel that information is important enough to share with other short-term rental companies?
MS. TAYLOR: Objection, this is well beyond the

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scope of any topic.
A: Again, so, AIRBNB is not like a law enforcement organization that can conduct a -- you know, like a forensic examination of -- of a device or images on a device. All AIRBNB can do is support a user who is reporting a potential violation, carry out enforcement on its platform, and be available to assist law enforcement if that individual pursues contacting law enforcement.
Q: Okay. Are you familiar with AIRBNB's winter release program?
MS. TAYLOR: Objection.
A: I -- I'm not sure exactly what you're talking about. Can you give a little bit more ---
Q: It's called AIRBNB set up. It's a new program. Are you familiar with it?
MS. TAYLOR: Objection; scope.
A: I don't know if I recall the particular language, but I -- it just might be something I am not remembering off the top of my head.
Q: This goes with Topic number 6. It says in this program new homes on AIRBNB are getting booked almost immediately. It's a super -- all new super easy way to AIRBNB a home. They're

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activated and receive their first reservation within three days. Are you familiar with that program?
MS. TAYLOR: Objection. It's still objection to scope and that -- reading the topic.
MS. BARBIER: Objection to speaking objections. You can object to the form and that's it.
MS. TAYLOR: I can also object if it is violating the Court's order about what can be testified to today.
MS. BARBIER: This is Topic number 6.
MS. TAYLOR: I was saying Topic number 6 is about background checks and so ---
MS. BARBIER: That's correct. And this is related to background checks.
Q: I want to know how you do perform these checks in this new program. Can you explain, Ms. Chauvet?
MS. TAYLOR: Same objection.
A: So, again, I think what you're -- I think what you're referring to -- what you're describing is improvements in the process to list a property on AIRBNB. With that said, any changes to, you know, kind of how users and our user interface looks or what field a host fills

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out or kind of how many mouse clicks are required to list a property wouldn't change the account activity triggers through which a background check might occur. The same user activity that would trigger a background check would still be in place.
Q: Okay. So, what -- what steps are taken by AIRBNB in this new program to vet the people who create these accounts and are getting their houses booked immediately?
MS. TAYLOR: Objection.
A: Again, there's, you know, for a regular, you know, marketplace listing, a user would just create an account, agree to the terms of service. The activity on that account may trigger ver- -- an identity verification process or background review, and the only -- I think the only change would be sort of the user's experience in actually creating their listing page and that, you know, it's more user-friendly and maybe intuitive in terms of the flow. But in terms of the processes involved in identity verification or background check, the activity triggers wouldn't change -- nothing would be changing there.

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Q: So, is it your testimony under oath that AIRBNB is verifying the identity and performing background checks of all of the people who sign up for AIRBNB set up and have a reservation booked within three days?
A: My under- ---
MS. TAYLOR: Objection. Was there -- was that a question? I didn't ---
MS. BARBIER: Yeah. I'm asking her.
Q: Are these people who are participating in this new program to get their property booked immediately, are they being -- are they getting background checks and is their identity being verified?
MS. TAYLOR: Objection.
A: So, again, I think that with -- with an improved listing creation process, it isn't -- you know, that's -- that isn't necessarily going to guarantee a specific time or speed at which they will begin accepting reservations. You know, if a user -- if a user's account -- if a user like in operating their account activity triggers a background check, an automated background check will still be performed by the third-party vendor just as it

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would with previous iterations of the user experience when creating a listing. If they're prompted to complete identity verification, they'll still be prompted to complete identity verification in the same way. This is intended to create, again, a more easy and user-friendly intuitive process for creating a listing on an account, not how the platform operates generally.
Q: It's supposed to make it faster for somebody to get an AIRBNB listing up and get the reservation booked, correct?
MS. TAYLOR: Objection.
A: I think it's just -- it's meant to -- I mean, ultimately how long it takes you to create your listing I think is probably based on, you know, how long it takes you to, you know, prepare your content. So, it'll still be different for -- for each person, but the actual interface is just a little bit smoother and it's -- you know, it's a little less cumbersome or easier to see or just sort of easier to understand, you know, what step they're on and how many steps might be next. At that point, too, it's -- again, it's still not a guarantee of the

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speed at which they'll begin accepting reservations. They'll still need to set their calendar availability; they'll still need to activate their listing, which they might not be ready to do right away. It's just meant to be, again, just sort of an easier -- an easier to understand interface.
Q: You testified previously about Tara Bunch, do you recall that?
A: I recall we talked about Tara Bunch earlier today.
Q: And you indicated that she was a -- she's in charge of the Safety and Trust Team, is that right?
A: My understanding is that she oversees the Community Support Team. I don't know that she oversees Trust.
Q: Okay. And is she on AIRBNB's executive team?
A: I know that she's a senior officer in the company. I'm not sure if she's considered an executive officer.
Q: Do you know if she's at the top of AIRBNB's corporate hierarchy?
A: I know that -- I believe she reports to Ryan Chesky. I'm not exactly sure, you know, kind

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of -- if she's considered executive or not. I know she -- again, she's a chief -- she's a -- she's a senior officer within the company.
Q: Do you know why if she's a senior officer on the executive team, she's not listed in AIRBNB's SEC filings?
MS. TAYLOR: Objection.
A: No, I don't -- I don't know why she would or wouldn't be. I know she's been at the company for a couple years now. I believe her position, you know, may have -- she may have altered her position a little bit or sort of increased in seniority. I couldn't tell you why she is not listed in an SEC document.
Q: Do you know what AIRBNB's requirements are that they have to disclose certain things in their SEC filings?
MS. TAYLOR: Objection; scope.
A: I know that there are some dis- -- I know that there are generally disclosure requirements. I don't know what the specifics are.
Q: Okay. And you don't know why Ms. Bunch isn't listed as a senior executive?
MS. TAYLOR: Objection.
A: No.

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Q: But do you know whether she is?
MS. TAYLOR: Objection.
A: Again, I think she's definitely a senior officer within the company. I don't know if she's considered an executive officer.
Q: Who would know?
MS. TAYLOR: Objection.
A: I mean, I'm -- I'm not sure who would know. I mean, yeah, I'm -- again, I don't know exactly, you know, kind of in the hierarchy of very senior -- senior roles within the company, you know, if she is higher than one person or another or kind of at the same level.
Q: Who are the people at AIRBNB who have knowledge of AIRBNB's attempts to comply with South Carolina real estate laws?
MS. TAYLOR: Objection.
Q: What are their names?
MS. TAYLOR: Objection.
A: I'm -- again, I'm not aware of somebody who is -- whose role involves attempting to comply with the South Carolina real estate laws.
Q: Okay. Would you -- I mean, would you know if there were somebody?
MS. TAYLOR: Objection.

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A: I mean, I'm not aware of somebody. If I -- there's a -- there's a lot of people at the company I couldn't tell you what every single person's employee does, but I'm not aware of anybody who's -- who's role is encompassed -- whose role encompasses that function.
Q: Okay. And who would be -- what are the names of the people at AIRBNB who would have the most knowledge of incidents involving hidden cameras in AIRBNB -- in properties that are being rented out through AIRBNB?
A: I -- I mean, I expect that that would be the people who are responding directly to those -- to contact from users. That would just be the Safety Team generally. Those are the people who are interacting with users on a day-to-day basis and carrying out enforcement under the policy.
Q: And who are the people -- who's the head of the Safety Team?
A: The Saf- -- let's see. I mean, I think there's like a sort of regional structure that is within the greater customer support hier- -- like a role -- like the umbrella of customer support, so I think it might be like multiple

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people who are working together across multiple regions.
Q: What are their names?
MS. TAYLOR: Objection.
A: Let me think. I know that there are a couple of regions that are just -- that are sort of, you know, in flux. In -- let's see, in North America, that would be not even necessarily North America, but for the -- one -- one or more of the teams covering North America hours, I believe that would be Zara Stephens, but it's possible that she is more regionally located.
Q: I'm sorry; say her name again.
A: Zara Stephens.
Q: Zara Stephens and what's her title?
A: I believe that she is a regional operations manager.
Q: Where is she located?
A: I'm not sure. I know she oversees a team based in Canada, but I'm not sure if she's currently operating in the United States or if she is in Canada.
Q: Well, would somebody with her title who resides in Canada be in charge or oversee the team in the United States, issues involving hidden

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cameras?
MS. TAYLOR: Objection.
A: They would work with members who are -- who reside in the United States, but the North America hub for safety is based in Canada.
Q: So that's over all of North America, correct?
MS. TAYLOR: Objection.
A: I mean, for -- in order to have, you know, 24-hour support for issues, these are shared across multiple regions, but that region is based in North America and obviously during North American hour- -- like operating hours, they would be responding directly to those -- you know, to any issues within the scope of safety.
Q: Is there a separate entity called AIRBNB Canada?
MS. TAYLOR: Objection.
A: I don't recall there's an entity called AIRBNB Canada or if that -- if that is referencing AIRBNB Ireland.
Q: Is AIRBNB Ireland the only separate entity that you're aware of from AIRBNB?
MS. TAYLOR: Objection; scope.
A: I know that there are other -- other entities

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other than AIRBNB, Inc. and AIRBNB Ireland. For example, AIRBNB Payments.
Q: Is there an AIRBNB Canada?
MS. TAYLOR: Objection.
A: I don't recall if there's an AIRBNB Canada.
Q: But Ms. Stephens resides in Canada but is over the -- the Safety Team in the United States, is that right?
MS. TAYLOR: Objection.
A: No, the team is based in Canada. I'm not sure, again, because we have a policy of, you know, being able to choose to work remotely, if she resides in the United States or if she resides in Canada. I know she had previously resided in the United States.
Q: But her job entails things that happen in the United States, is that correct?
MS. TAYLOR: Objection.
A: Her job entails things that are handled by the safety department generally. So, whether that is an issue in the United States or an issue somewhere else, if it is within the scope of safety handling, that would be associated with her role.
Q: Okay. I just need to take a short break and

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then I might be finished.
MS. TAYLOR: Okay.
MS. BARBIER: Okay. So, let's take five minutes, if you will.
(A break was taken from 4:55 p.m. until 5:00 p.m.)
Q: Ms. Chauvet, if you could direct your attention to Exhibit 13.
(Plaintiff's Exhibit Number 13 was referenced at this time.)
A: All right. Okay.
Q: Can you tell me what this document is?
A: Yes. So, this is a document, it's a business record that shows the amenities that were specified for Katherine Thomas' listing on two different dates. The amenities are referenced as like a numerical value, so this document also includes the actual, like, amenity that is associated with each of the numerical values.
Q: So, are these amenities that Ms. Thomas represented existed at one of her rental properties or all of her rental properties or what?
A: These would have been amenities that were specified by Ms. Thomas at a specific property, the property with property ID 31993856.

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Q: And does AIRBNB have this listing of amenities for each of the properties that Ms. Thomas and Mr. Riviere are hosting?
A: My understanding is that this -- this is sort of the format of the business record that would, you know, represent the amenities at other properties, as well. This is representive (sic) of a specific property.
Q: Well, I mean, are you saying that Ms. Thomas represented, like, if I'm looking at AIRBNB 79, which is like the third or fourth page -- I guess it's the fourth page, it says -- no, I'm sorry, the fifth page, it says amenity 383 then has beach club, beach house, beach towels. I mean, is she saying that it has beach -- it's a beach house?
A: I think I'm not understanding. Are you asking if that's one of the amenities she said she has?
Q: Yeah.
A: No, so, at the -- on the first page of Exhibit 13 at the top of the page, it show -- it has three columns, listing ID, DS, and amenity. And then the second and third rows it contains values for one specific listing, which is

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referenced by listing ID, and two dates that are reflected by that. One of the dates reflects the listing -- the amenities headings on April 12, 2019, and the other date reflects the listing amenity settings on May 17, 2019.
Q: So, the numbers in the far right corner underneath amenity, next to those two dates, are the amenities she represented that she had?
A: Yes.
Q: Okay. And I notice she did not put in those amenities that she had security cameras, which is number 544, is that right?
A: That is -- 544 is security system. I don't know if that encompasses security camera, but I don't believe -- let's see. I don't believe any of the values listed for this listing include security camera.
Q: Is security camera an option?
A: I am double-checking if it's an option on this list. I know it is definitely a specification on the listing page. I'm just running through these really quickly.
MS. TAYLOR: Ms. Barbier, I found the page if it's helpful. I can -- I can ...
MS. BARBIER: I see 229 security camera.

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MS. TAYLOR: Yeah.
A: You two are a little faster at this than I am.
MS. TAYLOR: I mean, it's your show, but, you know.
A: Yes, there it is. I see here.
Q: Okay. So, it doesn't say that, does it?
A: It does not have 229 specified for this listing, no.
Q: Okay. Now, I want to make sure that I give you an opportunity to give me any more information. I know that you said that you did some additional preparation since October 26 of 2022. And if there's anything that I haven't asked you about that you did additionally find out or prepare for, please let me know, because we are going to be moving for sanctions and, you know, a part of the reason we're going to move for sanctions is because we don't believe you were adequately prepared and we don't believe you had -- you responded to many of the questions. So, if there's additional information that you did prepare for that I haven't asked you about, please let me know. Is there any?
MS. TAYLOR: There was a lot in there, but I'm going to make an -- objection.

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A: I mean, I think that we've discussed a lot of -- a lot of the information that I -- that I met with other teams about. I'm trying to think if there's anything we haven't discussed.
Q: Like, let me ask you this, for example, when you met with the Trust Team, what additional information did you find out?
A: In meeting with the Trust Team, we discussed information about the sources that are utilized by Inflection, the, you know, the -- both the nationwide -- sort of at a nationwide, statewide, and then local county level. The sorts of information that would be -- that would be available to report from those sources and just sort of the -- the requirements of those sources and that they -- you know, they need to comply by the Fair Credit Reporting Act.
Q: Do you mean what Inflections -- what databases they're using to prepare your background checks?
A: You know, sort of -- yeah, what generally -- you know, what is a -- what is like a sort of representative list of sources utilized by Inflection at different -- at different levels,

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national, state, county level, and what kinds of information those sources would be able to provide.
Q: Well, what are those sources?
A: So, again, these are -- there's some national level ones, for example, like the National Sex Offender Registry, and then at a state level, there's -- any state that has an available state sex offender registry. There are corrections departments agencies which can report on things like currently incarcerated individuals, individuals with a history of incarceration. There are county parts which can report on various criminal convictions and those are all sorts of levels of county report ranging from like a traffic -- like a traffic conviction or a traffic infraction to different -- different criminal -- criminal conviction histories. And I believe, like, also, like, parole reporting agencies, sort of the volume per state, you know, like that you can be, like, you know, 100 or more different sources for an individual state and that those are run for, you know, multiple states for each background check process.

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Q: Okay. Did you discuss any other issues with Mr. Johnston of the Trust Team?
A: No, that was pretty much the focus of our conversation, basically, you know, the requirement for the sources, how many source-- you know, kind of, like, what is a representative state breakdown in terms of volume of sources, types of sources.
Q: Okay. What about with Ms. Lai on the Luxe Team, what -- what issues did you discuss with her?
A: With her I discussed the onboarding of new properties and what the -- the walk-through process looks like for those properties and reviewing sort of the property amenities, kind of, you know, what sorts of things are looked at in the walk-through and who performs that.
Q: What walk-through are you referring to?
A: So, for -- for Luxe properties, these undergo a walk-through by a third-party, it's somebody typically with a hospitality background or customer support background, who is verifying sort of the elevated elements associated with a Luxe property, to be things like matching dishes, design, comfort level, you know, types

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of bedding, that sort of thing, to confirm that the property is consistent with the Luxe brand.
Q: And in that inspection of the Luxe properties, is there any inspection for hidden cameras?
A: No.
Q: So, there are properties that are inspected, Luxe properties, but AIRBNB does nothing to determine whether there are hidden cameras at that time?
MS. TAYLOR: Objection.
A: To be clear, these aren't -- it's not like an inspection. You know, we're not looking for violations. These are third-parties, again, people with a hospitality background who are familiar with providing like, you know, a very comfortable recreational environment who are looking at properties to -- to confirm that the properties meet a certain elevated standard of amenity and comfort for guests. Again, this isn't sort of a compliance or -- or like a technical inspection process. It's like a walk-through with somebody with a clipboard who's, you know, just trying to evaluate the overall -- the overall quality of the amenities and the amenities on offer.

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Q: If someone's going to walk-through the property, why wouldn't you have them look for hidden cameras?
A: So, again, this isn't somebody who's looking for -- this isn't like a safety focus or a security focus process, this is -- this is a walk-through to confirm that these properties are, you know, kind of meeting the expectation of guests who are going to be paying, you know, more money than they would for another type of listing. These aren't technically trained or experienced individuals. These are people who are familiar with identifying, you know, quality features.
Q: So, even though safety is AIRBNB's number one priority, they can't ask an inspector to check for hidden cameras?
MS. TAYLOR: Objection.
A: Safety is -- is a top priority, but these aren't -- these aren't inspectors. These aren't even -- you know, these aren't homeowners inspectors or, you know, special technicians or anything like that. These are people who are just verifying that, you know, a property would meet the expectations of

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somebody paying, you know, a fairly large amount of money for a very comfortable and eas-- -- you know, accessible and amenable experience.
Q: So, you sat down with the Plus Team, as well, and what topics did you discuss with them? What new information did you get?
A: We discussed sort of what the process looks like to onboard a Plus property and the walk-through process performed by photographers for Plus properties.
Q: Okay. And so for Plus properties, you have photographers going through the properties?
A: Yes, third-party photographers who are -- they've been selected for, you know, their photography skills do a walk-through to identify design elements and comfort and provide -- provide the, like, walk-through service to confirm that, again, a listing is sort of consistent with the Plus brand.
Q: So, when AIRBNB has these people walking through the Plus properties, do they ask them to look for hidden cameras?
A: No.
Q: Why not?

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A: Again, these aren't, you know, like technicians or people profession -- performing, like, some sort of forensic inspection, these are photographers who are verifying, you know, the sort of quality level of a listing and providing, you know, a photography service to -- to highlight the unique design elements of that space.
Q: Does AIRBNB consider a quality listing to be a listing that would safeguard somebody's privacy?
MS. TAYLOR: Objection.
A: I mean, I think that sort of the -- the respect of an individual's privacy is an essential element for any listing regardless of whether it's part of the Luxe or Plus brand.
Q: Right, but if you were going to send somebody through the properties, why wouldn't you ask them to look for hidden cameras?
MS. TAYLOR: Objection.
Q: Again, that's -- this isn't sort of a -- you know, a security focused technical inspection. You know, this is a, you know, a sort of design and function where, you know, sort of observation process and additionally, like, if

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a camera is hidden, I'm not sure that even -- even if you were performing sort of a more technical inspection, which these definitely are not, I think something if its design intended to be obscured, it's not something that anybody would be able to observe easily or readily.
Q: You're aware they have apps that you can get on your phone that can detect hidden cameras, right?
MS. TAYLOR: Objection.
A: No, I'm not aware of any. I'm not aware of any apps that do something like that.
Q: And AIRBNB hasn't availed itself to inquire about those types of services or those apps that you can -- are readily accessible to people?
MS. TAYLOR: Objection.
A: Again, I'm not aware of something that would provide a -- you know, that sort of, you know, reliable function. Again, that's not something I'm aware of that AIRBNB would want to look into.
Q: Okay.
A: (Technical break in audio) something that is

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reliably out there.
Q: What makes you think it's not reliable?
MS. TAYLOR: Objection.
A: I think that there's a lot of apps that will for a nominal fee sell people a lot of things. I'm not aware of anything that is, you know, considered an industry standard or a best practice that can be downloaded as an app.
Q: And make sure we're talking about the same thing, about an app that could detect a hidden camera, you're not aware of any that are reliable?
MS. TAYLOR: Objection.
A: No, I'm not.
Q: Okay. Have you heard any discussion at AIRBNB about informing their guests that these things are available?
MS. TAYLOR: Objection.
A: I'm not aware of any discussion.
Q: Okay. You also met with the Data Science Team, with Ms. Kim, and what information -- additional information did you get from her?
A: Ms. Kim gave me information about how -- how different types of customers' contact tickets are categorized and how to identify, you know

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-- and the number of total tickets, contact tickets, associated with, in this case, the category of handling under the security camera recording devices policy.
Q: Right. So, is she the one who informed you that there were 35,000 customer service tickets that fell within the description of surveillance device issues?
A: Yes.
Q: Okay. And how long did you meet with her for?
A: I don't remember how long.
Q: Okay. Did Ms. Kim review any of those contact tickets?
A: I -- I don't know if -- it wasn't -- that wasn't something we discussed.
Q: She -- did she prepare that information for you or did you get that infor- -- did you ask her to do it before you met with her?
MS. TAYLOR: Objection.
A: We met and I asked her to give me some information about how tickets are categorized and -- and how many tickets would be in the category under the security camera and recording devices policy.
Q: And how long did it take her to get you the

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answer to that question?
MS. TAYLOR: Objection.
A: I -- I don't now how long it took her to find that information, but she was able to give me -- I mean, she was familiar with the ways in which these customer -- the customer support tickets are categorized and the process for -- for identifying how many would meet a certain category.
Q: Right, so how long did it take her to tell you that there were 35,000 in that category?
MS. TAYLOR: Objection.
A: Again, I'm not sure. I know that there's -- you know, this is part of a -- you know, as I explained earlier, a command that's written and then I don't know if I was processing what we were talking about kind of generally how they're categorized or if she had that -- you know, like, if she was able to do that quickly. I know that we had a conversation about, you know, the structure of how the -- how the tickets are categorized and how -- how she would be identifying, like, the total number of tickets, like, the actual actions to perform that.

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Q: Did she perform that search for you in the meeting or did she come to the meeting with that information in hand?
MS. TAYLOR: Objection.
A: We didn't meet in person. We met electronically. I couldn't see -- you know, I know that we were -- we were talking and she was either writing or referencing notes. I don't know.
Q: Well, did you talk to her before your meeting -- I mean, your communication with her?
A: No.
Q: Okay. So, did she give you that number while you were -- were you on a Zoom call, a phone, or what?
A: Yes, we were on a Zoom call.
Q: Okay. And did -- while you were on the Zoom call, did she give you that number?
A: Yes.
Q: Okay. So, it didn't take her days to figure it out, did it?
A: I'm assuming it didn't take her days. Like I said, we discussed it. She was referencing, you know, things that she had and was, you know, writing down at the time, so I don't know

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how long it took her to figure it out.
Q: But within the course of your meeting with her, she was able to give you that number?
A: Yes.
MS. TAYLOR: Objection.
Q: And approximately how long was your meeting?
MS. TAYLOR: Objection.
A: I don't remember how long it was. I'm sorry.
Q: Do you have a calendar where you wrote it down, what time you blocked off for it?
MS. TAYLOR: Objection.
A: I mean, I remember we met in the afternoon, but I don't -- I don't know if we -- like the -- if we went longer than the block of time or -- you know, again, this was -- this was a few weeks ago, so I'm -- I'm not sure.
Q: Did it take her less than an hour?
MS. TAYLOR: Objection.
A: I don't -- again, I don't recall the total time. I think it would have -- it may have been close to an hour. I can't remember.
Q: Did it take her less than three hours? Two hours?
MS. TAYLOR: Objection.
A: Again, I -- I don't -- I don't know how long it

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took her to perform her -- to perform the work to give -- to arrive at that number.
Q: But you would agree with me that's something that you could have easily discovered and found out before your first deposition, correct?
MS. TAYLOR: Objection.
A: Well, again, Ms. Kim's on a -- the Data Science Team. She -- you know, she's training in that area and is prepared to write, you know, some of these more complex complicated, you know, programming commands to actually access that data. That's not something I could have easily or readily done with the confidence to confirm a number.
Q: You could have asked her prior to your first deposition, correct?
MS. TAYLOR: Objection.
A: I mean, I -- I don't know, you know, again, what the availability for data science department's going to be like before the first deposition.
Q: Why didn't you ask her?
MS. TAYLOR: Objection.
A: Again, I -- I don't know what kind of data science support would have actually been

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available. I don't know how long this took her to prepare or to write.
Q: Is it you don't know because you didn't ask, right?
MS. TAYLOR: Objection.
A: I mean, I don't -- I don't know how long it took her for -- before this particular meeting.
Q: Okay. Let me ask you this with Mr. Baer, the chief legal officer, how often do you see him?
MS. TAYLOR: Objection; scope.
A: I mean, I would say maybe not -- I mean maybe very infrequently in-person, not particularly frequently in meetings.
Q: Well, I mean, in San Francisco, in your -- how far is your office from his office?
MS. TAYLOR: Objection.
A: I -- well, I don't work in San Francisco. And I -- you know, a lot of -- a lot of people work remotely, so there's -- there is a San Fran- -- a San Francisco office for employees. I don't know how often he -- he chooses to work there.
Q: But your understanding is that's where he's based?
A: That's -- that's my understanding of, like, where his -- his, you know, role is described

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as being based, yeah.
Q: Okay. I don't have any other questions. Thank you.
MS. BARBIER: I don't know if Mr. -- well, Mr. Wlodarczyk is not -- is not still on the line, so I'm assuming he doesn't.
MS. TAYLOR: That would probably be a good indication.
MS. BARBIER: Yeah. All right. Well, thank you for your time today and I'm sure we'll be in touch.
MS. TAYLOR: Thank you, Madam Court Reporter.
(Off the record.)
MS. TAYLOR: I just want to make sure that I -- we reserve our right to review the transcript to make any corrections. That's all. Thank you.
(There being no further questions, the deposition concluded at 5:28 p.m.)

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\STATE OF SOUTH CAROLINA COUNTY OF AIKEN	IN THE COURT OF COMMON PLEAS SECOND JUDICIAL CIRCUIT CASE NO.: 2021-CP-02-00889
JULIANNE FOSTER, Plaintiff, v. RHETT RIVIERE, KATHERINE A. THOMAS, CHASE ENTERPRISES, LLC OF SOUTH CAROLINA, and AIRBNB, INC., Defendants.	**AIRBNB, INC.'S RESPONSES TO PLAINTIFF'S AMENDED SECOND SET OF REQUESTS FOR PRODUCTION 16-44**

COMES NOW the Defendant, Airbnb, Inc., pursuant to the South Carolina Rules of Civil Procedure and applicable law, and responds to Plaintiff's Amended Second Set of Requests for Production to Defendant Airbnb, Inc. No.'s 16-44 as follows:

GENERAL OBJECTIONS

Airbnb objects to the document requests from Plaintiff to the extent they are not reasonably calculated to lead to the discovery of admissible evidence; to the extent they seek any proprietary, confidential or sensitive corporate information of Airbnb (such documents will be labeled "CONFIDENTIAL" per the Court's September 16, 2021 Protective Order in this action); to the extent they seek work product prepared in anticipation of litigation or attorney-client privileged communications; to the extent they seek private personal information about non-parties to this action without their consent; and to the extent the requests are vague, ambiguous, and unduly burdensome, including by purporting to impose obligations upon Airbnb to create new records or search or compile records beyond those for the subject dispute. Airbnb also objects because the Requests are not limited in time and are thus overbroad, unduly burdensome, and not

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reasonably calculated to lead to the discovery of admissible evidence; Airbnb will not produce documents created after the filing of the complaint. To the extent these Requests overlap with the topics proposed in Plaintiff's Rule 30(b)(6) deposition notice, Airbnb incorporates by reference the objections raised in its Motion for a Protective Order, the corresponding Memorandum of Law filed in support, and the oral argument on the motion. By agreeing to produce any documents in response to these Requests, Airbnb does not concede that it has any obligation to make available a corporate witness to give any testimony on a corresponding topic is appropriate. Similarly, if Airbnb agrees to make a corporate representative available to respond to, Airbnb does not concede that it has any obligation to produce documents on any related request for production.

Airbnb further objects to the extent the requests mischaracterize Airbnb's business. Airbnb provides an online marketplace that connects third-parties who wish to offer their unique accommodations (called "Hosts") with third-party travelers seeking to book accommodations (called "Guests"). Airbnb does not own, control or have the right to access the properties Hosts list on its platform. In this matter, the Host was Defendant Katherine Thomas, and the Guest who booked the Host's rental property was non-party Michelle Jain.

RESPONSES AND OBJECTIONS

16. All documents reflecting the organizational, leadership and management structure of AIRBNB during the time period of January 1, 2019 through the present.

RESPONSE: Airbnb objects to this Request for the reasons stated in its general objections, which it incorporates by reference here. Airbnb also objects to this Request on the grounds that it is overbroad, unduly burdensome, not

proportionate to the needs of the case, and compound. Some or all of this information is publicly available in Airbnb's public filings. Airbnb objects to this Request to the extent it seeks information protected by the attorney-client privilege and/or work product doctrine, or other applicable privileges. In addition, Airbnb objects to this Request as not likely to lead to evidence that is related to a claim or defense of any party in this case. Airbnb's organizational, leadership, or management structure has nothing to do with Plaintiff's claims.

17. All non-privileged information of AIRBNB regarding the factual allegations in the case of Foster v. Riviere, et al – 2021-CP-02-00889.

RESPONSE: Airbnb objects to this Request for the reasons stated in its general objections, which it incorporates by reference here. Airbnb also objects to this Request as vague and ambiguous; it does not understand what constitute the "factual allegations" here. Airbnb also objects to this Request as overbroad, unduly burdensome, and not proportionate to the needs of the case. In addition, Airbnb objects to this Request to the extent it seeks information protected by the attorney-client privilege and/or work product doctrine, or information protected by the Stored Communications Act or other applicable laws or doctrine.

Subject to the foregoing objections, Airbnb will produce responsive, non-privileged documents created before May 2019 concerning video cameras at the property that is the subject of this litigation, and any policy governing the use of video cameras by hosts that was in effect in May 2019 it identifies in a reasonably diligent search. It will also search for and produce any Airbnb background check policies effective between the summer of 2016 and May 2019 it identifies in a

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reasonably diligent search. Unless specifically requested, Airbnb is not re-producing any documents produced by other Parties during the litigation.

18. All agreements and/or contracts between Rhett Riviere, Chase Enterprises, LLC of South Carolina, and/or Katherine Thomas with AIRBNB.

RESPONSE: Airbnb objects to this Request for the reasons stated in its general objections, which it incorporates by reference here. In addition, Airbnb objects to this Request to the extent it seeks information protected by the attorney-client privilege and/or work product doctrine, or other applicable privileges. Airbnb also objects to this Request as overbroad, unduly burdensome, and not proportionate to the needs of the case to the extent it sweeps in agreements or contracts not involving Airbnb and to the extent it addresses agreements and/or contracts that were not in effect during the events of May 17 and 18, 2019, that form the basis of Plaintiff's claims. None of that information is related to a claim or defense of any party in this case.

Subject to the foregoing objections, Airbnb responds as follows: Airbnb already produced in April the Terms of Service to which Katherine Thomas agreed. Airbnb will produce the Terms of Service to which Rhett Riviere agreed. Airbnb is not re-producing any documents previously produced by any party during the litigation.

19. All records, reports, documents, correspondence, handwritten notes or otherwise, materials of any kind that concern, reference or relate to any of the following: Rhett Riviere, Chase Enterprises, LLC of South Carolina, Katherine Thomas and/or Julianne Foster.

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RESPONSE: Airbnb objects to this Request for the reasons stated in its general objections, which it incorporates by reference here. In addition, Airbnb objects to this Request to the extent it seeks information protected by the attorney-client privilege and/or work product doctrine, or information protected by the Stored Communications Act or other applicable laws or doctrine. Airbnb objects to this Request as overbroad, unduly burdensome, and not proportionate to the needs of the case. Nor are "[a]ll" such documents, no matter the author or subject, relevant to the specific claim or defense the parties have raised in this case. Finally, Airbnb objects to the undefined phrase "concern, reference or relate" as vague and ambiguous.

Subject to the foregoing objections, Airbnb responds as follows: Airbnb already produced in April user information from Thomas' Airbnb account. It produced on July 6 a copy of the screen that Airbnb used to request information from users on July 17, 2016, as captured by the Wayback Machine. Thomas signed up using the "continue with Facebook" option, and therefore Airbnb did not request additional information from her through the sign-up screen. Additionally, Airbnb produced on July 6 a copy of (i) the information Thomas provided during account registration; (ii) the information Thomas provided in creating and managing her listings; (iii) communications between community support agents at partner organizations and Thomas through May 2019; and (iv) a list of Thomas' reservations through May 2019 and associated payment data. After a reasonable search, Airbnb has not located other relevant records regarding Thomas.

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Airbnb will search for and produce any (i) copies of any sign-up screen Riviere used to create an Airbnb account; and (ii) the information Riviere provided during account registration that Airbnb can locate after a reasonable search. After a reasonable search, Airbnb has not located other relevant, responsive records regarding Riviere.

After a reasonable search, Airbnb has not identified any responsive documents regarding Chase Enterprises or Julianne Foster before May 2019. Airbnb is not re-producing any documents previously produced by any party during the litigation.

20. All documents which describe the process by which AIRBNB's online booking program notifies potential hosts of policies and procedures related to background checks.

RESPONSE: Airbnb objects to this Request for the reasons stated in its general objections, which it incorporates by reference here. Airbnb objects to this Request as seeking information not reasonably calculated to lead to evidence related to the claim or defense of any party in this case. Hosts' knowledge of policies and procedures related to background checks are irrelevant to Plaintiff's claims, which relate to the sufficiency of the background checks of Ms. Thomas and Mr. Riviere that actually took place. Airbnb also objects to this Request as overbroad, unduly burdensome, and not proportionate to the needs of the case. Airbnb objects to this Request to the extent it seeks information protected by the attorney-client privilege and/or work product doctrine, or other applicable

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privileges. Airbnb also objects to this Request as seeking private information protected by the Stored Communications Act or other applicable statute or regulation to the extent it calls for communications from third parties, or personally identifiable or otherwise sensitive information about third parties.

Subject to the foregoing objections, Airbnb will produce the Airbnb.com webpage that described Airbnb's background check policies and procedures as of the summer of 2016.

21. All documents which describe the process by which AIRBNB checks public state and county criminal records, as well as state and national sex offender registries.

RESPONSE: Airbnb objects to this Request for the reasons stated in its general objections, which it incorporates by reference here. In addition, Airbnb objects to this Request to the extent it seeks information protected by the attorney-client privilege and/or work product doctrine, or other applicable privileges. Airbnb also objects to this Request as overbroad, unduly burdensome, and not proportionate to the needs of the case to the extent it seeks information about specific background checks beyond those of Ms. Thomas and Mr. Riviere. Airbnb also objects to the undefined term "state and national sex offender registries," which is vague and ambiguous.

Subject to the foregoing objections, Airbnb will search for and produce any Airbnb responsive background check policies effective between the summer of 2016 and May 2019 it identifies in a reasonably diligent search. Airbnb is not re-producing any documents previously produced by any party during the litigation.

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22. All documents which describe the process by which AIRBNB processes findings from public state and county criminal records, as well as state and national sex offender registries.

RESPONSE: Airbnb objects to this Request for the reasons stated in its general objections, which it incorporates by reference here. In addition, Airbnb objects to this Request to the extent it seeks information protected by the attorney-client privilege and/or work product doctrine, or other applicable privileges. Airbnb also objects to this Request as overbroad, unduly burdensome, and not proportionate to the needs of the case to the extent it seeks information about specific background checks beyond those of Ms. Thomas and Mr. Riviere or any background checks after May 2019.

Subject to the foregoing objections, Airbnb will search for and produce any responsive Airbnb background check policies effective between the summer of 2016 and May 2019 it identifies in a reasonably diligent search. Airbnb is not re-producing any documents previously produced by any party during the litigation.

23. All documents which describe AIRBNB's policies related to rejecting a host from utilizing AIRBNB's online booking program or guest(s) reservation(s) canceling due to background check findings.

RESPONSE: Airbnb objects to this Request for the reasons stated in its general objections, which it incorporates by reference here. In addition, Airbnb objects to this Request to the extent it seeks information protected by the attorney-client privilege and/or work product doctrine, or other applicable privileges.

Airbnb objects to this Request as overbroad, unduly burdensome, and not proportionate to the needs of the case by seeking "[a]ll" documents about any time a host was denied from using Airbnb's platform due to a background check and without any limitation as to time period. The only specific background checks that are relevant here are those of Ms. Thomas and Mr. Riviere. Airbnb also objects to this Request as seeking information not reasonably calculated to lead to relevant information. Airbnb also objects to the phrase "guest(s) reservation(s) canceling due to background check findings" as vague and ambiguous. Airbnb also objects to this Request as seeking private information protected by the Stored Communications Act or other applicable statute or regulation to the extent it calls for communications from third parties, or personally identifiable or otherwise sensitive information about third parties.

Subject to the foregoing objections, Airbnb will search for and produce any Airbnb background check policies effective between the summer of 2016 and May 2019 it identifies in a reasonably diligent search. Airbnb is not re-producing any documents previously produced by any party during the litigation.

24. All documents which describe any agreement AIRBNB has related to filters for background checks with approved providers (i.e. canvasing public records whereby an arrest took place in addition to any convictions that followed).

<u>RESPONSE</u>: Airbnb objects to this Request for the reasons stated in its general objections, which it incorporates by reference here. In addition, Airbnb objects to this Request to the extent it seeks information protected by the attorney-client privilege and/or work product doctrine, or other applicable privileges.

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Airbnb objects to this Request as overbroad, unduly burdensome, and not proportionate to the needs of the case by seeking "[a]ll" documents Airbnb uses to filter for background checks. Airbnb also objects to this Request as seeking information not reasonably calculated to lead to relevant information. Airbnb also objects to the undefined phrase "filters for background checks" as vague and ambiguous.

Subject to the foregoing objections, Airbnb will produce any Airbnb responsive background check policy effective between the summer of 2016 and May 2019 it identifies in a reasonably diligent search. Airbnb is not re-producing any documents previously produced by any party during the litigation.

25. All documents which describe AIRBNB's policies to execute removals of AIRBNB hosts; reinstatement after removal; criteria for host eligibility; and appeals of hosts after removal.

RESPONSE: Airbnb objects to this Request for the reasons stated in its general objections, which it incorporates by reference here. In addition, Airbnb objects to this Request to the extent it seeks information protected by the attorney-client privilege and/or work product doctrine, or other applicable privileges. Airbnb also objects to this Request as overbroad, unduly burdensome, and not proportionate to the needs of the case by seeking "[a]ll" documents related to any time a host was denied from using Airbnb's platform due to a background check and without any limitation as to time period. The only specific background checks that are relevant here are those of Ms. Thomas and Mr. Riviere. Airbnb also objects to this Request as seeking information not reasonably calculated to lead to relevant

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information. Plaintiff's claims have nothing to do with reinstatements, appeals, or guest background checks. Airbnb also objects to the phrase "AIRBNB's policies to execute removals of AIRBNB hosts; reinstatement after removal; criteria for host eligibility; and appeals of hosts after removal" as unintelligible. Airbnb also objects to this Request as seeking private information protected by the Stored Communications Act or other applicable statute or regulation to the extent it calls for communications from third parties, or personally identifiable or otherwise sensitive information about third parties.

Subject to the foregoing objections, Airbnb will search for and produce any Airbnb responsive background check policies effective between the summer of 2016 and May 2019 it identifies in a reasonably diligent search. Airbnb is not re-producing any documents previously produced by any party during the litigation.

26. All documents that describe to audiences to whom AirCover protection is offered, including the circumstances under which hosts can opt out of AirCover protection.

RESPONSE: Airbnb objects to this Request for the reasons stated in its general objections, which it incorporates by reference here. In addition, Airbnb objects to this Request as seeking information not reasonably calculated to lead to relevant information. Airbnb objects to this Request to the extent it seeks information protected by the attorney-client privilege and/or work product doctrine, or other applicable privileges. Airbnb also objects to this Request as overbroad, unduly burdensome, and not proportionate to the needs of the case by seeking "[a]ll" documents that describe AirCover protection for all audiences. Airbnb also objects to this Request as seeking private information protected by the Stored

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Communications Act or other applicable statute or regulation to the extent it calls for communications from third parties, or personally identifiable or otherwise sensitive information about third parties.

27. All documents related to AIRBNB's governance of their privacy policies as they relate to disclosed or concealed monitoring devices in AIRBNB properties including data supporting removal, reinstatement, and appeals of hosts who violate the policy.

RESPONSE: Airbnb objects to this Request for the reasons stated in its general objections, which it incorporates by reference here. In addition, Airbnb objects to this Request to the extent it seeks information protected by the attorney-client privilege and/or work product doctrine, or other applicable privileges. Airbnb objects to this Request as seeking information not reasonably calculated to lead to relevant information. Airbnb also objects to this Request as overbroad, unduly burdensome, and not proportionate to the needs of the case by seeking "[a]ll" documents—including data—"related" to any governance of privacy policies related to any type of monitoring device. Nor does this case involve any reinstatement or appeal of a host who violated a privacy policy. Airbnb also objects to this Request as seeking private information protected by the Stored Communications Act or other applicable statute or regulation to the extent it calls for communications from third parties, or personally identifiable or otherwise sensitive information about third parties.

28. All documents related to AIRBNB and its hosts' compliance with state statutes concerning real estate property management licensure to hosts and potential hosts.

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RESPONSE: Airbnb objects to this Request for the reasons stated in its general objections, which it incorporates by reference here. In addition, Airbnb objects to this Request to the extent it seeks information protected by the attorney-client privilege and/or work product doctrine, or other applicable privileges. Airbnb also objects to this Request as seeking information not reasonably calculated to lead to relevant information. Airbnb does not provide legal advice to Hosts, nor does it have any responsibility to keep abreast of state and local properties where Hosts maintain properties, which is the responsibility of Hosts alone. Airbnb also objects to the undefined phrase "state statutes concerning real estate property management licensure." Airbnb does not understand the specific statutes about which Plaintiff asks. Airbnb also objects to this Request as overbroad, unduly burdensome, and not proportionate to the needs of the case by seeking "[a]ll" documents regarding the statutes in all 50 states and without any limitation as to time period. Airbnb also objects to this Request as seeking private information protected by the Stored Communications Act or other applicable statute or regulation to the extent it calls for communications from third parties, or personally identifiable or otherwise sensitive information about third parties.

29. All communications between "Michele" and Defendant Katherine Thomas via AIRBNB's online booking program since April 12, 2019.

RESPONSE: Airbnb objects to this Request for the reasons stated in its general objections, which it incorporates by reference here. In addition, Airbnb objects to this Request to the extent it seeks information protected by the attorney-client privilege and/or work product doctrine, or other applicable privileges. Airbnb

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objects to the undefined name "Michele" as vague and ambiguous. For the purpose of this response, Airbnb interprets "Michele" to mean Michelle Jain, the guest who booked a stay at 115 Third Ave SW, Aiken, South Carolina on May 17 and 18, 2019. Airbnb also objects to this Request as seeking information not reasonably calculated to lead to relevant information. Airbnb also objects to this Request as overbroad, unduly burdensome, and not proportionate to the needs of the case by seeking testimony about "[a]ll" communications between a guest and a host. Airbnb also objects to this Request as seeking information protected by the Stored Communications Act or other applicable statute or regulation to the extent it calls for communications from third parties, or personally identifiable or otherwise sensitive information about third parties.

30. All Protocols, manuals, memoranda, or other written standards of care or instructions that reference or concern the safety of guests while staying in an AIRBNB property during the time period of December 1, 2013 through the present.

RESPONSE: Airbnb objects to this Request for the reasons stated in its general objections, which it incorporates by reference here. In addition, Airbnb objects to this Request to the extent it seeks information protected by the attorney-client privilege and/or work product doctrine, or other applicable privileges. Airbnb objects to this Request as overbroad, unduly burdensome, and not proportionate to the needs of the case by seeking "[a]ll" instructions that "reference or concern the safety of guests" for nearly a decade. Airbnb objects to the phrase "safety of guests" as vague and ambiguous. Airbnb also objects to this Request as seeking information not reasonably calculated to lead to relevant information. Airbnb also

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objects to the term "AIRBNB property" because Airbnb does not own, control, or manage the properties hosts list via its online platform. Airbnb also objects to the phrase "Protocols, manuals, memoranda, or other written standards of care" as vague and ambiguous. Airbnb also objects to this Request as seeking private information protected by the Stored Communications Act or other applicable statute or regulation to the extent it calls for communications from third parties, or personally identifiable or otherwise sensitive information about third parties.

Subject to the foregoing objections, Airbnb will search for and produce any responsive Airbnb background check policies effective between the summer of 2016 and May 2019 it identifies in a reasonably diligent search, and any policies governing the use of video cameras by hosts that were in effect in May 2019 it identifies in a reasonably diligent search. Airbnb has already produced the applicable Terms of Service. Airbnb is not re-producing any documents previously produced by any party during the litigation.

31. All Protocols, manuals, memoranda, or other written standards of care or instructions that reference or concern the vetting of hosts by AIRBNB during the time period of December 1, 2013 through the present.

RESPONSE: Airbnb objects to this Request for the reasons stated in its general objections, which it incorporates by reference here. In addition, Airbnb objects to this Request to the extent it seeks information protected by the attorney-client privilege and/or work product doctrine, or other applicable privileges. Airbnb objects to this Request as overbroad, unduly burdensome, and not proportionate to the needs of the case by seeking "[a]ll" instructions that "reference or concern

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the vetting of hosts" for nearly a decade. Airbnb objects to the phrase "vetting of hosts" as vague and ambiguous. Airbnb also objects to this Request as seeking information not reasonably calculated to lead to relevant information. Airbnb also objects to the phrase "Protocols, manuals, memoranda, or other written standards of care" as vague and ambiguous. Airbnb also objects to this Request as seeking private information protected by the Stored Communications Act or other applicable statute or regulation to the extent it calls for communications from third parties, or personally identifiable or otherwise sensitive information about third parties.

Subject to the foregoing objections, Airbnb will search for and produce any responsive Airbnb background check policies effective between the summer of 2016 and May 2019 it identifies in a reasonably diligent search, and any policies governing the use of video cameras by hosts that were in effect in May 2019 it identifies in a reasonably diligent search. Airbnb is not re-producing any documents previously produced by any party during the litigation.

32. All Protocols, manuals, memoranda, or other written standards of care or instructions that reference or concern the inspection of host properties by AIRBNB during the time period of December 1, 2013 through the present.

RESPONSE: Airbnb objects to this Request for the reasons stated in its general objections, which it incorporates by reference here. In addition, Airbnb objects to this Request to the extent it seeks information protected by the attorney-client privilege and/or work product doctrine, or other applicable privileges. Airbnb objects to this Request as overbroad, unduly burdensome, and not proportionate

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to the needs of the case by seeking testimony about "[a]ll Protocols, manuals, memoranda, or other written standards of care" that "reference or concern" host property inspection, regardless of the reason, over the course of nearly a decade. Airbnb also objects to this Request as seeking information not reasonably calculated to lead to relevant information.

Subject to the foregoing objections, Airbnb will search for and produce any responsive Airbnb policies governing host property inspections in South Carolina effective between the summer of 2016 and May 2019, if any, it identifies in a reasonably diligent search. Airbnb is not re-producing any documents previously produced by any party during the litigation.

33. All Protocols, manuals, memoranda, or other written standards of care or instructions that reference or concern the use of video cameras by AIRBNB hosts during the time period of December 1, 2013 through the present.

RESPONSE: Airbnb objects to this Request for the reasons stated in its general objections, which it incorporates by reference here. In addition, Airbnb objects to this Request to the extent it seeks information protected by the attorney-client privilege and/or work product doctrine, or other applicable privileges. Airbnb objects to this Request as overbroad, unduly burdensome, and not proportionate to the needs of the case by seeking testimony about "[a]ll Protocols, manuals, memoranda, or other written standards of care or instructions" that "reference or concern" policies governing the use of video cameras, over the course of nearly a decade. Airbnb also objects to this Request as seeking information not reasonably calculated to lead to relevant information.

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Subject to the foregoing objections, Airbnb will produce any responsive policies governing the use of video cameras by hosts that were in effect in May 2019 it identifies in a reasonably diligent search. Airbnb is not re-producing any documents previously produced by any party during the litigation.

34. All reports and/or complaints made to AIRBNB of guests being secretly videotaped while staying in an AIRBNB during the time period of December 1, 2013 through the present.

RESPONSE: Airbnb objects to this Request for the reasons stated in its general objections, which it incorporates by reference here. In addition, Airbnb objects to this Request to the extent it seeks information protected by the attorney-client privilege and/or work product doctrine, or other applicable privileges. Airbnb objects to this Request as overbroad, unduly burdensome, and not proportionate to the needs of the case by seeking testimony about every single "report[] and/or complaint[]" over the course of nearly a decade without any limitation in geographic scope. Airbnb also objects to this Request as seeking information not reasonably calculated to lead to relevant information. Airbnb also objects to this Request as seeking private information protected by the Stored Communications Act or other statute or regulation to the extent it calls for communications from third parties, or personally identifiable or otherwise sensitive information about third parties.

35. All lawsuits filed against AIRBNB related to guests being secretly videotaped during the time period of December 1, 2013 through the present.

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RESPONSE: Airbnb objects to this Request for the reasons stated in its general objections, which it incorporates by reference here. In addition, Airbnb objects to this Request to the extent it seeks information protected by the attorney-client privilege and/or work product doctrine, or other applicable privileges. Airbnb objects to this Request as overbroad, unduly burdensome, and not proportionate to the needs of the case by seeking testimony about every single lawsuit filed against Airbnb over the course of nearly a decade without any limitation in geographic scope. Airbnb objects to this Request as seeking information that is publicly available and, in the alternative, as protected from disclosure to the extent any requested information is not public and subject to a protective order or other court order preventing its disclosure. Airbnb also objects to this Request as seeking information not reasonably calculated to lead to relevant information.

36. All settlements entered into by AIRBNB related to guests being secretly videotaped during the time period of December 1, 2013 through the present.

RESPONSE: Airbnb objects to this Request for the reasons stated in its general objections, which it incorporates by reference here. In addition, Airbnb objects to this Request to the extent it seeks information protected by the attorney-client privilege and/or work product doctrine, or other applicable privileges. Airbnb objects to this Request as overbroad, unduly burdensome, and not proportionate to the needs of the case by seeking highly confidential information about every single lawsuit filed against Airbnb over the course of nearly a decade without any limitation in geographic scope. Airbnb also objects to this Request as seeking information not reasonably calculated to lead to relevant information.

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Airbnb also objects to this Request as seeking private information protected by the Stored Communications Act or other applicable statute or regulation to the extent it calls for communications from third parties, or personally identifiable or otherwise sensitive information about third parties.

37. All information related to the employee training program for all employees of AIRBNB, Inc. that have responsibilities related to guest safety during the time period of December 1, 2013 through the present.

RESPONSE: Airbnb objects to this Request for the reasons stated in its general objections, which it incorporates by reference here. In addition, Airbnb objects to this Request to the extent it seeks information protected by the attorney-client privilege and/or work product doctrine, or other applicable privileges. Airbnb objects to this Request as overbroad, unduly burdensome, and not proportionate to the needs of the case by seeking testimony about confidential employee records for anyone whose responsibilities touch on any type of "guest safety" for a period of almost ten years. Airbnb objects to the undefined phrase "responsibilities related to guest safety" as vague and ambiguous. Airbnb also objects to this Request as seeking information not reasonably calculated to lead to relevant information. Airbnb also objects to this Request to the extent it encompasses material protected from discovery by the attorney-client privilege, work product doctrine, or any other doctrine.

38. The internal reports and/or external reports and/or audits during the last ten years of AIRBNB that relate to guest safety during the time period of December 1, 2013 through the present.

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RESPONSE: Airbnb objects to this Request for the reasons stated in its general objections, which it incorporates by reference here. In addition, Airbnb objects to this Request to the extent it seeks information protected by the attorney-client privilege and/or work product doctrine, or other applicable privileges. Airbnb objects to this Request as overbroad, unduly burdensome, and not proportionate to the needs of the case by seeking testimony about every "internal and/or external report[] and/or audit[]" relating to any form of "guest safety" for the past decade. Airbnb also objects to the phrase "relate to guest safety" as vague and ambiguous. This Request is also unintelligible; a "report" from April 2012 could not possibly relate to guest safety in December 2013, and neither category is relevant to this May 2019 incident. Airbnb also objects to this Request as seeking information not reasonably calculated to lead to relevant information.

39. All documents which describe the process by which AIRBNB determines whether an AIRBNB host is the lawful owner and/or occupier of an AIRBNB property.

RESPONSE: Airbnb objects to this Request for the reasons stated in its general objections, which it incorporates by reference here. In addition, Airbnb also objects to this Request as seeking information not reasonably calculated to lead to relevant information. Airbnb objects to this Request to the extent it seeks information protected by the attorney-client privilege and/or work product doctrine, or other applicable privileges. Airbnb also objects to the term "AIRBNB property" because Airbnb does not own, control, or manage the properties hosts list via its online platform. Airbnb also objects to this Request as overbroad, unduly burdensome, and not proportionate to the needs of the case by seeking "[a]ll"

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documents related to the process by which Airbnb determines whether a host is the lawful owner and/or occupier of an AIRBNB property. A host's lawful ownership or occupation of property is relevant here at most as it relates to those of Ms. Thomas.

40. All audited financial statements reflecting the assets and liabilities of AIRBNB during the time period of 2013 through 2022.

RESPONSE: Airbnb objects to this Request for the reasons stated in its general objections, which it incorporates by reference here. In addition, Airbnb objects to this Request to the extent it seeks information protected by the attorney-client privilege and/or work product doctrine, or other applicable privileges. Airbnb objects to the undefined terms "assets and liabilities" as vague and ambiguous. Airbnb also objects to this Request as seeking information that is either publicly available through Airbnb's SEC filings, or else highly confidential, and without any limitation as to time period. Airbnb also objects to this Request as seeking information not reasonably calculated to lead to relevant information and is designed to harass.

41. All communications between AIRBNB and the company / entity known as TROOLY related to Katherine Thomas, for example, as same is identified in AIRBNB's production at pages: AIRBNB-000099, 000100, 000106, 000109 to 000111, 000113, 000114, and 000117 to 000122.

RESPONSE: Airbnb objects to this Request for the reasons stated in its general objections, which it incorporates by reference here. In addition, Airbnb also objects to this Request as seeking information not reasonably calculated to

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lead to relevant information. Airbnb objects to this Request as unintelligible. As a quick search would have revealed, Airbnb acquired Trooly in June 2017, at which point it ceased operating as an independent company. Airbnb also objects to this Request as overbroad, unduly burdensome, and not proportionate to the needs of the case. Airbnb further objects to operating to the extent it seeks information protected by the attorney-client privilege and/or work product doctrine, or other applicable privileges.

After a reasonable search, Airbnb states there are no responsive communications between Airbnb and Trooly. The cited Trooly checks were completed automatically through Trooly's Application Programming Interface (API), and Airbnb produced the Trooly code it identified after a reasonable search for those checks on April 8.

42. All communications between AIRBNB and the company / entity known as TROOLY related to Rhett Riviere, for example, as same is identified in AIRBNB's production at pages: AIRBNB-000099, 000100, 000106, 000109 to 000111, 000113, 000114, and 000117 to 000122.

RESPONSE: Airbnb objects to this Request for the reasons stated in its general objections, which it incorporates by reference here. In addition, Airbnb also objects to this Request as seeking information not reasonably calculated to lead to relevant information. Airbnb objects to this Request as unintelligible. As a quick search would have revealed, Airbnb acquired Trooly in June 2017, at which point it ceased operating as an independent company. Airbnb also objects to this Request as overbroad, unduly burdensome, and not proportionate to the needs of

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the case. Airbnb further objects to operating to the extent it seeks information protected by the attorney-client privilege and/or work product doctrine, or other applicable privileges.

After a reasonable search, Airbnb states there are no responsive communications between Airbnb and Trooly. The cited Trooly checks were completed automatically through Trooly's Application Programming Interface (API), and Airbnb produced the Trooly code it identified after a reasonable search for those checks on April 8.

43. All communications between AIRBNB and the company / entity known as TROOLY related to Chase Enterprises, LLC of South Carolina, for example, as same is identified in AIRBNB's production at pages: AIRBNB-000099, 000100, 000106, 000109 to 000111, 000113, 000114, and 000117 to 000122.

RESPONSE: Airbnb objects to this Request for the reasons stated in its general objections, which it incorporates by reference here. In addition, Airbnb also objects to this Request as seeking information not reasonably calculated to lead to relevant information. Airbnb objects to this Request as unintelligible. As a quick search would have revealed, Airbnb acquired Trooly in June 2017, at which point it ceased operating as an independent company. Airbnb also objects to this Request as overbroad, unduly burdensome, and not proportionate to the needs of the case. Airbnb further objects to operating to the extent it seeks information protected by the attorney-client privilege and/or work product doctrine, or other applicable privileges.

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After a reasonable search, Airbnb states there are no responsive communications between Airbnb and Trooly. The cited Trooly checks were completed automatically through Trooly's Application Programming Interface (API), and Airbnb produced the Trooly code it identified after a reasonable search for those checks on April 8.

44. All agreements between AIRBNB and the company / entity known as TROOLY identified and described above that were in effect at any time since January 1, 2016..

RESPONSE: Airbnb objects to this Request for the reasons stated in its general objections, which it incorporates by reference here. In addition, Airbnb also objects to this Request as seeking information not reasonably calculated to lead to relevant information. Airbnb objects to this Request as unintelligible. As a quick search would have revealed, Airbnb acquired Trooly in June 2017, at which point it ceased operating as an independent company. Airbnb also objects to this Request as overbroad, unduly burdensome, and not proportionate to the needs of the case. Airbnb further objects to operating to the extent it seeks information protected by the attorney-client privilege and/or work product doctrine, or other applicable privileges.

Subject to the foregoing objections, Airbnb will search for and produce any agreement between Airbnb and Trooly that were in effect between the summer of 2016 and when Airbnb acquired Trooly in June 2017. Airbnb will not produce any agreements related to Trooly's acquisition by Airbnb.

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing **AIRBNB'S RESPONSES TO PLAINTIFF'S AMENDED SECOND SET OF REQUESTS FOR PRODUCTION 16-44** was served this 8th day of July, 2022, via email, to the following:

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State of South Carolina
The Circuit Court of the Ninth Judicial Circuit

Roger M. Young, Sr.
Judge

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MEMORANDUM

To: Attorneys and Parties with Discovery motions

From: Judge Roger Young

Subject: Preparation for discovery motions

Date: August 29, 2019

The following may assist you in preparation for your hearing. If you have resolved your motions, please advise the Clerk's office.

Boilerplate or generalized objections are tantamount to no objection at all

Each discovery response, whether to an interrogatory or discovery response, whether to an interrogatory or discovery production is to be answered or objected to separately. The rule is clear that each interrogatory "shall "shall be answered separately and fully in writing..." SCRCP, Rule 33(a). If there are objections to interrogatories or requests for interrogatories or requests for production, "the reasons for objection shall be stated…" SCRCP, Rules 33(a) and 34(b). Whether the reasons are satisfactory is to be decided on a case by case basis. However, keeping in mind the general purposes and concepts stated in the rules can help combat frivolous and obfuscatory objections.

"An affirmative duty does exist to answer interrogatories and respond to requests to produce." *CFRE, LLC v. Greenville County Assessor LLC v. Greenville County Assessor,* 395 S.C. 67, *395 S.C. 67,* 83, 716 S.E.2d 877, 885 (2011)83, 716 S.E.2d 877, 885 (2011). Objections to interrogatories must be specific and supported by a detailed explanation why the interrogatories are improper or may result in waiver of the objections. *In re Folding Carton Antitrust Litigation.*, 83 F.R.D. 260, 264 (N.D. Ill. 1979). The mere statement by a party that the by a party that the interrogatory was "overly broad, burdensome, oppressive and irrelevant" is not adequate to voice a successful objection to an interrogatory. *Josephs v. Harris Corp.* 677 F.2d 985, 992 (3d Cir. 1982). Parties shall not make nonspecific, boilerplate objections. **Objections that state that the discovery request is "vague, overly broad, or unduly burdensome" are, standing alone, meaningless and will be found meritless by the court.** A party objecting must explain the specific and particular way in which a given request is vague, overly broad, or unduly

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burdensome.[1] *Curtis v. Time Warner Entm't-Advance/Newhouse* P *'ship,* 2013 WL 2099496, at *2 (D.S.C. May 14, *2013*). Parties should not recite a formulaic objection followed by an answer to the request. It has become common practice for a party to object on the basis of any of the above reasons and then state that, "notwithstanding the above," the party will respond to the discovery request, subject to or without waiving such objection. Such an objection and answer preserve nothing and serves only to waste the time and resources of both the parties and the court. Such practice leaves the requesting party uncertain as to whether the question has actually been actually been fully answered or whether only a portion of the question has been answered. *Id.* citing 2004 A.B.A. Civil Discovery Standards, 2004 A.B.A. Sec. Lit. 18. One objecting to discovery must show specifically how, despite the broad and liberal construction afforded the discovery rules, each interrogatory is not relevant or how each question is overly broad, burdensome or oppressive, by submitting affidavits or offering evidence revealing the nature of the burden. *Roesberg v. Johns-Manville Corp.,* 85 F.R.D. 292, 296 (E.D. Pa. 1980). It is not proper to object merely because answering interrogatories may require expending considerable time, effort or expense or may interfere with business operations. *Id.* at 97.

"General objections" that purportedly apply to all discovery responses are improper. These general objections do not comply with the letter or spirit of the rules as they do not provide the specificity required to each request.[2]

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[1] [1] *Walker v. Lakewood Condo. Owners Ass'n*, 186 F.R.D. 584, 587 (C.D. Cal. 1999); *see also Steed v. EverHome Mortg. Co.*, 308 Fed. Appx. 364, 371 (11th Cir. 2009) ("[B]oilerplate objections may border on a frivolous response to discovery requests."); *McLeod, Alexander, Powel & Apffel, P.C. v. Quarles*, 894 F.2d 1482, 1485 (5th Cir. 1990) ("[T]o say an interrogatory was overly broad, burdensome, oppressive and irrelevant [is] not adequate to voice a successful objection to an interrogatory." (internal quotations omitted)); *Josephs v. Harris Corp.*, 677 F.2d 985, 992 (3d Cir. 1982) ("[T]he mere statement by a party that the interrogatory was 'overly broad, burdensome, oppressive and irrelevant' is not adequate to voice a successful objection to an interrogatory."); *Adelman v. Boy Scouts of Am.*, 276 F.R.D. 681, 688 (S.D. Fla. 2011) ("[B]oilerplate objections [are] legally inadequate or meaningless."); *Nissan N. Am., Inc. v. Johnson Elec. N. Am., Inc.*, 2011 WL 669352, at *2 (E.D. Mich. Feb. 17, 2011)("Boilerplate or generalized objections are tantamount to no objection at all ...."); *Hager v. Graham*, 267 F.R.D. 486, 498 (N.D. W. Va. 2010) ("The objection is only a general statement that does not specify how the [request for production] is vague, ambiguous, and overly broad. Therefore, the objection is improper."); *Enron Corp. Sav. Plan v. Hewitt Assocs., L.L.C.*, 258 F.R.D. 149, 159 (S.D. Tex. 2009) ("Boilerplate objections are not acceptable; specific objections are required ...." (internal quotations omitted)); *A. Farber & P'rs, Inc. v. Garber*, 234 F.R.D. 186, 188 (C.D. Cal. 2006) ("[G]eneral or boilerplate objections such as 'overly burdensome and harassing' are improper—especially when a party fails to submit any evidentiary declarations supporting such objections.").

[2] *Mills v. E. Gulf Coal Preparation Co., LLC*, 259 F.R.D. 118, 132 (S.D. W. Va. 2009) ("Failure to state objections specifically in conformity with the Rules will be regarded as a waiver of those objections."); *Sabol v. Brooks*, 469 F. Supp. 2d 324, 328 (D. Md. 2006) ("[F]ailure to make particularized objections to document requests constitutes a waiver of those objections."); *In re Folding Carton Antitrust Litig.*, 83 F.R.D. 260, 264 (N.D. Ill. 1979) ("General objections may

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For an objecting party to carry its burden, the objection must be specific, the party making it must explain why it applies on the facts of the case to the request being made, and if the party is providing information subject to the objection, the party must articulate how it is applying the objection to limit the information it is providing.[3] In short, objections should be plain enough and specific enough so that the Court can understand in what way the discovery is claimed to be objectionable. *See generally Curtis v. Time Warner Entmt'-Advance/Newhouse P'ship*, 2013 WL 2099496, at *2 (D.S.C. May 14, 2013). *See generally* Kosieradzki & Rahimi, *supra*, at 30–31 ("Objections must be sufficiently particular to advise the requesting party and the court to what extent the discovery request is objectionable.").

General objections to requests as excessive, overbroad, and unduly burdensome, without more detail as outlined herein, are considered by the Court as *per se* insufficient. The objecting party must show specifically how each discovery request is burdensome or oppressive by submitting affidavits or offering evidence revealing the nature of the burden. *Oleson v. Kmart Corp.*, 175 F.R.D. 560, 565 (D. Kan. 1997); *accord Roesberg v. Johns–Manville Corp.*, 85 F.R.D. 292, 29–97 (E.D. Pa. 1980) (explaining that an objecting party "must show specifically how ... each interrogatory is not relevant or how each question is overly broad, burdensome or oppressive ... by submitting affidavits or offering evidence revealing the nature of the burden" (internal citations omitted)). Responses which provide no information whatsoever in support of these assertions are very likely to be overruled and may be sanctionable if deemed to be abusive violations by the Court.

Use of Standard Interrogatories – Abusive Objections

Rule 33(b) lists specific interrogatories that are allowed "[i]n all cases…" and should be served. Attorneys responding to these standard interrogatories with paragraphs of copy and paste generic objections are engaging in dilatory conduct. Neither attorneys nor courts should tolerate such obstructive behavior.

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result in waiver of the objections."). *See generally* Wise, *supra*, at 569 ("[B]ecause general objections are nonspecific and 'hide the ball' with respect to what information or material is being provided and what information or material is being withheld and why ... [they] have been universally condemned by courts for this very reason."); Mark Kosieradzki & Kara Rahimi, *Keep Discovery Civil: When Opposing Counsel Obstructs or Deflects Your Access to Evidence, Look to the Rules and Long–Settled Case Law for Relief. Both Are on Your Side*, Trial, June 2008, at 32 ("[C]ourts have held that asserting numerous general objections obscures any valid objections and may result in a waiver of the valid objections absent a showing of good cause.").

[3] *See Josephs*, 677 F.2d at 992 (explaining that a party's objections must "show specifically how each interrogatory is not relevant or how each question is overly broad, burdensome or oppressive" (internal quotations and alterations omitted)); *DL v. District of Columbia*, 251 F.R.D. 38, 43 (D.D.C. 2008)(explaining that if party's objections "are not applied with sufficient specificity to enable this Court to evaluate their merits ... this Court will overrule [the party's] objections in their entirety"); *Folding Carton*, 83 F.R.D. at 264 ("Objections to interrogatories must be specific and [be] supported by a detailed explanation why the interrogatories are improper.").

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Rule 33(b) requires responding with important facts known or observed by witness so that the summary is restricted to the actual knowledge of the witness. Note to Rule 33(b). The rules make it clear that specific objections and reasons are required when responding. There can be no good reason to objecting to standard interrogatories.

Production of Documents

As to documents produced in response to discovery requests, the responding party shall produce them "as" they are kept in the usual course business or shall organize and label them to correspond with the categories in the request." SCRCP, Rule 34(b). If the form for producing the information is not specified or otherwise agreed upon, the responding party must produce the information in a form which it is ordinarily maintained that is reasonably usable. SCRCP, Rule 34(b)(1). When dealing with electronic discovery, it "must relate to the claims and defenses asserted in the pleadings and should serve as a means for facilitating a just and cost-effective resolution of disputes." Notes to 2011 Amendment, SCRCP, Rule 34.

Duty to Consult Before Moving to Compel

One submitting discovery requests may move for an order under Rule 37(a) with respect to any objection to or other failure to answer the interrogatory or request for production. SCRCP, Rule 33(a) and 34(b). If the discovery responses received are improper, consult with the other party and try to resolve the issues. Rule 11 requires that before filing a motion, one communicate with opposing counsel and attempt in good faith to resolve the matter contained in the motion, unless the movant's counsel certifies that consultation would serve no useful purpose or could not be timely held. SCRCP, Rule 11(a). After consulting, compromises may be reached so that only the actual controversies are presented to the court.

The rule requires that the movant's counsel affirm that consultation has taken place. Attaching correspondence showing the attempts to resolve the matter with the articulated reasons from both sides can help demonstrate the issues for the court.

Burden — Motion to Compel

After consulting as required, one needs to move to compel the other side to sufficiently respond to your requests. As part of the motion, provide the court with both the request and the responses at issue, and explain why the responses are deficient in the context of the case. Articulate specific reasons, not generalities as to why the discovery sought is proper. Generally, the initial burden is on the party moving to compel to inform the court (1) which discovery requests are the subject of the motion, (2) which responses are disputed, (3) why the party believes the responses are deficient, (4) why any objections are not justified, and (5) why the information sought through discovery is discoverable. After the moving party has met its burden, the party resisting discovery must show specifically how each interrogatory or request for production is not relevant or how each is overly broad, burdensome or oppressive. If claims of privilege or work product are made, the factors and facts supporting such claims should be supported with specifics, not

generalities, in the form of a privilege log that will provide enough information for you and the court to evaluate the objection.

Opinions and Contentions Proper

The rules allow one to serve discovery designed to eliminate the need for depositions or other expensive ways of establishing opinions or contentions of the parties. An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law. SCRCP, Rule 33(d). Similarly, requests for admission may be served for purposes of the pending action only concerning any matters within the scope of Rule 26(b) that relate to statements or opinions of fact or of the application of law, including the genuineness of any documents described in the request. SCRCP, Rule 36(a). Further, opinions of experts are proper subjects of discovery as well. SCRCP, Rule 26(b)(4)(A).

Privilege Log - Express Claims of Privilege or Trial Preparation

A party may withhold information otherwise discoverable by expressly claiming such material is privileged or subject to protection as trial preparation material. SCRCP, Rule 26(b)(5). The claim shall be made expressly and shall describe the nature of the documents, communications or things not produced or disclosed in a manner that, without revealing the information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection. SCRCP, Rule 26(b)(5)(A-B). *See also* Note to 1996 Amendment. The Rules expressly require the disclosure of the nature of evidence prior to any claim of privilege so other parties may assess the applicability of the privilege or protection. *Samples v. Mitchell,* 329 S.C. 105, 111, 495 S.E.2d 213, 216 n.5 (Ct. App. 1997). The obligation to describe what is being withheld and why also applies to non-parties when responding to a subpoena, under SCRCP, Rule 45(d)(2). SCRCP, Rule 26(b)(5) Note to 1996 Amendment.

For, example, the work product rule would not excuse the failure to disclose the existence of a surveillance video tape pursuant to the standard interrogatories. If an attorney believed the other side had no right to this evidence, either because of relevancy or because of the work product rule, she should have either objected to the interrogatory or disclosed the existence, but not the content, of the evidence and moved for a protective order. *Samples v. Mitchell,* 329 S.C. 105, 111, 495 S.E.2d 213, 216 (Ct. App. 1997). The decision whether a document is privileged is for the court, not the party. Privileged Matter—Assertion of Privilege, 8 Fed. Prac. & Proc. Civ. § 2016.1 (3d ed.). In making determinations as to the adequacy of the privilege log, the court should be guided by a sense of reasonableness in deciding what should be required. *Id.*

The use of a "privilege log" by party withholding the material is designed to satisfy the requirement that the claim to be made expressly and provide the other party with an opportunity to assess the applicability of the claimed privilege or protection. The description should provide a feasible means of understanding why each document is privileged or protected. Depending on the case, a privilege log may consist of details like a description and date of the document along with who created and received it. The required detail of the privilege log should be decided on a

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case by case basis. However, the log should not generically assert privilege or simply use words like "privileged document."

Attorney-Client Privilege

Generally, the party asserting the privilege must establish the confidential nature of the communication. *State v. Doster,* 276 S.C. 647, 653, 284 S.E.2d 218, 220 (1981). To establish an attorney-client privilege, the person asserting the privilege must show that the relationship between the parties was that of attorney and client and that the communications were confidential in nature for the purpose of obtaining legal advice. *Crawford v. Henderson*, 356 S.C. 389, 395, 589 S.E.2d 204, 207-08 (Ct. App. App. 2003). The essential elements giving rise to the privilege were stated by Wigmore to be: "(1) Where legal advice of any kind is sought, (2) from a professional legal adviser in his capacity as such, (3) the communications relating to that purpose, (4) made in confidence (5) by the client, (6) are at his instance permanently protected (7) from disclosure by himself or by the legal adviser, (8) except the protection be waived." *State v. Doster*, 276 S.C. 647, 651, 284 S.E.2d 218, 219-20 (1981).

The privilege must be tailored to protect only confidences disclosed within the relationship. And the court must determine the question of privilege without first requiring disclosure of the substance of the communication. *Id.* Not every communication within the attorney and client relationship is privileged. The privilege does not extend to communications in furtherance of criminal, tortious or fraudulent conduct. *Id.*

Attorney Work Product and Limitations

"The attorney work product doctrine protects discovery documents prepared in anticipation of litigation, unless a substantial need can be shown by *the requesting party." Stokes Craven—Holding Corp. v. Robinson,* 416 S.C.517, 537, 787 S.E.2d 485, 495 (2016). "Generally, in determining whether a document has been prepared 'in anticipation of litigation,' most courts look to whether or not the document was prepared because of the prospect of litigation." *Id.*

"The document must be prepared *because* of the prospect of litigation when the preparer faces an actual claim or a potential claim following an actual event or series of events that reasonably could result in litigation." *Nat'l Union Fire Ins. Co. of Pittsburgh, Pa. v. Murray Sheet Metal Co.*, 967 F.2d 980, 984 (4th Cir. 1992). Thus, materials prepared in the ordinary course of business or pursuant to regulatory requirements or for other non-litigation purposes are not documents prepared in anticipation of litigation within the meaning of Rule *26(b)(3). Id. See also, Tobaccoville USA, Inc. v. McMaster*, 387 S.C. 287, 294, 692 S.E.2d 526, 530 (2010). A party must show more than a statute governing the party's actions considers the possibility of future litigation or concerns litigation. *Id.*

Motion for Protection

If the discovery process threatens to become abusive or create a particularized harm to a litigant or third party, the trial judge may issue an order "to protect a party or person from annoyance, embarrassment, oppression, or undue burden by expense." *Hollman v. Woolfson,* 384 S.C. 571,

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578, 683 S.E.2d, 495, 498(2009). "The person requesting protection from the court or Commission must initially show good cause by alleging a particularized harm which will result if the challenged discovery is had...Once the party seeking the protective order has met its burden of showing good cause by alleging a particularized harm, the party seeking the discovery must come forward and show that the information that is sought 'is both relevant and necessary to the case. When both parties meet their burden of proof, the court must weigh the opposing factors.'" *Hamm v. SCPSC*, 312 S.C. 238, 439 S.E.2d 852, 854 (1994); *see also, Hollman v. Woolfson*, 384 S.C. 571, 578, 683 S.E.2d 495, 498 (2009).

Duty To Supplement

A party who has responded to a discovery request under Rules 31, 33, 34 and 36 with a response that was complete when made is under a duty to promptly transmit to the other party information sought which comes to the knowledge of a party, his representative or attorney after the original answers have been submitted. SCRCP, Rule 26(e). "This duty to supplement does not apply to discovery under Rule 30 Depositions Upon Oral Examination."
"[T]here is an additional duty to provide supplemental information on expert witnesses and witnesses with knowledge of the facts of the case regardless of the form of the discovery request. The obligation to supplement prior discovery responses includes the duty to amend or supplement answers which are found to be incorrect or misleading…" SCRCP, Rule 26(e) Note to 1996 Amendment.

Conclusion

The moving party shall provide an affidavit detailing the attempts to resolve the motion prior to the hearing shall be presented. The affidavit should list a statement of services rendered which details the time and fees generated from pursuit of the discovery sought in the Motion to Compel. **Affidavits, briefs and proposed Orders** granting the requested relief and leaving a blank for the amount of fees and costs to be awarded **shall be presented to the court at the hearing** and shall also be served on opposing counsel prior to the hearing. **Failure to comply may result in denial of the relief.**

As to any objection to discovery on the basis that the information sought is either privileged or work product, the objecting party shall prepare and present at the time of the hearing their **privilege log** detailing the basis for the claim to privilege or reason why it should be excluded from production.

At a minimum, the privilege log should detail the date of the communication/statement, who prepared or made the statement, to whom the statement was directed to and finally, the specific basis for the privilege should be included in the log. While this will necessitate much more work on the part of the party claiming the privilege, **failure to prepare and bring** this log to the hearing will result in the **privilege claimed considered waived** by the court and the **motion to compel shall be granted**.

The Motion to Compel hearing shall constitute a hearing under Rule 37(d) 4, SCRCP.

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STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS

SECOND JUDICIAL CIRCUIT

JULIANNE FOSTER,

Plaintiff,

v.

RHETT RIVIERE, KATHERINE A. THOMAS, CHASE ENTERPRISES, LLC OF SOUTH CAROLINA, AND AIRBNB, INC,

Defendants.

C/A No. 2021CP0200889

ORDER ON AIRBNB'S MOTION TO ALTER OR AMEND

Airbnb seeks to have the court alter or amend its order of August 3, 2022, which dealt with Airbnb's motion for a protective order. The parties were notified that the motion would be decided on written submissions, and a scheduling order was entered for those submissions. Both sides have fully briefed the issues. Having reconsidered the matter, the court denies the motion to alter or amend, with the exception that the deadline for taking the Rule 30(b)(6) deposition is extended to November 30, 2022.

Airbnb takes issue with the notice of the Rule 30(b)(6) deposition that lists twenty-four matters of inquiry. On August 3, 3022, the court ordered:

1. The Rule 30(b)(6) deposition of Airbnb shall be held on or before August 31, 2022.
2. The parties shall confer on a mutually agreed upon date to take the Rule 30(b)(6) deposition of Airbnb.
3. The Rule 30(b)(6) deposition shall take place in Aiken, South Carolina where the case is pending in accordance with Rule 30(a)(2), South Carolina Rules of Civil Procedure.

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4. The attached Amended Rule 30(b)(6) Deposition Notice shall be the operative notice governing the Rule 30(b)(6) deposition of Airbnb.

The parties shall comply with this Order by August 31, 2022.

The order also provided that, should the Rule 30(b)(6) deposition produce trade secrets, proprietary information, or confidential business model practices or confidential data from AIRBNB, such information shall not be disseminated outside the confines of this lawsuit unless pursuant to a further order of the court.

Airbnb submitted a transcript of the June 28, 2022 hearing and pointed out various things that the court stated during that hearing. Airbnb takes the court to task for adopting most of the language from the plaintiff's proposed order. At the conclusion of the hearing, the court requested that both sides submit proposed orders in electronic format so that the court could "cut and paste" language to develop a proposed order. Airbnb also argues that the court did not incorporate into the final order "guidance" that was stated during the hearing. In particular, Airbnb points out that the court "indicated that Plaintiff's 'safety question' and 'the territorial question' need to be 'narrowed somewhat.'" Airbnb notes the court's statement that the deposition could implicate a "staggering number of people." Airbnb also quotes the transcript where the court told the attorneys for the plaintiff to do whatever they could "to tighten up the demands that you put in your requests, if you put those in the order, then they're more likely to be approved by the Court."

The pending motion and the submissions in support of it challenge the final order as not incorporating the extent of the suggestions and commentary made by the court, though the motion acknowledges that the court changed some of the wording from the

proposed order. The hearing was held in late June. The assistance of the attorneys was requested and provided, and the court took time to read and consider everything that was argued in this rather complex discovery dispute. The ruling of the court was incorporated into a written order, which supersedes any oral comments made at the hearing.

Having reconsidered the matter fully, the court declines to alter or amend the August 3, 2022 order, with the exception of extending the deadline for taking the Rule 30(b)(6) deposition.

AND IT IS SO ORDERED.

[Judge's electronic signature follows on separate page]

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Aiken Common Pleas

Case Caption: Julianne Foster VS Rhett Riviere , defendant, et al

Case Number: 2021CP0200889

Type: Order/Amend

Circuit Judge (Code #2050)

s/ William P. Keesley

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WESLEY D. FEW, LLC

Attorney at Law

P.O. Box 9398, Greenville, South Carolina 29604

wes@wesleyfew.com | O: 864-527-5906

June 7, 2022

Via Email:

Andy Watson, Esq.
Butler Weihmuller Katz Craig LLP
11605 N. Community House Drive, Ste.150
Charlotte, NC 28277
awatson@butler.legal

RE: Julianne Foster vs. Rhett Riviere, Katherine A. Thomas, Chase Enterprises, LLC of South Carolina, and Airbnb, Inc.
Case No.: 2021-CP-02-00889
Our File No.: 00305-001

Mr. Watson,

Enclosed and served upon you are Plaintiff's Amended Requests for Production 16-44 to Airbnb, Inc. and certificate of service for same.

With warm regards, I remain

Sincerely Yours,



Wesley D. Few

WDF/cgy

Enclosures

CC: All Counsel of Record (*Via email only)*
Ryan L. Beasley, Esq. (*Via email only)*
Deborah B. Barbier, Esq. (*Via email only)*
Client (*Via email only*)

ELECTRONICALLY FILED - 2023 Feb 10 10:54 AM - AIKEN - COMMON PLEAS - CASE#2021CP020889

STATE OF SOUTH CAROLINA COUNTY OF AIKEN Julianne Foster, Plaintiff, vs. Rhett Riviere, Katherine A. Thomas, Chase Enterprises, LLC of South Carolina, And Airbnb, Inc., Defendants. _____	)	IN THE COURT OF COMMON PLEAS 2ND JUDICIAL CIRCUIT CASE NO. 2021-CP-02-00889 **PLAINTIFF'S AMENDED SECOND SET OF REQUESTS FOR PRODUCTION TO DEFENDANT AIRBNB, INC. – NO.'S 16-444** _____

TO: L. ANDREW WATSON, ESQUIRE, COUNSEL TO DEFENDANT AIRBNB, INC.

Pursuant to Rules 34 of the South Carolina Rules of Civil Procedure, Plaintiff Julianne Foster ("Plaintiff") hereby requests that Defendant Airbnb, Inc. ("AIRBNB") answer the following Requests for Production, in writing and under oath, within thirty (30) days from the date of the service hereof.

TABLE OF DEFINITIONS / ABBREVIATIONS

This section defines various words and phrases in this Notice. This information is provided to clarify the means of terms in this Notice to assist AIRBNB in understanding the objectives of Plaintiff's discovery efforts, and to help locate and furnish the information and materials.

1. "AIRBNB" or "**Defendant**," - Refers to AIRBNB, Inc., its subsidiaries, divisions, or any other entity (by whatever name and/or denomination), which is/was an owner, a predecessor or successor in interest, including any entity which may have merged or consolidated with AIRBNB's designee may also be asked questions potentially known by another party, other contracting entities, or their agents or employees. By acceptance of this Notice, and production of a responsive witness thereto. AIRBNB acknowledges it will produce someone knowledgeable

about such matters. To the extent any other party, agent, or employee of AIRBNB can provide answers or responses unknown to AIRBNB's designated representative, be prepared to explain why that is the case.

2. The phrase "**writing and recording**" shall be defined under South Carolina Rules of Evidence Rule 1001(1), which specifically includes all electronic communications and electronically recorded information such as word processing files, e-mails, and computer / network backup media.

3. The term "**photograph**" shall be defined under South Carolina Rules of Evidence Rule 1001(2).

4. Where originals and/or non-identical copies are not available, "**writing and recording**" also means identical copies of original writing or recording and copies of non-identical copies.

5. "**Information**" - This term should include reference to both facts and applicable principles. This word should not be construed to be limited to any method of acquisition or compilation and should, therefore, be construed to include oral information and documents or other tangible objects.

REQUESTS FOR PRODUCTION

16. All documents reflecting the organizational, leadership and management structure of AIRBNB during the time period of January 1, 2019 through the present.
17. All non-privileged information of AIRBNB regarding the factual allegations in the case of *Foster v. Riviere, et al* – 2021-CP-02-00889.
18. All agreements and/or contracts between Rhett Riviere, Chase Enterprises, LLC of South Carolina, and/or Katherine Thomas with AIRBNB.
19. All records, reports, documents, correspondence, handwritten notes or otherwise, materials of any kind that concern, reference or relate to any of the following: Rhett

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Riviere, Chase Enterprises, LLC of South Carolina, Katherine Thomas and/or Julianne Foster.

20. All documents which describe the process by which AIRBNB's online booking program notifies potential hosts of policies and procedures related to background checks.
21. All documents which describe the process by which AIRBNB checks public state and county criminal records, as well as state and national sex offender registries.
22. All documents which describe the process by which AIRBNB processes findings from public state and county criminal records, as well as state and national sex offender registries.
23. All documents which describe AIRBNB's policies related to rejecting a host from utilizing AIRBNB's online booking program or guest(s) reservation(s) canceling due to background check findings.
24. All documents which describe any agreement AIRBNB has related to filters for background checks with approved providers (i.e. canvasing public records whereby an arrest took place in addition to any convictions that followed).
25. All documents which describe AIRBNB's policies to execute removals of AIRBNB hosts; reinstatement after removal; criteria for host eligibility; and appeals of hosts after removal.
26. All documents that describe to audiences to whom AirCover protection is offered, including the circumstances under which hosts can opt out of AirCover protection.
27. All documents related to AIRBNB's governance of their privacy policies as they relate to disclosed or concealed monitoring devices in AIRBNB properties including data supporting removal, reinstatement, and appeals of hosts who violate the policy.
28. All documents related to AIRBNB and its hosts' compliance with state statutes concerning real estate property management licensure to hosts and potential hosts.

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29. All communications between "Michele" and Defendant Katherine Thomas via AIRBNB's online booking program since April 12, 2019.
30. All Protocols, manuals, memoranda, or other written standards of care or instructions that reference or concern the safety of guests while staying in an AIRBNB property during the time period of December 1, 2013 through the present.
31. All Protocols, manuals, memoranda, or other written standards of care or instructions that reference or concern the vetting of hosts by AIRBNB during the time period of December 1, 2013 through the present.
32. All Protocols, manuals, memoranda, or other written standards of care or instructions that reference or concern the inspection of host properties by AIRBNB during the time period of December 1, 2013 through the present.
33. All Protocols, manuals, memoranda, or other written standards of care or instructions that reference or concern the use of video cameras by AIRBNB hosts during the time period of December 1, 2013 through the present.
34. All reports and/or complaints made to AIRBNB of guests being secretly videotaped while staying in an AIRBNB during the time period of December 1, 2013 through the present.
35. All lawsuits filed against AIRBNB related to guests being secretly videotaped during the time period of December 1, 2013 through the present.
36. All settlements entered into by AIRBNB related to guests being secretly videotaped during the time period of December 1, 2013 through the present.
37. All information related to the employee training program for all employees of AIRBNB, Inc. that have responsibilities related to guest safety during the time period of December 1, 2013 through the present.
38. The internal reports and/or external reports and/or audits during the last ten years of AIRBNB that relate to guest safety during the time period of December 1, 2013 through

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the present.

39. All documents which describe the process by which AIRBNB determines whether an AIRBNB host is the lawful owner and/or occupier of an AIRBNB property.

40. All audited financial statements reflecting the assets and liabilities of AIRBNB during the time period of 2013 through 2022.

41. All communications between AIRBNB and the company / entity known as TROOLY related to Katherine Thomas, for example, as same is identified in AIRBNB's production at pages: AIRBNB-000099, 000100, 000106, 000109 to 000111, 000113, 000114, and 000117 to 000122.

42. All communications between AIRBNB and the company / entity known as TROOLY related to Rhett Riviere, for example, as same is identified in AIRBNB's production at pages: AIRBNB-000099, 000100, 000106, 000109 to 000111, 000113, 000114, and 000117 to 000122.

43. All communications between AIRBNB and the company / entity known as TROOLY related to Chase Enterprises, LLC of South Carolina, for example, as same is identified in AIRBNB's production at pages: AIRBNB-000099, 000100, 000106, 000109 to 000111, 000113, 000114, and 000117 to 000122.

44. All agreements between AIRBNB and the company / entity known as TROOLY identified and described above that were in effect at any time since January 1, 2016.

WESLEY D. FEW, LLC

/s/Wesley D. Few

Wesley D. Few, S.C. Bar No. 15565
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ATTORNEYS FOR PLAINTIFF JULIANNE FOSTER

June 7, 2022
Greenville, South Carolina

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	2nd JUDICIAL CIRCUIT
JULIANNE FOSTER, Plaintiff, vs. RHETT RIVIERE, KATHERINE A. THOMAS, CHASE ENTERPRISES, LLC OF SOUTH CAROLINA, AND AIRNBNB, INC., Defendants.	)	Case No: 2021-CP-02-00889 **CERTIFICATE OF SERVICE**

I, Cassy Young, on behalf of the law office of Wesley D. Few, LLC, attorneys for the Plaintiff in this action, do hereby certify that I have served the below parties and / or their counsel of record by Email as set forth below on this date in this action with a copy of the document(s) listed below.

1) **Plaintiff's Amended Requests for Production 16-44 to Airbnb, Inc.**

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/s/Cassy Young
Cassy Young

June 7, 2022
Greenville, South Carolina

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STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS

2ND JUDICIAL CIRCUIT

JULIANNE FOSTER,

Plaintiff,

v.

RHETT RIVIERE, KATHERINE A. THOMAS, CHASE ENTERPRISES, LLC OF SOUTH CAROLINA, AND AIRBNB, INC,

Defendants.

C/A No. 2021-CP-02-00889

ORDER GRANTING IN PART AND DENYING IN PART AIRBNB'S MOTION FOR A PROTECTIVE ORDER

Before the Court is Defendant Airbnb's Motion for a Protective Order pursuant to South Carolina Rule of Civil Procedure 26(c). The matter has been fully briefed, and a hearing was held via WebEx on the matter on June 28, 2022. Plaintiff Julianne Foster ("Foster"), represented by Wes Few and Deborah Barbier; Defendant Rhett Riviere represented by John Harte; Defendant Katherine Thomas represented by Damon Wlodarczyk; and Defendant Airbnb, Inc. ("Airbnb"), represented by Andrew Watson, were present at the hearing. Having considered the matter, including the motion, the parties' briefs and memoranda, exhibits, and oral arguments, it is hereby **ORDERED** that Airbnb's Motion for a Protective Order is **GRANTED IN PART and DENIED IN PART** as outlined below**.**

BACKGROUND

In her Complaint, Foster alleges two claims against Defendant Airbnb: negligence in Count I, and *per se* negligence in Count V[1]. The claims concern her May 2019 stay at a property

[1] *See* S.C. Code 40-57-20.

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owned by Defendant Chase Enterprises, LLC ("Chase") of South Carolina that had been reserved using the Airbnb online platform. Foster alleges that, unbeknownst to her, one or more of the Defendants, including Chase's principal, Rhett Riviere installed a video recording device in the bedroom she was using. Riviere is facing criminal charges for his conduct, which included recording private images of Foster during her stay. Plaintiff alleges that in some of the images recorded by Defendants, she was unclothed. Foster only learned of this conduct after a SLED agent notified her about the recordings. Plaintiff served a revised Notice of Rule 30(b)(6) deposition on defense counsel on May 26, 2022. This deposition notice is the subject of this Motion for a Protective Order.

Airbnb seeks a Protective Order from this Court cancelling the scheduled July 12, 2022 and "barring or otherwise limiting the corporate-representative deposition" to be taken pursuant to South Carolina Rule of Civil Procedure 30(b)(6). Airbnb also requests that the noticed deposition date be postponed to a mutually agreed upon date.

On March 20, 2022, Plaintiff provided Airbnb with a draft Notice of Deposition under Rule 30 and Rule 30(B)(6), SCRCP. On April 13, 2022, Airbnb responded objecting to all twenty-four (24) of the matters of inquiry set out in her Draft Notice. Airbnb's objections included, but were not limited to "vague and ambiguous" terms; "overbroad, unduly burdensome, and not proportionate to the needs of the case"; "seeking information not reasonably calculated to lead to relevant information"; attorney-client privilege; and work product doctrine. *Id.* Airbnb did not offer any dates for the deposition. In an effort to reach a compromise, on May 26, 2022, Plaintiff sent a modified and conclusive Notice of Deposition under Rule 30 and Rule 30(B)(6) ("Notice"). Airbnb responded by filing the instant Motion for a Protective Order.

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Counsel was ordered to submit proposed orders and confer regarding several of the listed topics during the hearing held on June 28, 2022. The Court hereby orders the following:

1. The Rule 30(b)(6) deposition of Airbnb shall be held on or before August 31, 2022.
2. The parties shall confer on a mutually agreed upon date to take the Rule 30(b)(6) deposition of Airbnb.
3. The Rule 30(b)(6) deposition shall take place in Aiken, South Carolina where the case is pending in accordance with Rule 30(a)(2), South Carolina Rules of Civil Procedure.
4. The attached Amended Rule 30(b)(6) Deposition Notice shall be the operative notice governing the Rule 30(b)(6) deposition of Airbnb.

The parties shall comply with this Order by August 31, 2022.

CONCLUSION

Accordingly, the Court GRANT**S** IN PART Airbnb's Motion for a Protective Order DENIES in part, as set forth above. Should the Rule 30(b)(6) deposition produce trade secrets, proprietary information, or confidential business model practices or confidential data from AIRBNB, such information shall not be disseminated outside the confines of this lawsuit unless pursuant to a further order of the court.

[Judge's electronic signature follows on separate page]

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STATE OF SOUTH CAROLINA COUNTY OF AIKEN Julianne Foster, Plaintiff, vs. Rhett Riviere, Katherine A. Thomas, Chase Enterprises, LLC of South Carolina, and AIRBNB Inc., Defendants.	)	IN THE COURT OF COMMON PLEAS 2nd JUDICIAL CIRCUIT Case No: 2021-CP-02-00889 **PLAINTIFF'S NOTICE OF DEPOSITION OF DEFENDANT AIRBNB INC. UNDER RULE 30(B)(6), SCRCP**

TO: L. ANDREW WATSON, COUNSEL TO AIRBNB, INC.:

PLEASE TAKE NOTICE, that, under Rule 30 and also Rule 30(b)(6), SCRCP, Plaintiff, Julianne Foster ("Foster") will examine Defendant, AIRBNB, Inc., ("AIRBNB") in a stenographic deposition which will be taken before qualified Notary Public in-person in Aiken, South Carolina beginning at 9:00 a.m. August , 2022 at the law offices of Young & Thurmond, 409 Park Avenue SW, Aiken, South Carolina 29801.

Under Rule 30(b)(6), AIRBNB, must designate and prepare one or more officers, directors, managing agents or other persons who consent to testify on behalf of AIRBNB and whom AIRBNB will prepare to testify regarding all information known or reasonably available to AIRBNB's organization regarding the following designated matters.

Matters of Examination

1. The organizational, leadership and management structure of AIRBNB during the time

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period of January 1, 2013 through the present.

2. All non-privileged information of AIRBNB regarding the factual allegations in the case of *Foster v. Riviere, et al* – 2021-CP-02-00889.
3. All agreements and/or contracts between Rhett Riviere, Chase Enterprises, LLC of South Carolina, and/or Katherine Thomas with Airbnb.
4. All records, reports, documents, correspondence, handwritten notes or otherwise, materials of any kind that concern, reference or relate to any of the following: Rhett Riviere, Chase Enterprises, LLC of South Carolina, Katherine Thomas and/or Julianne Foster.
5. All facts, information, and opinions upon which AIRBNB's online booking program notifies potential hosts of policies and procedures related to background checks performed by approved background check providers.
6. All facts and information upon which AIRBNB, through approved background check providers, checks databases of public state and county criminal records as well as state and national sex offender registries including specific detail regarding how AIRBNB processes findings from these third-party checks.
7. All facts and information upon which AIRBNB's background check practices caused a host to be rejected from utilizing AIRBNB's online booking program or guest(s) reservation(s) canceling due to background check findings.
8. All facts and information upon which AIRBNB agrees to filters for background checks with approved providers (i.e. canvasing public records whereby an arrest took place in addition to any convictions that followed).
9. All facts, information, and opinions upon which AIRBNB executes removal, reinstatement, criteria for eligibility, and appeals associated with implications AIRBNB's background

check policies have for hosts and guests.

10. All facts and information related to audiences to whom AirCover protection is offered, including the circumstances under which hosts can opt out of AirCover protection.
11. All facts and information related to AIRBNB's governance of their privacy policies as they relate to disclosed or concealed monitoring devices including data supporting removal, reinstatement, and appeals of hosts who violate the policy.
12. All facts and information related to AIRBNB and its hosts' compliance with state statutes concerning real estate property management licensure to hosts and potential hosts.
13. All communications between "Michele" and Defendant Katherine Thomas via AIRBNB's online booking program since April 12, 2019.
14. All Protocols, manuals, memoranda, or other written standards of care or instructions that reference or concern the actions taken by AIRBNB to protect guests from hidden cameras used to secretly videotape AIRBNB guests and from sexual predators, while staying in an AIRBNB property during the time period of December 1, 2013 through the present.
15. All Protocols, manuals, memoranda, or other written standards of care or instructions that reference or concern the gathering of information related to the suitability of AIRBNB hosts by AIRBNB during the time period of December 1, 2013 through the present.
16. All Protocols, manuals, memoranda, or other written standards of care or instructions that reference or concern the inspection of host properties by AIRBNB during the time period of December 1, 2013 through the present.
17. All Protocols, manuals, memoranda, or other written standards of care or instructions that reference or concern the use of video cameras by AIRBNB hosts during the time period of December 1, 2013 through the present.

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18. All reports and/or complaints made to AIRBNB of guests being secretly videotaped while staying in an Airbnb during the time period of December 1, 2013 through the present.
19. All lawsuits filed against AIRBNB related to guests being secretly videotaped during the time period of December 1, 2013 through the present.
20. All settlements entered into by AIRBNB related to guests being secretly videotaped during the time period of December 1, 2013 through the present.
21. All information related to the employee training program for all employees of AIRBNB that have responsibilities related to the protection of AIRBNB guests from being secretly video recorded while staying in an AIRBNB property during the time period of December 1, 2013 through the present.
22. The identity of all AIRBNB employee(s) involved in the vetting of AIRBNB hosts in South Carolina during the time period of December 1, 2013 through the present.
23. The internal reports and/or external reports and/or audits during the last ten years of AIRBNB that concern or relate to the secret video recording of AIRBNB guests during the time period of December 1, 2013 through the present.
24. The assets and liabilities of Airbnb, Inc.

AIRBNB's Duties and Obligations for this Deposition

AIRBNB must produce a knowledgeable witness about the facts, issues, and designations of documents referenced in this Notice. Complying with Rule 30(b)(6) may require the designation of more than one person to respond to the areas of inquiry stated in this Notice. For this Notice and/or the requested deposition, please consider these precedential cases to be a summary of the requirements applicable to AIRBNB's corporate designee(s).

Answers and testimony given by AIRBNB's designee(s) bind AIRBNB. Covol Fuels

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No. 4, LLC v. Pinnacle Min. Co., LLC, 785 F.3d 104, 113 n.13 (4th Cir. 2015); Ethox Chem., LLC v. Coca-Cola Co., No. 6:12-CV-01682-TMC, 2014 WL 2719214, at *2 (D.S.C. June 16, 2014) ("It follows that, in order to comply with the rule, the corporation has an affirmative duty to ensure that its designee has knowledge of all information on the noticed topics reasonably available to the corporation and is prepared to provide complete, binding answers on that information."); Career Counseling, Inc. v. Amsterdam Printing & Litho, Inc., No. 3:15-CV-05061-JMC, 2018 WL 3037106, at *7 (D.S.C. June 19, 2018).

The corporate designee need not have firsthand knowledge of the events in question, but to make the deposition meaningful, the designee must be prepared to provide "complete, knowledgeable, and binding answers on behalf of the corporation." Marker v. Union Fidelity Life Inc. Co., 125 F.R.D. 121, 126 (M.D.N.C. 1989); see also In re Vitamins Antitrust Litig., 216 F.R.D.168 (D.D.C. 2003). The designee's preparation should include a review of prior fact witness deposition testimony and documents and deposition exhibits, even if that review would be burdensome. Calzaturficio S.C.A.R.P.A. s.p.a. v. Fabiano Shoe Co., Inc., 201 F.R.D. 33, 36-37 (D. Mass. 2001). The primary objective of discovery is to ensure that lawsuits are decided by what the facts reveal, not by what facts are concealed. In Re Anonymous Member of the S.C. Bar, 346 S.C. 177, 193, 552 S.E.2d 10, 18 (2001).

Where Rule 30(b)(6) depositions are noticed after previous corporate depositions have been taken and the Rule 30(b)(6) notice includes topics partially covered in the previous corporate depositions, the courts have denied motions for protective orders seeking preclusion or limitation on the later Rule 30(b)(6) deposition. See e.g., Foster-Miller, Inc. vs. Babcock & Wilcox Canada, 201 F.3d 1 (1st Cir. 2000) (explaining the burden is on company to determine best designee to testify for corporation and prior deposition of corporate fact witness did not

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preclude Rule 30(b)(6) deposition). The case law is also clear that Rule 30(b)(6) cannot be used to limit was is asked of the designated witness at a deposition. King v. Pratt & Whitney, 161 F.R.D. 475 (S.D. Fla. 1995).

The descriptions and/or topics within the Rule 30(b)(6) notice simply identifies the minimum to which a witness must be prepared to testify, not the maximum. Detoy v. City & County of San Francisco, 196 F.R.D. 362, 366 (N.D. Cal. 2000); King v. Pratt & Whitney, 161 F.R.D. at 475. Under South Carolina law, generally, evidence objected to shall be taken subject to objection. Instructions not to answer questions at a deposition are improper. See Rule 30(c), SCRCP. Finally, if an examining party asks a question arguably outside the scope of the matters described in the Notice, the general provisions of Rule 26(b)(1), SCRCP would apply. ("Parties may object discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action").

Opinions

Rule 30(b)(6) requires that an organization "must not only testify about facts within [its] knowledge, but also its subjective beliefs and opinions … its interpretation of documents and events." U.S. v. Taylor, 166 F.R.D. 356, 361-63 (M.D.N.C. 1996) affirmed, 166 F.R.D. 367 (M.D.N.C. 1996).

Knowledge of Organization

Rule 30(b)(6) is intended to prevent serial depositions of various organizational witnesses without the proper knowledge and to eliminate "bandying," which is when several people are deposed but each disclaims knowledge of facts clearly known to persons in the organization and thereby known by the organization itself. FED. R. CIV. P. 30(b)(6), Advisory Committee Note: 1970 Amendment. "[T]he purpose of a Rule30(b)(6) deposition is to get answers on the subject

matter described with reasonable particularity by the noticing party, not to simply get answers limited to what the deponent happens to know." Alexander v. F.B.I., 186 F.R.D. 148, 152 (D.D.C. 1999). The testimony elicited at the Rule 30(b)(6) deposition represents the knowledge of the corporation, not the individual deponents. U.S. v. Taylor, 166. F.R.D. 356 (M.D.N.C. 1996). "[I]f it becomes obvious during the course of a deposition that the designee is deficient, the [organization] is obligated to provide a substitute." Prokosch v. Catalina Lighting, 193 F.R.D. 633 (D. Minn. 2000).

Duty to Prepare

An organization cannot avoid its Rule30(b)(6) obligations by "sticking its head in the sand," refusing to look for the answers, and then saying it does not know the answer. In re Independent Service Orgs Antitrust Litig., 168 F.R.D. 651, 653 (D. Kan.1996). If the representative(s) cannot testify as to the corporation's collective information on the matters requested, then the corporation and/or its attorneys must collect the information and prepare the representative(s) so that the representative(s) can give complete, knowledgeable, and binding testimony. Starlight Int'l Inc. v. Herlihy, 186 F.R.D. 626, 638 (D. Kan. 1999). A thorough, "reasonable" investigation may require an organization to rely on business records, other documents, interviews with present and former employees. U.S. v. Taylor, 166 F.R.D. at 361.

Imposing a duty to prepare its representative(s) ensures that an organization will not ambush an opponent by conducting half-hearted inquiry before the deposition but a thorough and vigorous one before trial. Id. at 362. "If that preparation means tracking much the same investigative ground that counsel and the risk management / peer review committee have already traversed, but independently of that investigation, so be it." Wilson v. Lakner, 228 F.R.D. 524 (D. Md. 2005). The company must produce, a knowledgeable deponent competently prepared to fully

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and responsibly address the questions posed by the requesting party. Prokosch v. Catalina Lighting, 193 F.R.D. 633 (D. Minn. 2000). "Defendant must prepare deponents by having them review prior fact witness deposition testimony as well as documents and deposition exhibits." Id. Unless it can provide that the information was not known or was inaccessible, a corporation cannot later proffer new or different allegations that could have been made at the time of the 30(b)(6) deposition. Rainey v. American Forest & Paper Assoc., 26 F. Supp. 2d 82 (D.DC. 1998). Defendant will be precluded from offering any testimony at trial on the subjects, which its designee was unable or unwilling to testify about at the 30(b)(6) deposition. QBE v. Jorda, 277 F.R.D. 676 (S.D. Fla. 2012).

Areas of Inquiry

Areas of inquiry seek the discovery of facts and the source of information that are clearly relevant and discoverable. BEOC v. Caesars Entertainment, Inc., 237 F.R.D. 428, 434 (D. Nev. 2006). "A party which intends to assert claims and defenses in litigation must adequately prepare an individual to testify as to those claims and defenses." In Re Classicstar Mare Lease Litigation, 2009 WL1313311 (E.D. KY. 2009). Discovery of facts and the source of information about the defendants' claims and defenses are relevant and discoverable. EEOC v. Caesars Entertainment. Inc., 237 F.R.D. 534, 541 (D. Nev. 2008). "Clients cannot refuse to disclose facts which their attorneys conveyed to them and which the attorneys obtained from independent sources." Id. Rule 30(b)(6) cannot be used to limit what is asked of a designated witness at a deposition. Rather, the Rule simply defines a corporation's obligations regarding whom they must produce for such a deposition and what that witness must be able to answer. King v. Pratt & Whitney, 161 F.R.D. 475, 476 (S.D. Fla. 1995). Rule 30(b)(6) is not a limitation -- 30(b)(6) defines minimum, not maximum scope of inquiry -- and Rule 26(b)(1) seeks anything leading to relevant information.

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Id.

No Objection if Difficult to Prepare

An organization cannot simply object to a Rule 30(b)(6) deposition because the required investigation would be "difficult" or "time consuming." Buycks-Robertson v. Citibank Fed. Sav. Bank, 162 F.R.D. 338, 343 (N.D. Ill. 1995). Even if corporate documents are voluminous and the review of those documents would be burdensome, a representative is still required to review them to prepare for the deposition; such preparation is necessary because the individuals so deposed must testify to the knowledge of the corporation, not the individual. See Calzaturficio S.C.A.R.P.A, s,p.a. v. Fabiano Shoe Co., 201 F.R.D. 33 (D.Mass.2001).

Sanctions

Failure to provide knowledgeable designees who can answer on behalf of Plaintiff shall be treated as contempt of court under Rule 37(b), and in such a circumstance Plaintiff's designee(s)and counsel may be jailed until the matters are testified to properly. Pioneer Drive, LLC v. Nissan, 262 F.R.D. 552 (D.MX. 2009). Preparing a designated witness with only the self-serving half of the story that is the subject of his testimony is not an act of good faith. Sciarietta v. Lincoln Nat. Fus. Co., No.13-12559 (11th Cir. 2015). Instructions not to respond that neither shielded a privilege nor supplied time to apply for a protective order were unprofessional and violated the Federal Rules of Civil Procedure and the ethical rule. Redwood v. Dobson, 476 F.3d 462 (7th Cir. 2007).

Former Employees

If the corporation no longer employs individuals with memory of distant events or such individuals are deceased, this still does not relieve the corporation from preparing its designee(s) for the deposition of the corporation to extent matters are reasonably available, whether from

documents, past employees, or other sources; while the corporation may plead lack of memory, if it wishes to assert positions based on testimony from third parties, or their documents, the designee still must present opinions as to why the corporation believes the facts should be so construed. U.S. v. Taylor, 166 F.R.D.at 361.

More Than One Designee

The corporation must designate more than one deponent if it would be necessary to do so to respond to the areas of inquiry specified with reasonable particularity. Alexander v. F.B.T., 186 F.R.D. 148, 151 (D.D.C. 1999). "The corporation then must not only produce such number of persons as will satisfy the request, but more importantly, prepare them so that they may give complete, knowledgeable and binding answers on behalf of the corporation." Marker v. Union Fidelity Life, Inc., 125 F.R.D.121 (M.D.N.C. 1989).

TABLE OF DEFINITIONS / ABBREVIATIONS

This section defines various words and phrases in this Notice. This information is provided to clarify the means of terms in this Notice to assist AIRBNB in understanding the objectives of Plaintiff's discovery efforts, and to help locate and furnish the information and materials.

1. "AIRBNB" or "**Defendant**," - Refers to AIRBNB, Inc., its subsidiaries, divisions, or any other entity (by whatever name and/or denomination), which is/was an owner, a predecessor or successor in interest, including any entity which may have merged or consolidated with AIRBNB's designee may also be asked questions potentially known by another party, other contracting entities, or their agents or employees. By acceptance of this Notice, and production of a responsive witness thereto. AIRBNB acknowledges it will produce someone knowledgeable about such matters. To the extent any other party, agent, or employee of AIRBNB can provide answers or responses unknown to AIRBNB's designated representative, be prepared to explain

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why that is the case.

2. The phrase "**writing and recording**" shall be defined under South Carolina Rules of Evidence Rule 1001(1), which specifically includes all electronic communications and electronically recorded information such as word processing files, e-mails, and computer / network backup media.

3. The term "**photograph**" shall be defined under South Carolina Rules of Evidence Rule 1001(2).

4. Where originals and/or non-identical copies are not available, "**writing and recording**" also means identical copies of original writing or recording and copies of non-identical copies.

5. "**Information**" - This term should include reference to both facts and applicable principles. This word should not be construed to be limited to any method of acquisition or compilation and should, therefore, be construed to include oral information and documents or other tangible objects.

[signature on following page]

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Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF JULIANNE FOSTER

July 1, 2022
Greenville, South Carolina

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Aiken Common Pleas

Case Caption: Julianne Foster VS Rhett Riviere , defendant, et al

Case Number: 2021CP0200889

Type: Order/Protective Order

Circuit Judge (Code #2050)

s/ William P. Keesley

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May 15, 2023

Via E-Filing
The Honorable Jocelyn Newman
1701 Main Street, Room 223
Post Office Box 192
Columbia, SC 29202-0192

RE: Foster v. Riviere, et al. (Aiken County, SC)
Case No. 2021-CP-02-00889
Our File No. 057915.01500

Judge Newman:

Dick Harpootlian and I have been retained to represent Airbnb, Inc. in this matter as additional counsel. This matter came before you for a hearing on a motion to dismiss and two motions to compel production on April 5, 2023.

The Court has not yet issued a written order on the motions.[1] Nevertheless, and while not waiving any of its rights or positions, Airbnb has taken steps to produce documents the Court found responsive and discoverable to 13 requests for production ("RFPs") at issue (attached).

Airbnb's production will be made under the Court's September 16, 2021 Confidentiality Order, although there are some issues respecting that Confidentiality Order and disputes regarding it, which were addressed in correspondence to Your Honor by Mr. Ashmore on April 20.

Some guest and host identity/contact information was requested via RFPs 34, 45–47, and 48. Disclosing guests' contact information would allow Plaintiff to contact each of these non-party guests, even though they have not been given notice and a chance to object to the disclosure. Disclosing the identities of hosts unrelated to this case would also allow Plaintiff to expose criminal backgrounds, no matter how stale the conviction or irrelevant those hosts or convictions are to the claims. These non-parties have privacy and Due Process rights. An open issue exists

[1] *See Spartanburg Buddhist Ctr. of S.C. v. Ork*, 417 S.C. 601, 608, 790 S.E.2d 430, 434 (Ct. App. 2016) (order not final until written and entered); *Case v. Case*, 243 S.C. 447, 451, 134 S.E.2d 394, 396 (1964); *First Union Nat. Bank of S.C. v. Hitman, Inc.*, 306 S.C. 327, 329, 411 S.E.2d 681, 682 (Ct. App. 1991), *aff'd*, 308 S.C. 421, 418 S.E.2d 545 (1992).

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regarding whether non-parties are entitled to notice and an opportunity to object before such a production of their identities/contact information, or whether the Court will order the production without notice to the non-parties.

Similar privacy interests were at issue in *Hollman v. Woolfson*, 384 S.C. 571, 577–78, 683 S.E.2d 495, 498–99 (2009). There, our Supreme Court granted two extraordinary writs of certiorari and reversed and vacated discovery orders which compelled production of non-party contact information and allowed the plaintiff's counsel to contact those non-parties. *Id.* The Court held that it was an abuse of discretion for the Court to require the production of the non-parties' contact information and then to authorize the plaintiff's counsel to contact those non-parties. *Id.* at 578, 683 S.E.2d at 498–99. The Court reasoned that the information obtained from the non-parties would not advance any of the plaintiff's claims, including his South Carolina Unfair Trade Practices Act claim. *Id.* at 580, 683 S.E.2d at 500.

Similar to the *Hollman* non-parties, the non-parties here have valid privacy interests and would suffer particularized harm if their identification/contact information were produced without notice, even with the Confidentiality Order in place, as "no protective device can limit the invasion of the [non-party guests'] privacy once contact with them is permitted." *Id.* at 578, 683 S.E.2d at 498–99. As a result, Airbnb requests the Court hold a status conference—in person or remotely—on this aspect of the productions at its earliest convenience.

Airbnb has separately filed a Motion to Compel Arbitration contemporaneously with this letter. Airbnb will also be moving to dismiss and/or stay further judicial proceedings. Airbnb has not waived its rights to compel arbitration of the Amended Complaint (which, among other things asserts new causes of action), nor does it waive those rights in seeking clarification from the Court and a written order respecting the privacy rights of non-parties, should the motion to compel arbitration be denied.

Respectfully,

C. Mitchell Brown

cc: Via ECF
Richard A. Harpootlian
Phillip Donald Barber
Beattie B. Ashmore
Dawn Sestito
Damali Taylor
Deborah B. Barbier
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Requests for Production at Issue

Subject of February 10, 2023 Motion to Compel:

16. "All documents reflecting the organizational, leadership and management of Airbnb from January 1, 2019 through the present."
17. "All non-privileged information of Airbnb regarding the factual allegations in the case of *Foster v. Riviere, et al* – 2021-CP-02-00889."
19. "All records, reports, documents, correspondence, handwritten notes or otherwise, materials of any kind that concern, reference or relate to any of the following: Rhett Riviere, Chase Enterprises, LLC of South Carolina, Katherine Thomas and/or Julianne Foster."
27. "All documents related to Airbnb's governance of their privacy policies as they relate to disclosed or concealed monitoring devices in AIRBNB properties including data supporting removal, reinstatement, and appeals of hosts who violate the policy."
28. "All documents related to Airbnb and its hosts' compliance with state statutes concerning real estate property management licensure to hosts and potential hosts."
29. "All communications between 'Michele' and Defendant Katherine Thomas via Airbnb's online booking program since April 12, 2019."
31. "All Protocols, manuals, memoranda, or other written standards of care or instructions that reference or concern the vetting of hosts by Airbnb during the time period of December 1, 2013 through the present."
33. "All Protocols, manuals, memoranda, or other written standards of care or instructions that reference or concern the use of video cameras by Airbnb hosts during the time period of December 1, 2013 through the present."
34. "All reports and/or complaints made to Airbnb of guests being secretly videotaped between December 1, 2013, through the present."

Subject of January 18, 2023 Motion to Compel:

45. "Provide all contact information in the possession of Airbnb for each and every Guest associated with the reservation id number [related to the property at issue]."
46. "Provide all contact information in the possession or control of Airbnb for each and every Guest(s) associated with the confirmation code [related to the property at issue]."
47. Provide all contact information in the possession of Airbnb for each and every Guest associated with the id product [related to the property at issue]."
48. "Provide all documents which identify any individual who has been an Airbnb Host during the time period of December 1, 2013 until the present who has been convicted of any of the [offenses from Airbnb background check policy]."

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May 16, 2023
VIA E-FILING

The Honorable Jocelyn Newman
Post Office Box 192
Columbia, SC 29202

In re: Julianne Foster v. Airbnb, Inc., et al.
C/A No. 2021-CP-02-00889

Dear Judge Newman,

Yesterday, Mitch Brown and I filed on behalf of Defendant Airbnb, Inc., a motion to compel arbitration.

I consulted with Plaintiff's attorney, Debbie Barbier on the motion and she and I discussed that we would both like to have a hearing on this recently filed motion at the Court's earliest convenience via WebEx.

If you would like to discuss this matter further, please have your office contact me and I can coordinate a date and time that works with the Court's schedule and the parties.

Thank you for your assistance in this matter.

With warm personal regards, I am,

Sincerely,

Richard A. Harpootlian

RAH:hm