

RECEIVED

Apr 12 2024

SC Court of Appeals

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 I

C. Mitchell Brown
E-Mail: mitch.brown@nelsonmullins.com
Blake Williams
E-Mail: blake.williams@nelsonmullins.com
Matthew A. Abee
E-Mail: matt.abee@nelsonmullins.com
Nelson Mullins Riley & Scarborough LLP
1320 Main Street / 17th Floor
Columbia, SC 29201
(803) 799-2000

Deborah B. Barbier, Esquire
Deborah B. Barbier, LLC
1811 Pickens Street
Columbia, SC 29201
dbb@deborahbarbier.com

Ryan L. Beasley, Esquire
Ryan L. Beasley, Attorney at Law, PA
416 East North Street
Greenville, SC 29601-2931
rlb@ryanbeasleylaw.com

Richard A. Harpootlian
Richard A. Harpootlian, P.A.
1410 Laurel Street (29201)
Post Office Box 1090
Columbia, South Carolina 29202
(803) 252-4848
rah@harpootlianlaw.com

Beattie B. Ashmore
Beattie B. Ashmore, PA
beattie@beattieashmore.com
650 East Washington Street
Greenville, SC 29601
PH: (865) 467-1001

Attorneys for Appellant Airbnb, Inc.

Wesley D. Few, Esquire
Wesley D. Few LLC
PO Box 9398
Greenville, SC 29604
wes@wesleyfew.com; cassy@wesleyfew.com

Attorneys for Julianne Foster

Damon C. Wlodarczyk, Esquire
Howser Newman & Besley, LLC
PO Box 12009
Columbia, SC 29211
damonw@hnblaw.com

Attorney for Katherine A. Thomas

James Mixon Griffin, Esquire
Margaret Nicole Fox, Esquire
Griffin Humphries LLC
4408 Forest Drive, Suite 300
Columbia, SC 29206
Tel. (803) 744-0800
jgriffin@griffinhumphries.com
mfox@griffinhumphries.com

Joseph M. McCulloch Jr., Esquire
Kathy R. Schillaci, Esquire
McCulloch and Schillaci
PO Box 11623
Columbia, SC 2921
joe@mccullochlaw.com
kathy@mccullochlaw.com

*Attorneys for Rhett Riviere and Chase
Enterprises LLC of South Carolina*

RECORD ON APPEAL INDEX

VOLUME I

Orders

Order Denying Airbnb’s Motion to Dismiss, filed Dec. 30, 2021	1
Order Granting Plaintiff’s Motions to Compel, file June 6, 2022	7
Order Denying Airbnb’s Motion for Protective Order, filed Aug. 3, 2022.....	13
Order Denying Airbnb’s Motion to Alter or Amend, filed Oct. 11, 2022.....	29
Order Granting Plaintiff’s Motion to Amend Complaint, filed Nov. 30, 2022	33
Form 4 Order Denying Airbnb’s Motion to Dismiss Amended Complaint, filed May 25, 2023	38
Form 4 Order (11:12 AM) Granting Airbnb’s Motion for Leave to Amend, May 25, 2023.....	41
Form 4 Order (11:28 AM) granting Plaintiff’s Motions to Compel Production, filed May 25, 2023	44
Form 4 Order taking Airbnb’s Motion to Stay, Rhett Riviere’s Motion to Compel, and Plaintiff’s Rule to Show Cause under Advisement, filed June 21, 2023	47
Order Denying Riviere’s Motions to Compel Arbitration and Dismiss, filed July 26, 2023.....	50
Order Granting Plaintiff’s Motion for Rule to Show Cause Against Airbnb, filed August 24, 2023	57
Order Staying Case Pending Appellate Decision, filed August 24, 2023	62
Order Denying Airbnb’s Motion to Compel Arbitration, filed September 13, 2023	67

Pleadings

Plaintiff’s Summons & Complaint, filed April 28, 2021.....	81
Riviere’s Answer to Complaint, filed June 28, 2021	94

Airbnb’s Answer, filed February 4, 2022	109
Plaintiff’s Amended Summons and Complaint, filed November 30, 2022	143
Airbnb’s Answer to the Amended Complaint and Crossclaim, filed April 20, 2023.....	184
Airbnb’s Third-Party Summons and Complaint, filed April 20, 2023	318

Transcripts

Transcript of Hearing (Judge Jocelyn Newman), April 5, 2023.....	334
Transcript of Hearing (Judge Maddox), June 13, 2023	445

VOLUME II

Motions and Memoranda

Motion to Compel Arbitration

Airbnb’s Motion to Compel Arbitration, filed May 15, 2023	490
Plaintiff’s Response in Opposition to Airbnb’s Motion to Compel Arbitration, filed June 6, 2023.....	550
Airbnb’s Reply in Support of its Motion to Compel Arbitration, filed June 12, 2023.....	598
Letter from Airbnb’s Counsel (Brown) to Judge Maddox, filed June 14, 2023.....	625
Letter from Plaintiff’s Counsel (Brown) to Judge Maddox, filed June 16, 2023	651
Letter from Plaintiff’s Counsel (Barbier) to Judge Maddox, filed June 16, 2023.....	664
Airbnb’s Supplemental Memorandum in Support of its Motion to Compel, filed July 21, 2023.....	674
Plaintiff’s Response in Opposition to Airbnb’s Supplemental Memorandum in Support of its Motion to Compel Arbitration, filed July 28, 2023	682

Motion to Stay and Joint Motion to Acknowledge Automatic Stay

Airbnb’s Motion to Stay, filed May 16, 2023.....	688

Plaintiff’s Response in Opposition to Airbnb’s Motion to Stay, filed June 6, 2023	690
Airbnb’s Reply in Support of its Motion to Stay, filed June 12, 2023	697
Joint Motion of Airbnb and Rhett Riviere to Acknowledge Automatic Stay, filed July 28, 2023.....	702
Plaintiff’s Response in Opposition to Joint Motion to Acknowledge Stay, filed July 31, 2023	710
Airbnb’s Reply in Support of Joint Motion to Acknowledge Stay & Exhibit, filed August 9, 2023	715

Motion to Compel Production

Plaintiff’s Motion to Compel, filed Mar. 3, 2022.....	722
Plaintiff’s Motion to Compel Production (RFPs 45–48), filed January 18, 2023	736
Plaintiff’s Motion to Compel Production (RFPs 16–44), filed February 10, 2023	801
Letter from Airbnb’s Counsel (Brown) to Judge Newman, filed May 15, 2023.....	981
Letter from Airbnb’s Counsel (Harpootlian) to Judge Newman, filed May 16, 2023.....	985

VOLUME III

Airbnb’s Motion to Reconsider and Stay Enforcement, filed June 5, 2023	986
Letter from Airbnb’s Counsel to J. Jocelyn Newman, June 5, 2023	999
Plaintiff’s Response in Opposition to Airbnb’s Motion to Reconsider and Stay Enforcement, filed June 8, 2023	1000

Motion for Rule to Show Cause

Plaintiff’s Motion for Rule to Show Cause & Exhibits, filed June 8, 2023	1141
Airbnb’s Response in Opposition to Plaintiff’s Motion for Rule to Show Cause, filed July 26, 2023.....	1220

Plaintiff’s Reply to Airbnb’s Response in Opposition to Rule to Show Cause and Proposed Order, filed July 28, 2023	1228

Motion to Dismiss the Complaint

Airbnb’s Motion to Dismiss Complaint, filed August 3, 2021.....	1233
Airbnb’s Memorandum in Support of Motion to Dismiss, filed Aug. 26, 2021	1237
Airbnb’s Motion to Dismiss Amended Complaint, filed January 20, 2023	1254
Airbnb’s Memorandum in Support of its Motion to Dismiss Amended Complaint, filed Feb. 23, 2023.....	1261
Airbnb’s Reply in Support of its Motion to Dismiss Amended Complaint, filed Apr. 3, 2023.....	1351

Motion for Protective Order

Airbnb’s Motion for Protective Order, filed Jun 14, 2022	1367
Airbnb’s Affidavit in Support of Motion for Protection, filed June 24, 2022.....	1430
Airbnb’s Memorandum in Support of its Motion for Protection, filed June 24, 2022.....	1439

VOLUME IV

Plaintiff’s Memorandum Opposition to Motion for Protective Order, filed June 24, 2022.....	1454
Airbnb’s Reply Memorandum in Further Support of Motion for Protective Order, filed June 27, 2022	1533

Motion for Reconsideration

Airbnb’s Motion for Reconsideration, filed Aug. 4, 2022	1545
Plaintiff’s Response to Defendant Airbnb’s Motion for Reconsideration, filed Aug. 9, 2022.....	1617

Airbnb’s Supplemental Memorandum in Support of Motion for Reconsideration, filed Sept. 2, 2022.....	1633

Airbnb’s Supplemental Reply in Support of Motion for Reconsideration, filed Sept. 14, 2022.....	1670

Motion to Amend the Complaint

Plaintiff’s Motion to Amend Complaint, filed Sept. 2, 2022	1729

Airbnb’s Objection to Plaintiff’s Motion to Amend Complaint, filed Sept. 13, 2022.....	1733

Airbnb’s Memorandum Opposition to Plaintiff’s Motion to Amend Complaint, filed Oct. 13, 2022.....	1775

Other Motions

Airbnb’s Motion to Quash Plaintiff’s Subpoena to Depose Rich Baer and for Protective Order, filed Jan. 17, 2023	1784

Airbnb’s Motion to Quash Plaintiff’s Notice of Deposition of Tara Bunch and for Protective Order, filed January 19, 2023	1829

Riviere’s Motion to Compel Arbitration, filed May 23, 2023.....	1858

Riviere’s Motion to Dismiss or Stay Case, filed May 26, 2023	1862

Letter from Airbnb to Judge Maddox, filed June 16, 2023	1865

Letter from Plaintiff to Judge Maddox, filed June 29, 2023	1878

VOLUME V

Other/Miscellaneous

Copy of the Docket from the Second Judicial Circuit Public Index.....	1890

Email Chain between Plaintiff’s Counsel and Airbnb’s counsel, July 14, 2021	1920

Email Chain between Plaintiff’s Counsel and Airbnb’s counsel, July 7, 2021	1922

Email Chain between Plaintiff’s Counsel and Airbnb’s counsel, May 27, 2021	1923
Airbnb’s Response to the June 6, 2022 Order granting Pl.’s Mot. to Compel	1925
Stipulation of Dismissal of Riviere, December 20, 2022	1932
Hindman Email to J. Newman, May 16, 2023.....	1934
Taylor Ltr. Producing Documents (Without Enclosures), June 5, 2023.....	1940
Airbnb’s June 5, 2023 Letter to Plaintiff	1942
Plaintiff’s June 8, 2023 email to Clerk of Court.....	1943
Airbnb’s June 8, 2023 email to Clerk of Court.....	1944
Email Chain with Charla Plouffe, Aiken County Court Administrator, June 8–9, 2023.....	1944
Email and Proposed Rule to Show Cause Circulated by Plaintiff’s Counsel (Few), July 24, 2023	1947
Email Chain with Will Smith, Law Clerk to J. Maddox, July 11–27, 2023	1956
Email and Proposed Rule to Show Cause Sent by Plaintiff’s Counsel (Few) to J. Maddox, July 27, 2023.....	1961
Riviere’s Notice of Appeal, filed July 27, 2023	1978
Airbnb’s Notice of Appeal, filed September 15, 2023	1991
Certificate of Counsel	2021

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 DENYING
DEFENDANT AIRBNB INC.'S
MOTION TO DISMISS**

Before the Court is Defendant Airbnb Inc.'s Motion to Dismiss pursuant to South Carolina Rule of Civil Procedure 12(b)(6). The matter has been fully briefed, and a hearing was held on the matter on August 31, 2021. Plaintiff Julianne Foster ("Foster"), represented by Deborah Barbier and Ryan Beasley, 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, and consistent with this Court's Form 4 Order entered on September 16, 2021, it is hereby **ORDERED** that Airbnb's Motion to Dismiss is **DENIED**.

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. Airbnb filed this motion to dismiss for failure to state a claim because it contends that the Complaint fails to state facts sufficient to constitute a cause of action against Airbnb for either of the counts pled against it.

APPLICABLE LAW

Under Rule 12(b)(6), SCRCP, a court may dismiss a claim if the defendant demonstrates the plaintiff has failed “to state facts sufficient to constitute a cause of action” in the pleadings filed with the court. *Williams v. Condon*, 347 S.C. 227, 232-33, 553 S.E.2d 496, 499 (Ct. App. 2001) (quoting Rule 12(b)(6), SCRCP). When considering a motion to dismiss for failure to state a claim, the court must base its ruling solely upon the allegations made on the face of the complaint. *Baird v. Charleston Cnty.*, 333 S.C. 519, 511 S.E.2d 69 (1999); *Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601 (1995). If the facts and inferences drawn from the facts alleged on the complaint would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper. *Brown v. Leverette*, 291 S.C. 364, 353 S.E.2d 697 (1987); *McCormick v. England*, 328 S.C. 627, 494 S.E.2d 431 (Ct. App. 1997). The facts and inferences alleged on the complaint must be viewed in the light most favorable to the plaintiff. *Toussaint v. Ham*, 292 S.C. 415, 357 S.E.2d 8 (1987); *Cowart v. Poore*, 337 S.C. 359, 523 S.E.2d 182 (Ct. App. 1999). “The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in [her] behalf, the complaint states any valid claim for relief.” *Gentry v. Yonce*, 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999).

Upon Airbnb's written request, this Court also took judicial notice of other materials offered by Airbnb in support of its Motion to Dismiss: (1) Airbnb's effective Terms of Service at the time of the subject rental; and (2) an Arbitration decision of *McCluskey v. Airbnb Inc.*, No. 01-18-0003-7337 (Am. Arb. Assn. Oct. 28, 2019).

DISCUSSION

In its Motion to Dismiss, Airbnb contends that as to Count I, Foster has not stated a negligence claim against it because Airbnb did not owe her a duty of care. Airbnb further alleges that, even if it did owe Foster a duty of care, Defendants Chase, Riviere and / or Thomas did not disclose the cameras located in the bedroom to it, and Foster has not pled facts to support that the crime for which she was a victim was foreseeable. Basically, Airbnb alleges it had no reason to know about Riviere's voyeuristic predilections, and that such lack of knowledge is a basis to dismiss Foster's negligence claim.

As to Count V, Airbnb contends that Foster has not stated a claim of negligence *per se* because Airbnb is not a real estate broker as defined by South Carolina Code § 40-57-20, *et seq.* Airbnb further contends, even if it violated the real estate licensing statute, such a violation does not provide a basis for a negligence *per se* action.

Under South Carolina law, there is no general duty to control the conduct of another or to warn a third person or potential victim of danger." *Doe ex rel. Doe v. Wal-Mart Stores, Inc.*, 711 S.E.2d 908, 911 (S.C. 2011) (citing *Faile v. S.C. Dep't of Juvenile Justice*, 566 S.E.2d 536, 546 (S.C. 2002)). However, the South Carolina Supreme Court has recognized at least five exceptions to this general rule, as follows:

(1) where the defendant has a special relationship to the victim; (2) where the defendant has a special relationship to the injurer; (3) where the defendant voluntarily undertakes a duty; (4) where the defendant negligently or intentionally creates the risk; and (5) where a statute imposes a duty on the defendant.

Id. at 911-12.

Based on the standard upon which this Court must rule upon a Motion to Dismiss, the Court accepts Plaintiff's allegations as truthful and finds that while there is usually no duty to protect, one or more of the following exceptions apply: (i) defendant has a special relationship to the victim, (ii) defendant has a special relationship to the injurer; and (iii) defendant voluntarily undertakes a duty.

The Court further finds that Foster has alleged facts sufficient to support foreseeability to survive a motion to dismiss. *See Easterling v. Burger King Corp.*, 416 S.C 437, 786 S.E2d 443, 449 n.2 (Ct. App. 2016) (holding that the focus is not on whether the defendant knew or should have known the perpetrator was about to physically attack the plaintiff, "but rather if a crime of that nature was foreseeable to the [defendant] balanced against the economically feasible security measures required to prevent such harm"). *See, e.g., Complaint*, ¶¶ 36, 40.

With respect to Count V alleging negligence *per se*, and viewing the allegations in the light most favorable to the Plaintiff, the Court finds Foster's Complaint sets forth facts, which if proven, support this claim.

CONCLUSION

Accordingly, the Court **DENIES** Defendant Airbnb's Motion to Dismiss in its entirety. Airbnb shall file an Answer to the counts pled against it within thirty (30) days after entry of this Order.

The Honorable DeAndrea Gist Benjamin
Presiding Judge for 2nd Circuit

December __, 2021
Columbia, South Carolina



Aiken Common Pleas

Case Caption: Julianne Foster VS Rhett Riviere , defendant, et al

Case Number: 2021CP0200889

Type: Order/Other

So Ordered

s/DeAndrea Gist Benjamin, #2161

Electronically signed on 2021-12-30 11:10:15 page 6 of 6

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.

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 Riviere 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.

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 GRANTS 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



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

Electronically signed on 2022-06-06 14:46:26 page 6 of 6

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 V¹. The claims concern her May 2019 stay at a property

¹ See S.C. Code 40-57-20.

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), SCRCF. 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.

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 GRANTS 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]

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	2nd JUDICIAL CIRCUIT
Julianne Foster,	)	Case No: 2021-CP-02-00889
Plaintiff,	)	
vs.	)	PLAINTIFF'S NOTICE OF DEPOSITION
Rhett Riviere, Katherine A. Thomas, Chase	)	OF DEFENDANT AIRBNB INC. UNDER RULE
Enterprises, LLC of South Carolina, and	)	30(B)(6), SCRPC
AIRBNB Inc.,	)	
Defendants.	)	

TO: L. ANDREW WATSON, COUNSEL TO AIRBNB, INC.:

PLEASE TAKE NOTICE, that, under Rule 30 and also Rule 30(b)(6), SCRPC, 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

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. canvassing 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.

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

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. Calzaturificio 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

preclude Rule 30(b)(6) deposition). The case law is also clear that Rule 30(b)(6) cannot be used to limit what 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), SCRCF. 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), SCRCF 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 Rule 30(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 Rule 30(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

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.D.C. 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.

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 Calzaturificio 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

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]

Respectfully submitted,

WESLEY D. FEW, LLC

/s/Wesley D. Few

Wesley D. Few, S.C. Bar No. 15565
Post Office Box 9398
Greenville, South Carolina 29604
(864) 527-5906 | wes@wesleyfew.com

Deborah B. Barbier

DEBORAH B. BARBIER, LLC

1811 Pickens Street
Columbia, South Carolina 29201
803-445-1032 | dbb@deborahbarbier.com

-and-

Ryan L. Beasley, SC Bar No. 68307

RYAN L. BEASLEY, ATTORNEY AT LAW, P.A.

416 East North Street, 2nd Floor
Greenville, South Carolina 29601
(864) 679-7777 | rlb@ryanbeasleylaw.com

ATTORNEYS FOR PLAINTIFF JULIANNE FOSTER

July 1, 2022
Greenville, South Carolina



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

Electronically signed on 2022-08-03 11:15:10 page 16 of 16

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, 2022, 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.

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]



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

Electronically signed on 2022-10-11 15:09:51 page 4 of 4

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN	)	
	)	
JULIANNE FOSTER,	)	Civil Action No. 2021-CP-02-00889
	)	
Plaintiffs,	)	
	)	ORDER GRANTING PLAINTIFF
vs.	)	LEAVE TO AMEND COMPLAINT
	)	
RHETT RIVIERE, KATHERINE A.	)	
THOMAS, CHASE ENTERPRISES,	)	
LLC OF SOUTH CAROLINA, AND	)	
AIRBNB, INC,	)	
	)	
Defendants.	)	

This matter is before the Court upon Plaintiff's Motion to Amend Complaint ("the Motion") pursuant to Rule 15 of the *South Carolina Rules of Civil Procedure*,¹ which was filed on September 2, 2022. The Motion came to a hearing on October 18, 2022, where Plaintiff was represented by attorneys Deborah Barbier and Wesley Few; Defendant Riviere was represented by attorneys Joseph McCulloch, James Griffin, and John Harte; Defendant Thomas was represented by attorney Damon Wlodarczyk; and Defendant Airbnb was represented by attorney Beattie Ashmore.

The Court concludes Defendants will not incur prejudice by granting Plaintiff's leave to amend her Complaint to assert new allegations and claims.

FACTUAL AND PROCEDURAL HISTORY

Plaintiffs filed their Summons and Complaint on April 28, 2021, alleging negligence, gross negligence, invasion of privacy, wrongful intrusion into private affairs, intentional infliction of

¹ Following the thirty day period in which a party may freely amend his pleading, a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires and does not prejudice any other party.

emotional distress, constructive fraud, misrepresentation, and negligence per se. Plaintiff's Proposed Amended Complaint, as included in the Motion as an exhibit, contains several causes of action not contained in the original Complaint, including allegations of negligent hiring, supervision, training, and retention of employees, or alternatively independent contractors; premises liability; vicarious liability for invasion of privacy; and violation of South Carolina Unfair Trade Practices Act ("SCUTPA"). Further, the Proposed Amended Complaint contains additional prayers for relief, like treble damages, and a number of factual allegations not seen in the original Complaint.

ANALYSIS

By operation of the South Carolina Rules of Civil Procedure, Plaintiff's allotted period to amend their Complaint expired thirty (30) days from service of the last responsive pleading. SCRCR Rule 15. Defendant Airbnb filed its answer on February 4, 2022; thus, Plaintiff's window for amendment as of right closed on or around March 6, 2022. The rules, however, permit a party to amend their Complaint following this deadline by leave of court when justice so requires and if no prejudice to the other party results. *Id.*

"Rule 15(a) provides that when a party asks to amend his pleading, 'leave shall be freely given when justice so requires and does not prejudice any other party.'" *Patton v. Miller*, 420 S.C. 471, 489, 804 S.E.2d 252, 261 (2017) (quoting Rule 15(a), SCRCR). "This rule strongly favors amendments and the court is encouraged to freely grant leave to amend." *Id.* (citations omitted). "'Rule 15(a) is substantially the same as the Federal Rule,' Rule 15(a), SCRCR notes, and the Supreme Court of the United States has referred to the Rule's 'freely given' provision as a 'mandate' that 'is to be heeded[.]'" *Id.* (quoting *Foman v. Davis*, 371 U.S. 178, 182, 83 S.Ct. 227, 230, 9 L.Ed.2d 222, 226 (1962)). In sum, "[i]n the absence of any apparent or declared reason—

such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.—the leave sought should, as the rules require, be ‘freely given.’” *Id.* The party opposing the amendment has the burden of establishing prejudice, undue delay, or bad faith. *See Foggie v. CSX Transp., Inc.*, 315 S.C. 17, 431 S.E.2d 587 (1993).

In response to the Motion, Defendants assert that leave should not be given because there is no justification for Plaintiff’s undue delay in asserting additional allegations, because Defendants would be prejudiced by the Court granting the amendment, and because certain factual allegations from the Proposed Amended Complaint are made in bad faith. The Court respectfully disagrees.

The prejudice Rule 15 envisions as a basis for denying leave to amend is (1) a lack of notice on the new issue to be tried and (2) a lack of opportunity to refute it. *Myat v. Tuomey Reg’l Med. Ctr.*, 427 S.C. 601, 606, 832 S.E.2d 306, 308 (Ct. App. 2019). Further, “[p]rejudice occurs when the amendment states a new claim or defense which would require the opposing party to introduce additional or different evidence to prevail in the amended action.” *Id.*

Discovery is still ongoing in the case at bar, and therefore, questions of prejudice and undue delay are silenced because Defendants will have ample opportunity to refute the allegations in the Proposed Amended Complaint through the discovery process. Further, with respect to the issue of delay, leave to amend can be granted immediately before, and even during, trial. *See Parker v. Spartanburg Sanitary Sewer Dist.*, 362 S.C. 276, 607 S.E.2d 711 (Ct. App. 2005). Accordingly, the Court concludes that prejudice and undue delay are insufficient reasons to deny Plaintiff leave to amend her Complaint.

Turning now to the issue of bad faith, Defendant Reviere directs the Court's attention to certain allegations from the Proposed Amended Complaint related to alleged prior bad acts; he argues these allegations are unsupported by facts or evidence and are made in bad faith as an attempt to harass him and destroy his reputation. Moreover, Defendant Reviere contends the new allegations are not necessary to Plaintiff's pursuit of the newly added premises liability claim against Defendant Reviere.

As mentioned above, Defendants have the burden of establishing the basis for denying Plaintiff leave to amend her Complaint. And while Plaintiff's allegations may be scandalous or potentially damaging to Defendants' reputations, that does not, by itself, constitute a showing of bad faith by Plaintiff or a basis to deny the Motion. Indeed, Plaintiff's claims and allegations contained in the Proposed Amended Complaint appear related to the causes of action and relief sought. *See Patton*, 420 S.C. at 490, 804 S.E.2d at 262 (holding "[i]f the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, [s]he ought to be afforded an opportunity to test [her] claim on the merits"). As such, the Court concludes Defendants have not established sufficient grounds to warrant denying Plaintiff leave to amend her Complaint.

CONCLUSION

After reviewing the applicable law and considering the arguments of counsel, the Court hereby **GRANTS** Plaintiff's Motion to Amend Complaint. As such, the Court grants Plaintiff leave to file an Amended Complaint within fifteen (15) days of receipt of this Order.

AND IT IS SO ORDERED.

[JUDICIAL E-SIGNATURE PAGE TO FOLLOW]



Aiken Common Pleas

Case Caption: Julianne Foster VS Rhett Riviere , defendant, et al

Case Number: 2021CP0200889

Type: Order/Amend

It Is So Ordered

s/ Walton J. McLeod

Electronically signed on 2022-11-30 09:38:46 page 5 of 5

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2021CP0200889

Julianne Foster et al
PLAINTIFF(S)

Airbnb Inc et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

Following a hearing on April 5, 2023,
Defendant Airbnb's Motion to Quash (filed on 1/17/23) is GRANTED;
Defendant Airbnb's Motion to Quash (filed on 1/19/23) is DENIED;
Plaintiff's Motion for Sanctions (filed on 2/14/23) is DENIED with leave to refile; and
Defendant Airbnb's Motion to Dismiss (filed on 1/20/23) is DENIED.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 05/25/2023 .

Brad Owensby
Damali Taylor for Airbnb Inc
Dawn Sestito for Airbnb Inc
Jane Page Thompson

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



Aiken Common Pleas

Case Caption: Julianne Foster , plaintiff, et al VS Rhett Riviere , defendant, et al

Case Number: 2021CP0200889

Type: Order/Electronic Form 4

So Ordered

Jocelyn Newman

Electronically signed on 2023-05-25 11:01:00 page 3 of 3

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2021CP0200889

Julianne Foster et al
PLAINTIFF(S)

Airbnb Inc et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

Following a hearing on April 5, 2023, Defendant Airbnb's Motion for Leave to Amend its Answer (filed on 11/2/23) is DENIED as to Defendant Riviere but otherwise GRANTED.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 05/25/2023 .

Brad Owensby
Damali Taylor for Airbnb Inc
Dawn Sestito for Airbnb Inc
Jane Page Thompson

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



Aiken Common Pleas

Case Caption: Julianne Foster , plaintiff, et al VS Rhett Riviere , defendant, et al

Case Number: 2021CP0200889

Type: Order/Electronic Form 4

So Ordered

Jocelyn Newman

Electronically signed on 2023-05-25 11:07:45 page 3 of 3

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2021CP0200889

Julianne Foster et al
PLAINTIFF(S)

Airbnb Inc et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

Following a hearing on April 5, 2023,

Plaintiff's Motion to Compel (filed on 1/18/23) was GRANTED, with Defendant Airbnb being allowed 60 days to respond; and

Plaintiff's Motion to Compel (filed on 2/10/23) was also GRANTED, allowing Defendant Airbnb 60 days to respond.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 05/25/2023 .

Brad Owensby
Damali Taylor for Airbnb Inc
Dawn Sestito for Airbnb Inc
Jane Page Thompson

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



Aiken Common Pleas

Case Caption: Julianne Foster , plaintiff, et al VS Rhett Riviere , defendant, et al

Case Number: 2021CP0200889

Type: Order/Electronic Form 4

So Ordered

Jocelyn Newman

Electronically signed on 2023-05-25 11:18:25 page 3 of 3

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2021 CP-0200889

Julianne Foster et. al.
PLAINTIFF(S)

Rhett Riviere et. al.
DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

ORDER INFORMATION

Defendant Airbnb's Motion to Stay, Third-Party Defendant Rhett Riviere's Motion to Compel, and Plaintiff's Rule to Show Cause came before the Court on June 13, 2023. These motions were taken under advisement.

This order ☐ ends ☒ does not end the case.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge	2131	Judge Code	Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

 ATTORNEY(S) FOR THE PLAINTIFF(S)	 ATTORNEY(S) FOR THE DEFENDANT(S)
	CLERK OF COURT

Court Reporter:

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

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



Aiken Common Pleas

Case Caption: Julianne Foster , plaintiff, et al VS Rhett Riviere , defendant, et al

Case Number: 2021CP0200889

Type: Order/Other

So Ordered

s/ J. Cordell Maddox Jr.

Electronically signed on 2023-06-21 12:55:41 page 3 of 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN	)	
Julianne Foster,	)	Civil Action No. 2021-CP-02-00889
	)	
Plaintiff,	)	
	)	
vs.	)	Order Denying Motions to Compel
	)	Arbitration and Dismiss by Third-
Rhett Riviere, Katherine A. Thomas,	)	Party Defendant Rhett Riviere
Chase Enterprises, LLC of South	)	
Carolina, and Airbnb, Inc.	)	
	)	
Defendants.	)	
	)	

This matter comes before the Court on Rhett Riviere’s (previously a Defendant, now a Third-Party Defendant) Motion to Compel Arbitration filed May 23, 2023, and his Motion to Dismiss or, in the Alternative, Stay filed on May 26, 2023. The Court held a hearing on June 13, 2023. All parties were represented by counsel. After consideration of the parties’ arguments based on the pleadings, exhibits, written submissions to date, oral argument, and applicable authorities, the Court **DENIES** Riviere’s motions to compel arbitration and dismiss or stay.

Factual Background

This action arose from an incident that occurred from May 17–18, 2019. (Am. Compl. ¶ 89.) Plaintiff alleges that she and her friend stayed at a rental property in Aiken, South Carolina. (*Id.* ¶ 93.) This property was owned by Defendant Chase Enterprises, which was managed by Riviere. (*Id.* ¶¶ 89–91.) Defendant Katherine Thomas held herself out to be the “host” or property manager for the property on Airbnb, Inc. (“Airbnb”). (*Id.* ¶ 95.) Plaintiff alleges that when she was staying at the property, Riviere had a hidden camera placed in a bedroom which captured recordings of her. (*Id.* ¶ 100.) Plaintiff dismissed her claims against Riviere pursuant to a confidential settlement agreement. Airbnb thereafter filed a third-party complaint against Riviere

seeking contractual and equitable indemnification. In response, Riviere filed a motion to compel Airbnb to arbitrate the indemnification claims.

Plaintiff's friend booked the property through Airbnb and the group "paid the Defendants to rent the Airbnb property." (*Id.* ¶ 100.) Riviere argues that Airbnb's Terms of Service attached as an exhibit to its Motion to Compel Arbitration govern the transaction. He argues that Plaintiff, Airbnb, and Thomas directly benefited from the transaction and the contractual provisions, including the incorporated policies, making them subject to those Terms. Riviere further contends that Plaintiff, Airbnb, and Thomas all agreed to the Terms as a condition of their being allowed to list and stay at his properties on Airbnb's online platform. Those Terms include an arbitration provision in Section 19 entitled "Dispute Resolution and Arbitration Agreement." (Terms of Service 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 then 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.*) The Court disagrees with Defendants' arguments that an arbitrator, not the Court, should decide whether this case is arbitrable.

Legal Standard

Under the applicable Federal Arbitration Act ("FAA") "there is a potent public policy favoring arbitration, but this policy is deployed only as an aid in interpreting the scope and

enforcement of validly entered arbitration agreements.” *Weaver v. Brookdale Senior Living, Inc.*, 431 S.C. 223, 229-30, 847 S.E.2d 268, 271–72 (Ct. App. 2020). 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.” *Wilson v. Willis*, 426 S.C. 326, 337, 827 S.E.2d 167, 173 (2019) (internal quotation omitted).

Analysis

The Court **DENIES** Riviere’s Motion to Compel Arbitration and the Motion to Dismiss for three reasons: (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; and (3) Riviere waived the right to enforce arbitration by participating in the litigation before his dismissal and the third-party claims against him. The Court has considered and rejected all of the arguments raised by Riviere (whether directly or by way of joinder with Airbnb’s motion) in submissions filed and made to date in reaching its rulings on the pending motions.

I. Direct benefits estoppel does not apply here.

Riviere argues that direct benefits estoppel applies to require Plaintiff’s claims to be brought in arbitration. *See Wilson*, 426 S.C. at 340–41, 827 S.E.2d at 175 (quoting *Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 290, 733 S.E.2d 597, 601 (Ct. App. 2012)). The Court disagrees. Instead, the Court relies on *Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, 422 S.C. 544, 556, 813 S.E.2d 292, 299 (Ct. App. 2018), a case cited by Plaintiff, to conclude that Plaintiff

received no direct contractual benefit because she suffered harm while staying at the residence that was the subject of the contract. Thus, the Court declines to compel the matter to arbitration.

II. The Court will not compel arbitration of outrageous acts that are unforeseeable.

In South Carolina, the outrageous torts exception 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 first recognized the exception to arbitration enforcement in 2007. *See Aiken v. World Fin. Corp. of South Carolina*, 373 S.C. 144, 644 S.E.2d 705 (2007). The Supreme Court excepted from arbitration outrageous torts that are “unforeseeable to the reasonable consumer and legally distinct from the contractual relationship between the parties.” *Id.*

Although Airbnb’s third-party complaint against Riviere seeks equitable and contractual indemnification, the Court nevertheless invokes that exception here, which Plaintiff first raised in her June 16 and 29, 2023 letters to this Court. On the facts alleged in the Amended Complaint, the Court concludes the exception applies outside of the contractual relationship between the parties and declines to compel the action to arbitration. The Court disagrees that United States Supreme Court precedent disallows this result.

III. Riviere has waived the right to seek arbitration.

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.” *Rhodes v. 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.*

Regardless of the applicability of the arbitration agreement in the Airbnb’s Terms of Service to the claims asserted in this matter, Riviere has waived his right to enforce arbitration by participating in the litigation and settling Plaintiff’s claims against him. See *Rhodes v. Benson Chrysler-Plymouth, Inc.*, 374 S.C. 122, 125, 647 S.E.2d 249, 250 (Ct. App. 2007). Plaintiff filed her Complaint on April 28, 2021. Riviere filed an answer on June 28, 2021, and an Amended Answer on July 23, 2021. Riviere also filed a Motion to Stay on July 23, 2021, while the criminal action against him proceeded, which was denied. The parties then proceeded with discovery and have exchanged written discovery, taken depositions, and litigated discovery-related motions. Plaintiff then amended her complaint on November 30, 2022, and then unilaterally dismissed Riviere on December 20, 2022, after reaching a settlement with him. Riviere was then brought into the case in response to third-party claims the Court required Airbnb to assert in lieu of crossclaims. It was not until May 23, 2023, that Riviere moved to compel arbitration. The Court finds that the nonwaiver provision in the Terms of Service is not dispositive on the issue of whether Riviere or Airbnb waived the right to arbitrate. *Nat’l Union Fire Ins. Co. of Pittsburgh, P.A. v. NCR Corp.*, 376 F. App’x 70, 73 (2d Cir. 2010).

Conclusion

IT IS THEREFORE ORDERED that Riviere's motions to compel arbitration is **DENIED**.

IT IS SO ORDERED.

[Electronic signature page of the Honorable J. Cordell Maddox, Jr. to follow.]



Aiken Common Pleas

Case Caption: Julianne Foster , plaintiff, et al VS Rhett Riviere , defendant, et al

Case Number: 2021CP0200889

Type: Order/Other

So Ordered

s/ J. Cordell Maddox Jr.

Electronically signed on 2023-07-26 13:37:56 page 7 of 7

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
FOR RULE TO SHOW CAUSE
AGAINST AIRBNB, INC.**

This matter came before the Court pursuant to Plaintiff's Motion for a Rule to Show Cause, filed June 8, 2023. A hearing was held on the matter on June 13, 2023. Having fully considered the matter, including the motion, exhibits, and the parties' arguments, it is hereby **ORDERED** that Plaintiff's Motion for a Rule to Show Cause is **GRANTED**.

On June 7, 2022, Plaintiff served Airbnb, Inc. ("Airbnb") with her Requests for Production Nos. 16-44.ⁱ In its responses, Airbnb objected on numerous grounds. (Ex. B, Feb. 10, 2023 Motion to Compel). On February 10, 2023, Plaintiff filed a Motion to Compel regarding her Requests for Production Nos. 16-44.

On November 1, 2022, Plaintiff served Airbnb with her Requests for Production Nos. 45-48. In its responses, Airbnb objected on numerous grounds. (Ex. B, Jan. 18, 2023 Motion to Compel). On January 18, 2023, Plaintiff filed her Motion to Compel regarding Requests for Production Nos. 45-48.

Each of Plaintiff's above-identified motions to compel were heard on April 5, 2023. The Court granted the motions during the hearing – giving Airbnb 60 days within which to comply and

produce the documents requested. Subsequently on May 25, 2023, the Court entered a Form 4 Order memorializing its decision.

On June 5, 2023, Airbnb produced some documents to Plaintiff, but informed her that it was unilaterally withholding production of other responsive documents, stating as follows:

Contemporaneous with this production, Airbnb is filing a motion for reconsiderationⁱⁱ and to stay enforcement with respect to Plaintiff's Request for Production Nos. 45, 46, 47 (Non-Party Guest Contact Information) and 48 (Non-Party Host Criminal Convictions). Consequently, Airbnb is withholding production of documents responsive to these requests at this time.

(Ex. 6, Plaintiff's June 8, 2023 Motion for Rule to Show Cause ("RTSC Motion")).

"Direct contempt involves contemptuous conduct in the presence of the court." State v. Jolly, 405 S.C. 622, 629, 749 S.E.2d 114, 118 (Ct. App. 2013) (citing State v. Kennerly, 337 S.C. 617, 620, 524 S.E.2d 837, 838 (1999)). South Carolina courts "have held the 'presence of the court' extends beyond the mere physical presence of the judge or the courtroom to encompass all elements of the system." Id.; see also S.C. Code Ann. § 14-5-320 (providing, "The circuit court may punish by fine or imprisonment, at the discretion of the court, all contempts of authority in any cause or hearing before the same.").

I find that the record before this Court shows an ongoing discovery dispute. Rule 11, SCRCPP, requires counsel to ensure the factual accuracy of all allegations in their filings. Airbnb did not dispute the accuracy of the dates upon which it was served with the Plaintiff's Requests for Production Nos. 16-44 or 45-48 (Exs. 1 and 3, RTSC Motion), and also did not dispute the dates for which it served its objections thereto. (Exs. 2 and 4, RTSC Motion). Certainly, Airbnb does not dispute the facts it presented in its June 5, 2023 letter to counsel to Plaintiff. (Ex. 6, RTSC Motion).

The record before this Court on the matters put at issue is not disputed. As shown by Airbnb's own statements in the record, it is acting in direct defiance of this Court's order dated May 25, 2023. Accordingly, I find Airbnb's actions show continuing "contemptuous conduct" towards the authority of this Court, and its orders.

Plaintiff has additionally argued and noted Airbnb has failed to produce other responsive documents, including, for example, none of its internal email communications, and no privilege log. (Ex. 7, RTSC Motion, at p. 5 of 5). Prior to the filing of her motion for a Rule to Show Cause, Plaintiff sought to communicate with Airbnb about how it intended to perform its searches for responsive ESI, but Airbnb did not respond. Instead, Plaintiff contends and the record reflects Airbnb simply decided which documents it would produce and withheld the remainder. This is undeniable in view of the block quote above taken from Airbnb's June 5, 2023 letter to Plaintiff's counsel (Ex. 6, RTSC Motion).

This Court finds Airbnb's stated plans to not comply with this Court's May 25, 2023 Order on the Motions to Compel and violate this Court's order. Airbnb must comply with this Court's May 25, 2023 Order on the Motions to Compel and produce all responsive documents to Plaintiff within forty-five (45) days of the date of this order.

IT IS SO ORDERED.

The Honorable J. Cordell Maddox, Jr.
Presiding Judge, 2nd Judicial Circuit

July __, 2023
Anderson, South Carolina

ⁱ Plaintiff notes her Request for Production Nos. 16-44 are substantially identical in scope and substance to the 24 topics in her 30(b)(6) deposition notice, which has already been the subject of two Airbnb motions. (see e.g., Orders on 30(b)(6) motions, filed Aug. 3, 2022 (at pp. 4-7, approving 24 topics) and Oct. 11, 2022 (denying reconsideration motion filed August 4, 2022)). This is the same notice for which Airbnb initially sought a protective order via motion filed June 14, 2022, and later its first motion to

reconsider on Aug. 4, 2022. Both of those motions were denied. As of the hearing on April 5, 2023, Airbnb had yet to provide any documents in response to these requests. (See April 5, 2023 Hearing Transcript, at pp. 105 to 110 (Airbnb continuing argument in support of its “compromise position” rejected)).

ii Airbnb has already filed two motions to reconsider this Court’s discovery orders, as follows: (i) Motion to Reconsider Denial of Airbnb’s Motion for Protective Order [as relates to Plaintiff’s 30(b)(6) deposition notice], filed August 4, 2022; and (ii) Airbnb, Inc.’s Motion to Reconsider and to Stay Enforcement, filed June 5, 2023. By the time Airbnb’s Aug. 4, 2022 first motion to reconsider was fully briefed, Airbnb had filed and presented 51 pages ($6 + 30 + 15 = 51$) of argument in support of its motion, which was denied in all substantive respects by order dated October 11, 2022.



Aiken Common Pleas

Case Caption: Julianne Foster , plaintiff, et al VS Rhett Riviere , defendant, et al

Case Number: 2021CP0200889

Type: Order/Rule To Show Cause

So Ordered

s/ J. Cordell Maddox Jr.

Electronically signed on 2023-08-24 11:19:34 page 5 of 5

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

ORDER

Airbnb, Inc.

Third-Party Plaintiff,

vs.

Rhett Riviere,

Third-Party Defendant.

Before the Court is Third-Party Plaintiff Airbnb, Inc. (“Airbnb”) and Third-Party Defendant Rhett Riviere’s (“Riviere”) joint motion 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. For the reasons stated below, the Court grants Airbnb and Riviere’s joint motion.

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.

Airbnb and Riviere submitted their joint motion to stay on July 28, 2023. That motion has been fully briefed and is ripe for adjudication.

ANALYSIS

As Airbnb and Riviere correctly noted, 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 timely instituted such an appeal.

The Court agrees with Airbnb and Riviere that under the Supreme Court of the United State'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. *Coinbase* formally recognized the mandatory stay of further proceedings required 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 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.

The Court also agrees with Airbnb and Riviere that Rule 241, SCACR mandates a stay. 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.

Finally, 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. Therefore, a discretionary stay is also appropriate.

CONCLUSION

For the foregoing reasons, the Court **GRANTS** Airbnb and Riviere’s motion and **ORDERS** that all further proceedings are **STAYED** pending a final decision of the appellate courts and this Court’s receipt of the remittitur confirming the same.

[Electronic signature page of the Honorable J. Cordell Maddox, Jr. to follow.]



Aiken Common Pleas

Case Caption: Julianne Foster , plaintiff, et al VS Rhett Riviere , defendant, et al

Case Number: 2021CP0200889

Type: Order/Stay

So Ordered

s/ J. Cordell Maddox Jr.

Electronically signed on 2023-08-24 11:30:45 page 5 of 5

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. 2021-CP-02-00889

**ORDER DENYING DEFENDANT AIRBNB'S
MOTION TO COMPEL ARBITRATION**

This matter came before the Court pursuant to Defendant Airbnb's Motion to Compel Arbitration filed on May 15. The motion has been fully briefed, and a hearing was held on the matter on June 13, 2023. Having fully considered the matter, including the motion, responses, exhibits, and the parties' oral arguments, it is hereby **ORDERED** that Defendant Airbnb's Motion to Compel Arbitration is **DENIED**.

BACKGROUND

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

Airbnb alleges that its Terms of Service ("TOS") in effect at the time of the rental 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). Plaintiff was not a party to any contract with Airbnb and did not agree to the TOS or its arbitration provision.

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. Airbnb, however, did not file a motion to compel arbitration until over two years later. In the interim, Airbnb aggressively litigated this action in court—objecting to extensive discovery propounded by Plaintiff; participating in mediation; filing two motions to dismiss based on the merits; and engaging in numerous discovery disputes. Airbnb filed its Motion to Compel Arbitration after the Court denied its second motion to dismiss; granted multiple motions to compel, and ordered Airbnb to participate in a second Rule 30(b)(6) witness deposition because its designee was unprepared on the noticed topics during the first deposition.

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) (citation omitted). As such, “courts are [not] to grant blindly all motions to compel arbitration.” *Rowland v. Sandy Morris Fin. & Est. Plan. Servs., LLC*, No. 20-1187, 2021 WL 1287563, at *3 (4th Cir. Apr. 7, 2021). Moreover, it is always up to the court to determine if the parties have an agreement to arbitrate. *Id.* 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. West, Inc. v. Jackson*, 561 U.S. 63, 71 (2010) (“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 Federal Arbitration Act (“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).¹ While federal law governs the

¹Our supreme court has recently returned the legal cliché that the law “favors” arbitration to its proper context, reminding that “statements that the law ‘favors’ arbitration mean simply that courts must respect and enforce a contractual provision to arbitrate as it respects and enforces all contractual provisions. There is, however, no public policy—federal or state—‘favoring’ arbitration.”

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).

ANALYSIS

As an initial matter, Airbnb raises the question of who is to decide the issue of whether the parties agreed to arbitrate—the Court or the arbitrator.² Because there is a delegation clause in its standard arbitration agreement contained in its TOS, Airbnb argues it a question for the arbitrator. Plaintiff, however, contends that is a question for the Court. The Court finds it is to determine whether a valid arbitration agreement was formed.

“[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). However, “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); *see also Granite Rock*, 561 U.S. at 297 (holding that a “court must resolve,” which “always include whether

Simmons v. Benson Hyundai, LLC, 438 S.C.1, 4 , 881 S.E.2d 646, 647 (Ct. App. 2022) (quoting *Palmetto Constr. Grp., LLC v. Restoration Specialists, LLC*, 432 S.C. 633, 639, 856 S.E.2d 150, 153 (2021)).

² “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 Ass’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. 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.

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); *see also York v. Dodgeland of Columbia, Inc.*, 406 S.C. 67, 749 S.E.2d 139, 144 (Ct. App. 2013). Accordingly, it is the Court which must first determine whether Plaintiff agreed to arbitrate her claims.

As discussed below, the Court denies Airbnb’s Motion to Compel Arbitration because: (1) direct benefits estoppel cannot be used to bind the non-signatory Plaintiff into arbitration, as she received no direct contractual benefits and 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; and (3) Airbnb waived its right to enforce arbitration by participating in extensive litigation for over two years.

1) Estoppel

It is undisputed that Plaintiff is a nonsignatory to any agreement with Airbnb, including the TOS.³ In its motion, Airbnb argues that Plaintiff is bound to the TOS, including the arbitration provision under a direct benefits estoppel theory. Airbnb, however, cannot overcome the presumption against arbitration which arises when the party resisting arbitration is a nonsignatory

³ To apply estoppel, Airbnb needs to establish that it had a valid arbitration agreement with Ms. Jain. Whether Ms. Jain entered into a binding arbitration agreement is in dispute. However, the Court need not address this issue because, even if she did, the evidence does not support the application of estoppel against Plaintiff in this case. *See Hagood v. Sommerville*, 362 S.C. 191, 199, 607 S.E.2d 707, 711 (2005) (declining to address an issue when the resolution of a prior issue is dispositive).

to the written agreement to arbitrate like Plaintiff. Moreover, Airbnb cannot establish that Plaintiff as a nonsignatory received any direct benefits from the TOS.

“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)). In South Carolina, “[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) (internal quotation marks and citation omitted). “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 maintained that other provisions of the same contract should be enforced to benefit him.” *Id.* (emphasis 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 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”)). Finally, a presumption against arbitration arises where the party resisting arbitration is a nonsignatory to the written agreement to arbitrate. *Wilson*, 426 S.C. at 337, 827 S.E.2d at 173 (citation omitted).

Here, Airbnb cannot overcome this presumption. Plaintiff has not sued Airbnb under any provision of the TOS, and she has not exploited any 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 (citation omitted); *see also Alston v. Conway Manor, LLC*, No. 2021-UP-105, 2021 WL 1227786 (S.C. Ct. App. Mar. 31, 2021) (declining to apply estoppel when the causes of action set forth in the complaint relied on alleged breaches of common law, regulatory, and statutory duties). Thus, the Court finds that the direct benefits estoppel does not apply because Plaintiff is not seeking to enforce the contract.

Moreover, estoppel does not apply because Plaintiff has not received any benefit from any agreement with Airbnb. 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, here, it would be difficult to find Plaintiff received a benefit from staying at the Airbnb rental when Airbnb caused her injuries and her privacy rights to be violated. Further, as discussed above, Plaintiff is not trying to enforce an agreement while attempting to avoid an arbitration provision. *Id.*; see also *Weaver v. Brookdale Sr. Living*, 431 S.C. 223, 233, 847 S.E.2d 268, 273 (Ct. Ap.. 2020) (opining that the plaintiff had not exploited or sought to enforce or benefit from the residency agreement “any more than a pedestrian run over by a truck has benefited from the contract for the purchase of the truck.”). Therefore, the Court finds that estoppel is inapplicable in this case.

2) Outrageous Acts

South Carolina courts have declined to enforce arbitration provisions in cases of outrageous acts that are unforeseeable to reasonable consumers. “Because even the most broadly-worded arbitration agreements still have limits founded in general principles of contract law, this [c]ourt 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 v. World Finance Corp. of South Carolina*, 373 S.C. 144, 151, 644 S.E.2d 705, 709 (2007).⁴ The surreptitious recording of Plaintiff while she was undressing in a private area of the Airbnb rental was an unexpected invasion of her privacy and unforeseeable to a reasonable consumer in a normal business dealing. Such unexpected and outrageous conduct could not possibly have been foreseen,

⁴ The Court in *Aiken* also emphasized that a determination of foreseeability is to be made from the standpoint of the injured party. 373 S.C. at 151 n.6, 644 S.E.2d at 709 n.6. See also *Timmons v. Starkey*, 380 S.C. 590, 671 S.E.2d 101, (Ct. App. 2008). On the other hand, Airbnb’s expectations and knowledge regarding hidden cameras is a disputed question of fact in this case.

and thus are outside of any arbitration agreement. Accordingly, the Court declines to enforce arbitration provisions in this case.

3) Waiver

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

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)).

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.⁵ These factors, of course, are not mutually exclusive, as one factor may be inextricably connected to, and influenced by, the others. *Rhodes v. Benson Chrysler–Plymouth, Inc.*, 374 S.C. 122, 126, 647 S.E.2d 249, 251 (Ct. App. 2007).

“[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; *see also Morgan Stanley & Co., LLC v. Couch*, 134 F. Supp. 3d 1215, 1230 (E.D. 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).

⁵ The 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). In any event, Plaintiff has been prejudiced by Airbnb’s delay in raising arbitration. The extensive litigation over the past two years has forced Plaintiff to incur discovery costs that would not have been expended in arbitration. *Evans*, 352 S.C. at 551, 575 S.E.2d at 77 (holding defendant’s continuation of discovery, rather than seeking arbitration in a timely manner, prejudiced plaintiff by forcing her to incur discovery costs that would not have been expended in arbitration).

Here, Airbnb was obviously aware of its arbitration provision in its TOS—as evidenced at the beginning of this action when Airbnb stated its unequivocal intention to file a Motion to Compel Arbitration. (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)). However, Airbnb did not file any such motion until after two years of active litigation—answering the Complaint and the Amended Complaint, deposing witnesses, participating in extensive discovery and mediation, and filing numerous motions, including two dispositive motions to dismiss, which the Court denied. Airbnb has engaged in extensive motions practice requiring the Court to devote its limited resources to resolving these motions.⁶ Further, Airbnb filed a motion to be allowed to amend and bring 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 and actively litigated this case in court and thus waived any right it may have had to arbitration. *Liberty Builders*, 336 S.C. at 666, 521 S.E.2d at 753 (finding waiver when the parties sought the court’s assistance approximately forty times prior to the filing of the motion to compel, on matters such as motions to amend, compel, dismiss, add parties, and restore under Rule 40(j), SCRCP); *Evans v. Accent Mfg’d Homes, Inc.*, 352 S.C. 544, 575 S.E.2d 74 (Ct. App. 2003) (finding waiver where arbitration was neither pleaded nor raised for first nineteenth months of litigation).

⁶ For example, Airbnb opposed Plaintiff’s deposing Airbnb’s 30(b)(6) witness filing a motion for protection and when the Court denied this motion, Airbnb filed a six-page motion for reconsideration and subsequently a 28-page Supplemental Memorandum and then a separate 13-page Supplemental Reply.

Airbnb argues that it reserved its rights to arbitration in its Answer; and there is an express non-waiver provision in the TOS. 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 and twenty-five affirmative defenses in its Answer to the Amended Complaint, none included an arbitration demand. Instead, Airbnb asserted in its introductory paragraph that it was reserving and not waiving its rights to compel arbitration. However, “[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, its inclusion of a claim for a violation of South Carolina’s Unfair Trade Practices Act (“SCUTPA”). However, 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"). Furthermore, even if the Amended Complaint revived Airbnb's right to assert arbitration, Airbnb continued to actively litigate and waived its purported right to arbitration once again. Airbnb was on notice of the additional claims when Plaintiff moved to file an Amended Complaint on September 2, 2022. Airbnb, however, answered the Amended Complaint and continued extensively litigating this action in court—participating in extensive discovery and filing numerous motions—and did not move to compel arbitration for almost nine months. Airbnb's actions throughout this litigation evidence a waiver of any right it may have had to arbitration. Accordingly, the Court finds that Airbnb has waived any right it may have had to compel arbitration.

CONCLUSION

Airbnb has actively participated in this litigation for two years now, and thus has waived any right it may have had to arbitrate. Moreover, Plaintiff never agreed to arbitration, and she is not subject to the application of estoppel. Based on the foregoing, Airbnb's Motion to Compel Arbitration is **DENIED**. I have considered and rejected all of the arguments made by Airbnb in favor of its motion to compel arbitration by way of written submission and in the oral argument on the motion.

IT IS SO ORDERED.



Aiken Common Pleas

Case Caption: Julianne Foster , plaintiff, et al VS Rhett Riviere , defendant, et al

Case Number: 2021CP0200889

Type: Order/Other

So Ordered

s/ J. Cordell Maddox Jr.

Electronically signed on 2023-09-13 15:21:39 page 14 of 14

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	2 nd JUDICIAL CIRCUIT
	)	
JULIANNE FOSTER,	)	
	)	C/A No.:
PLAINTIFF,	)	
VS.	)	SUMMONS
	)	
RHETT RIVIERE, KATHERINE A.	)	
THOMAS, CHASE ENTERPRISES, LLC	)	
OF SOUTH CAROLINA, AND AIRBNB,	)	
INC.,	)	
	)	
DEFENDANTS.	)	

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

[signature on next page]

WESLEY D. FEW, LLC

s/Wesley D. Few/
Wesley D. Few, S.C. Bar No. 15565
Post Office Box 9398
Greenville, South Carolina 29604
(864) 527-5906 | wes@wesleyfew.com

Deborah B. Barbier
DEBORAH B. BARBIER, LLC
1811 Pickens Street
Columbia, South Carolina 29201
803-445-1032 | dbb@deborahbarbier.com

-and-

Ryan L. Beasley, SC Bar No. 68307
RYAN L. BEASLEY, ATTORNEY AT LAW, P.A.
416 East North Street, 2nd Floor
Greenville, South Carolina 29601
(864) 679-7777 | rlb@ryanbeasleylaw.com

ATTORNEYS FOR PLAINTIFF

April 28, 2021
Greenville, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	
	)	2 nd JUDICIAL CIRCUIT
JULIANNE FOSTER	)	
	)	
	)	C/A No.: 2020-CP-02-_____
PLAINTIFF,	)	
VS..	)	COMPLAINT
	)	(Jury Trial Requested)
RHETT RIVIERE, KATHERINE A.	)	
THOMAS, CHASE ENTERPRISES, LLC	)	
OF SOUTH CAROLINA, AND AIRBNB,	)	
INC.,	)	
	)	
DEFENDANTS.	)	

COMES NOW THE PLAINTIFF, by and through her undersigned counsel of record, and brings this complaint against the Defendant, alleging as follows:

NATURE OF THE ACTION

1. Julianne Foster, (“Plaintiff”) brings this complaint for damages against Rhett Riviere (“Riviere”), Chase Enterprises LLC of South Carolina (“Chase Enterprises”), Katherine A. Thomas (“Thomas”), and Airbnb, Inc. (“Airbnb”) (hereinafter collectively referred to as “Defendants”) for injuries and damages that Plaintiff suffered due to a wrongful invasion into her private affairs that occurred on or around May 17, 2019, through May 18, 2019, and was caused by Defendants’ negligent and / or willful, wanton and reckless conduct.

2. Plaintiff seeks monetary damages from Defendants for Defendants’ negligent, reckless, and unlawful acts, all in contravention to South Carolina law.

PARTIES

3. At all times relevant to this Complaint, Plaintiff, Julianne Foster, has been a citizen of the state of South Carolina.

4. At all times relevant to this Complaint, Defendant Chase Enterprises has been a South Carolina limited liability corporation with its principal place of business located in Aiken, South Carolina. Upon information and belief, Chase Enterprises is used to invest in real estate.

5. At all times relevant to this Complaint, Defendant Rhett Riviere has been a citizen of the state of South Carolina, and upon information and belief was the controlling manager and sole member of Chase Enterprises.

6. At all times relevant to this Complaint, Defendant Thomas has been a resident of the state of South Carolina.

7. Defendant Airbnb, Inc., (“Airbnb”) is a corporation incorporated under the laws of Delaware with its principal place of business located in San Francisco, California.

8. At all times relevant to this action, Airbnb conducted and continues to regularly conduct business in the state of South Carolina.

JURISDICTION & VENUE

9. The incident that is the subject matter of this case occurred in Aiken County in South Carolina, and the Defendants are citizens and residents of Aiken County, South Carolina, and/or conducted business or owned property in Aiken County, South Carolina.

10. Jurisdiction and venue are proper in this court under S.C. Code § 15-7-30.

FACTUAL ALLEGATIONS

11. Plaintiff re-alleges the preceding paragraphs as though repeated verbatim herein.

12. The incident that is the subject of this case occurred on or around May 17, 2019, through May 18, 2019, on Defendant’s property (“the Airbnb property”), located at 115 Third Ave SW, Aiken, South Carolina, in Aiken County.

13. According to Aiken County, South Carolina Register of Deeds, the Airbnb property was owned by Chase Enterprises on the dates in question.

14. Chase Enterprises is also known as Chase Enterprises, LLC of South Carolina. This business is registered with the South Carolina Secretary of State and is specifically managed by Defendant Riviere.

15. Upon information and belief, Chase Enterprises is an LLC pass-through business whereby Chase Enterprises does not pay federal income taxes; instead, the owner(s)' report business income and pay the business tax on their personal tax returns.

16. Plaintiff's friend used Airbnb, an internet platform whereby homeowners pay a fee to advertise the renting of their homes, to locate the rental that is subject to this case.

17. Plaintiff and her friends relied upon Airbnb's name, reputation and claims it would provide only safe and trustworthy rental facilities.

18. In booking the Airbnb property, Plaintiff's friend communicated with Thomas, who held herself out to be the "host" and / or property manager for the property.

19. At all times relevant, Thomas acted as part of the Defendants' property rental enterprise, leasing, offering to lease property and, therefore, had a duty to protect their guests, including Plaintiff, and to take reasonable steps to ensure guest safety policies were followed.

20. At all relevant times, Airbnb held itself out, and continues to hold itself out, as "a trusted community marketplace for people to list, discover, and book unique accommodations around the world." Airbnb holds itself out as a company that prioritizes guest safety.

21. Airbnb states that its hosts are required to inform guests of any cameras or devices on their property, even if they are turned off, and undisclosed recording devices are never permitted. However, it does little, if anything, to enforce this policy.

22. In establishing an individual as a host or lessor within the Airbnb system, little to no effort is undertaken by Airbnb by way of a vetting process with respect to these hosts to ensure the safety and welfare of the third parties renting properties through Airbnb.

23. At all relevant times in the instant matter, Airbnb:

- a) failed to engage in any meaningful background checks of the lessor;
- b) failed to adequately and fully verify personal details of the lessor;
- c) failed to verify information and details about the property being rented out by the lessor; and
- d) failed to put into place or enforce policies and procedures to protect the constitutionally protected rights of privacy and seclusion of the third parties renting the properties through Airbnb.

24. At the time of this incident, Plaintiff was staying on the Defendants' property with her friends for a tennis tournament.

25. Plaintiff and her friends paid the Defendants to rent the AirBnb property.

26. Plaintiff stayed for the weekend and, during her stay, she undressed and changed clothes in the privacy of the bedroom she had rented.

27. Unbeknownst to Plaintiff and without her consent, Defendant had set up video surveillance equipment and secretly recorded Plaintiff while she was in the bedroom.

28. At no time did Defendants inform Plaintiff or her friends that there was any recording device on the property.

29. Plaintiff and her friends did not consent to being recorded in any manner and were unaware that a video camera was located on the property. Defendant recorded Plaintiff multiple times changing clothes while in the rented bedroom.

30. Plaintiff was informed by an agent from the South Carolina Law Enforcement Division that there were videos of her from her stay at Defendant's property, which included extremely private images of her undressing and without clothing.

31. That upon information and belief, the video recording device was on top of a dresser on the left side of the room positioned so as to capture the entire bed and almost the entire bedroom.

32. Plaintiff remains extremely upset and was devastated to learn she had been secretly recorded. Plaintiff remains concerned nude images and videos of her undressing have been shared and / or could make their way onto the internet.

33. As a result of this incident, Plaintiff is very concerned about her level of privacy and this concern has negatively impacted her life in a variety of ways.

34. As a result of this incident, Plaintiff has suffered severe emotional distress.

FIRST CAUSE OF ACTION
(Negligence and / or Gross Negligence)

35. Plaintiff realleges the preceding paragraphs as though repeated verbatim herein.

36. Defendants created a business enterprise whereby they lease, offer to lease, place for rent, solicit listings of places for rent, solicit prospective tenants and/or collect rent from real property in exchange for financial remuneration. This affirmative act places upon Defendants an obligation of due and reasonable care in accord with the laws of South Carolina.

37. Defendant Riviere has acknowledged that he knows he has a duty to immediately deactivate a recording device / camera when a rental guest of the Airbnb occupies the property.

38. Defendants were negligent/grossly negligent in the use and/or operation of cameras / video recording equipment inside the AirBnb property from May 17 through May 18, 2019.

39. Defendants breached this duty, which resulted in the secret recording of Plaintiff, without their knowledge or consent while Plaintiff and her friends were authorized paying Airbnb rental guests.

40. Upon information and belief, Defendant Airbnb conducted no background investigation of the Defendants Riviere and Thomas; nor did Airbnb engage in any reasonable evaluation of these hosts or the property prior to allowing it to be posted on its site.

41. In failing to engage in little, if any, investigation of lessors before allowing lessors to post their property on its site, Airbnb has created and continues to create a foreseeable risk of harm to parties such as this Plaintiff.

42. As a direct and proximate result of Defendants' misfeasance, Plaintiff has suffered general damages, including, but not limited to, humiliation, shock, embarrassment, intimidation, physical distress and injury, fear, stress, and other damages to be proven at the time of trial.

43. As a direct and proximate result of Defendants' misfeasance, Plaintiff has also suffered special damages to be proven at the time of trial.

44. Plaintiff, upon information and belief, alleges that Defendants committed the acts delineated herein in conscious disregard for Plaintiff's rights. Accordingly, Plaintiff is entitled to recover punitive damages in an amount according to proof.

SECOND CAUSE OF ACTION

(Invasion of Privacy – Wrongful Intrusion into Private Affairs by Rhett Riviere)

45. Plaintiff realleges the preceding paragraphs as though repeated verbatim herein.

46. On May 17, 2019, through May 18, 2019, Defendant's watching, spying, prying and video recording, intruded into Plaintiff's private affairs.

47. At all times relevant herein, Plaintiff had a legally protected right of privacy while a guest on Defendant's AirBnb property. Plaintiff never consented to being recorded, nor was

she even aware that she was being recorded. Plaintiff had a reasonable expectation of privacy that she would not be viewed by anyone who was not present in the room with her while staying in the Defendant's Airbnb property.

48. Defendant's intrusion into Plaintiff's privacy would be highly offensive to a reasonable person. The intrusion was into aspects of Plaintiff's life that were private and which Plaintiff would normally expect to be free from exposure to Defendant and other third parties.

49. The intrusion was substantial and unreasonable enough to be legally cognizable.

50. Defendant intentionally intruded on Plaintiff's private affairs and violated her most personal rights.

51. Plaintiff has suffered and continues to experience humiliation, shame, and other presumed damages and is entitled to recover for her actual and punitive damages from Defendant's actions as proven at trial.

THIRD CAUSE OF ACTION
(Intentional Infliction of Emotional Distress by Rhett Riviere)

52. Plaintiff realleges the preceding paragraphs as though repeated verbatim herein.

53. By recording Plaintiff in private moments, Defendant intentionally or recklessly inflicted severe emotional distress or was certain or substantially certain that such distress would result from his conduct.

54. Plaintiff was in a special relationship with Defendant based on the rental agreement between the parties.

55. Defendant's conduct was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious, and utterly intolerable in a civilized community.

56. Defendant's actions caused Plaintiff severe emotional distress when he intentionally videotaped the Plaintiff and invaded aspects of her life that were private and which Plaintiff would normally expect to be free from exposure to the Defendant.

57. Plaintiff has suffered and continues to suffer from severe emotional distress, including, but not limited to, grief, anxiety, shock, humiliation, embarrassment, shame, and feelings of powerlessness.

58. Plaintiff's emotional distress was so severe that no reasonable person could be expected to endure it.

59. Plaintiff suffered presumed, actual, and punitive damages from Defendant's intentional infliction of emotional distress.

FOURTH CAUSE OF ACTION
(Constructive Fraud / Misrepresentation by Rhett Riviere)

60. Plaintiff realleges the preceding paragraphs as though repeated verbatim herein.

61. Plaintiff was in a special relationship with Defendant based on the rental agreement between the parties.

62. Defendant did not disclose that there were cameras located in the bedroom, that would later record the Plaintiff and her friend into aspects of Plaintiff's life that were private and which Plaintiff would normally expect to be free from exposure to the Defendant.

63. An objective, reasonable person would have viewed the presence of the cameras and / or their active recording of cameras inside the listing as sufficiently important and significant that it would have played a role in the decision to enter into the contractual relationship.

64. Defendant knowingly did not disclose any security cameras or recording devices in or around the listing occupied by the Plaintiff, despite his duty to do so.

65. Defendant intended to have Plaintiff stay in the bedroom and had reason to expect that she would have refrained from staying in the bedroom if she was made aware of the actively recording camera that was located in there.

66. Plaintiff was not provided written notice of any type of security camera or other recording device in or around the listing.

67. Plaintiff relied on the integrity and honesty of the Defendant to stay in the AirBnb property and had a right to rely on aspects of her life that were private to be free from exposure to the Defendant.

68. Defendant acted in reckless and conscious disregard of Plaintiff's rights.

69. As a direct and proximate result of Defendant's actions, Plaintiff is entitled to recovery for her damages to be proven at trial.

70. Defendant committed these acts in conscious disregard for Plaintiff's rights. Plaintiff is entitled to an award of punitive damages.

FIFTH CAUSE OF ACTION
(Negligence *per se* by Riviere, Thomas and Airbnb)

71. Plaintiff re-alleges the preceding paragraphs as though repeated verbatim herein.

72. Defendants leased, offered to lease or rent, solicited rentals and prospective tenants and / or collected rent from real property within the definition of a real estate broker as set forth in S.C. Code Ann. § 40-57-20.

73. Pursuant to § 40-57-20, real estate brokers must be licensed in the State of South Carolina.

74. The purpose of this statute is to protect the public from incompetent and untrustworthy individuals engaging in enumerated activities within the real estate field.

75. Plaintiff falls within the class of people sought to be protected.

76. Despite Defendants engaging in activities of a real estate broker, on information and belief, none of the Defendants holds a broker's license as required by § 40-57-20.

77. In failing to engage in little, if any, investigation of hosts, Defendants including specifically Airbnb created and continues to create a foreseeable risk of harm to parties, such as the Plaintiff who rely upon Airbnb's assertion that it has created "a trusted community marketplace for people to list, discover, and book unique accommodations around the world."

78. Upon information and belief, Defendants including specifically Airbnb failed to conduct a background investigation of Defendants Riviere and Thomas, and did not engage in any reasonable evaluation of these hosts or property managers prior to allowing the rental to be posted on its website.

79. On information and belief, Defendants including specifically Airbnb did not have reasonable policies or procedures in place to protect lessees.

80. To the extent policies were in place, those policies were not enforced, ignored and / or violated.

81. As a result of Defendants failure to adhere to state licensing requirements, Plaintiff has suffered general damages, including but not limited to humiliation, shock, embarrassment, intimidation, distress, fear, stress and other damages to be proven at the time of trial.

82. As a direct and proximate result of Defendants' failure to adhere to state licensing requirements, Plaintiff has also suffered special damages to be proven at the time of trial.

83. Defendants committed these acts in conscious disregard for Plaintiff's rights. Accordingly, Plaintiff is entitled to an award of punitive damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for an order in her favor and against Defendants as follows:

- A. Award Plaintiff actual, compensatory, special, and / or consequential damages in an amount to be determined at a trial of this matter;
- B. Award Plaintiff punitive and / or exemplary damages in an amount to be determined at a trial of this matter; and
- C. All such other relief in law or equity as this court deems just and proper.

Respectfully Submitted,

WESLEY D. FEW, LLC

s/Wesley D. Few/
Wesley D. Few, S.C. Bar No. 15565
Post Office Box 9398
Greenville, South Carolina 29604
(864) 527-5906 | wes@wesleyfew.com

Deborah B. Barbier
DEBORAH B. BARBIER, LLC
1811 Pickens Street
Columbia, South Carolina 29201
803-445-1032 | dbb@deborahbarbier.com

Ryan L. Beasley, SC Bar No. 68307
RYAN L. BEASLEY, ATTORNEY AT LAW, P.A.
416 East North Street, 2nd Floor
Greenville, South Carolina 29601
(864) 679-7777 | rlb@ryanbeasleylaw.com

ATTORNEYS FOR PLAINTIFF

April 28, 2021
Greenville, South Carolina

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	
	)	
JULIANNE FOSTER,	)	Civil Action No. 2021CP0200889
	)	
Plaintiff,	)	
	)	
vs.	)	CHASE ENTERPRISES, LLC OF
	)	SOUTH CAROLINA AND RHETT
	)	RIVIERE’S ANSWER TO
	)	PLAINTIFF’S COMPLAINT
RHETT RIVIERE, KATHERINE A.	)	
THOMAS, CHASE ENTERPRISES, LLC	)	
OF SOUTH CAROLINA, AND AIRBNB,	)	
INC.,	)	
	)	
Defendant.	)	

Defendants Chase Enterprises, LLC of South Carolina (“Chase”) and Rhett Riviere (“Riviere”) (collectively “Defendants”), denying each and every allegation of Plaintiff’s Complaint except for those matters specifically admitted below, and reserving all rights under motions within or separately filed, answers the Complaint as follows.

FOR A FIRST DEFENSE

1. Defendants deny each and every allegation of the Complaint unless specifically admitted herein.
2. Responding to the allegations of Paragraphs 1 and 2, Defendants deny any and all alleged negligent, reckless, and unlawful acts, any tortious acts and omissions, wrongdoing, and/or liability. Plaintiff’s claims are without any basis and should be dismissed. Any remaining or inconsistent allegations of Paragraphs 1 and 2 are denied.
3. Defendants lack knowledge or information sufficient to admit or deny the allegations of Paragraph 3 and, therefore, deny the same.

4. Responding to the allegations of Paragraphs 4, Defendants admit that Chase is a limited liability company organized and existing pursuant to South Carolina law with its principal place of business in Aiken, South Carolina. Defendants admit that Chase owned 115 Third Avenue, SW in Aiken, South Carolina in May 2019. All remaining or inconsistent allegations of Paragraph 4 are denied.

5. Responding to the allegations of Paragraphs 5, Defendants admit that Riviere is a South Carolina resident, and he is a member of Chase. All remaining or inconsistent allegations of Paragraph 7 are denied.

6. Upon information and belief, Defendants admit the allegations of Paragraph 6.

7. Upon information and belief, Defendants admit the allegations of Paragraphs 7 and 8.

8. Responding to the allegations of Paragraph 9, Defendants admit that they own property in Aiken County, South Carolina. Defendants admit that the alleged incident occurred in Aiken County, South Carolina. Defendants deny any and all alleged negligent, reckless, and unlawful acts, any tortious acts and omissions, wrongdoing, and/or liability. Any additional or remaining allegations of Paragraph 9 are denied.

9. Responding to the allegations of Paragraph 10, Defendants reserve all defenses relating to jurisdiction and venue pending investigation and discovery. Based upon information presently available, it appears that Aiken County is the proper venue and jurisdiction. Defendants specifically deny any tortious acts and omissions, wrongdoing, and/or liability. Any additional or remaining allegations of Paragraph 10 are denied.

10. Responding to the allegations of Paragraph 11, Defendants incorporate herein their responses to Paragraphs 1 through 10 of the Complaint as if set forth verbatim.

11. Responding to the allegations of Paragraphs 12 and 13, Defendants admit that the property located at 115 Third Avenue, SW in Aiken, South Carolina is sometimes referred to as the “Stirrup Cup cottage,” and it was owned by Chase in May 2019. Defendants deny any and all alleged negligent, reckless, and unlawful acts, any tortious acts and omissions, wrongdoing, and/or liability. Any additional or remaining allegations of Paragraphs 12 and 13 are denied.

12. Responding to the allegations of Paragraph 14, Defendants admit that Chase is sometimes referred to merely as Chase Enterprises, and it is a limited liability corporation organized and existing pursuant to South Carolina law. Defendants admit that Riviere is the sole member of Chase and exercised the rights and duties of a member. Any additional or remaining allegations of Paragraph 14 are denied.

13. Responding to the allegations of Paragraph 15, Defendants admit that Chase is taxed in accordance with federal and state law applicable to single member limited liability companies. All remaining or inconsistent allegations of Paragraph 15 are denied.

14. Defendants lack knowledge or information sufficient to respond to the allegations set forth in Paragraphs 16, 17, and 18 regarding Plaintiff’s friend’s rental of 115 Third Avenue, SW in Aiken, South Carolina and communications with Thomas and, therefore, Defendants deny the same. Defendants deny any and all alleged negligent, reckless, and unlawful acts, any tortious acts and omissions, wrongdoing, and/or liability. All remaining or inconsistent allegations of Paragraphs 16, 17 and 18 are denied.

15. The allegations of Paragraphs 19, 20, 21, 22, and 23 are directed to other defendants and, therefore a response is not required. To the extent a response is required,

Defendants crave reference to South Carolina law applicable to the specific facts and circumstances at issue and deny all allegations as to duties owed inconsistent therewith. Defendants deny any and all alleged negligent, reckless, and unlawful acts, any tortious acts and omissions, wrongdoing, and/or liability. All remaining or inconsistent allegations of Paragraphs 19, 20, 21, 22, and 23 are denied.

16. Defendants lack knowledge or information sufficient to respond to the allegations set forth in Paragraph 24 and, therefore, Defendants deny the same.

17. Responding to the allegations of Paragraph 25, Defendants deny that they were paid for the rental of 115 Third Avenue, SW in Aiken, South Carolina. Defendants admit that they did not market 115 Third Avenue, SW in Aiken, South Carolina on Airbnb. All remaining or inconsistent allegations of Paragraph 25 are denied.

18. Defendants lack knowledge or information sufficient to respond to the allegations set forth in Paragraph 26 and, therefore, Defendants deny the same.

19. Responding to the allegations of Paragraphs 27, 28, and 29, Defendants admit that a security video camera was used at 115 Third Avenue, SW in Aiken, South Carolina when the property was not rented. Defendants were not aware of the rental of 115 Third Avenue, SW in Aiken, South Carolina or that the security video camera had not been turned off or deactivated. Defendants specifically deny any tortious acts and omissions, wrongdoing, and/or liability. Any additional or remaining allegations of Paragraphs 27, 28, and 29 are denied.

20. Defendants lack knowledge or information sufficient to respond to the allegations set forth in Paragraph 30 regarding Plaintiff's communications with the South Carolina Law Enforcement Division and, therefore, Defendants deny the same. Defendants specifically deny

any tortious acts and omissions, wrongdoing, and/or liability. All remaining or inconsistent allegations of Paragraph 30 are denied.

21. Defendants lack knowledge or information sufficient to respond to the allegations set forth in Paragraph 31 regarding the specific location of the security video camera and point of view on the dates at issue. Defendants specifically deny any tortious acts and omissions, wrongdoing, and/or liability. Any additional or remaining allegations of Paragraph 31 are denied.

22. Responding to the allegations of Paragraphs 32, 33, and 34, Defendants lack knowledge or information sufficient to respond to the allegations as to how Plaintiff thinks or feels and, therefore, these allegations are denied. Defendants specifically deny any tortious acts and omissions, wrongdoing, and/or liability. Any additional or remaining allegations of Paragraphs 32, 33, and 34 are denied.

FOR A FIRST DEFENSE
TO THE FIRST CAUSE ACTION
(Negligence/Gross Negligence)

23. Responding to the allegations of Paragraph 35, Defendants incorporate herein their responses to Paragraphs 1 through 34 of the Complaint as if set forth verbatim.

24. Responding to the allegations of Paragraph 36, Defendants deny they leased or offered for lease 115 Third Avenue, SW in Aiken, South Carolina or received any financial remuneration. As to the allegations regarding duties, Defendants crave reference to South Carolina law applicable to the specific facts and circumstances at issue and deny all allegations as to duties owed inconsistent therewith. Defendants deny any and all alleged negligent, reckless, and unlawful acts, any tortious acts and omissions, wrongdoing, and/or liability. All remaining or inconsistent allegations of Paragraph 36 are denied.

25. Responding to the allegations of Paragraph 37, Defendants admit that they were not aware of the rental of 115 Third Avenue, SW in Aiken, South Carolina or that the security video camera had not been turned off or deactivated. Defendants specifically deny any tortious acts and omissions, wrongdoing, and/or liability. Any additional or remaining allegations of Paragraph 37 are denied.

26. Defendants deny the allegations of Paragraphs 38 and 39. Defendants specifically deny any tortious acts and omissions, wrongdoing, and/or liability.

27. The allegations of Paragraphs 40 and 41 are directed to other defendants and, therefore a response is not required. To the extent a response is required, Defendants lack knowledge or information sufficient to respond to the allegations set forth in Paragraphs 40 and 41 and, therefore, deny the same. Defendants deny any and all alleged negligent, reckless, and unlawful acts, any tortious acts and omissions, wrongdoing, and/or liability. All remaining or inconsistent allegations of Paragraphs 40 and 41 are denied.

28. Defendants deny the allegations of Paragraphs 42, 43, and 44.

FOR A FIRST DEFENSE
TO THE SECOND CAUSE ACTION PLEAD IN THE ALTERNATIVE
(Invasion of Privacy- Wrongful Intrusion into Private Affairs)

29. Responding to the allegations of Paragraph 45, Defendants incorporate herein their responses to Paragraphs 1 through 44 of the Complaint as if set forth verbatim.

30. Responding to the allegations of Paragraphs 46, 47, 48, 49, 50, and 51, Defendants admit that they were not aware of the rental of 115 Third Avenue, SW in Aiken, South Carolina or that the security video camera had not been turned off or deactivated. Defendants deny that they watched, pried, or spied on Plaintiff or even knew that there was any recording. Defendants specifically deny any tortious acts and omissions, wrongdoing, and/or

liability. Any additional or remaining allegations of Paragraphs 46, 47, 48, 49, 50, and 51 are denied.

FOR A FIRST DEFENSE
TO THE THIRD CAUSE ACTION
(Intentional Infliction of Emotional Distress)

31. Responding to the allegations of Paragraph 52, Defendants incorporate herein their responses to Paragraphs 1 through 51 of the Complaint as if set forth verbatim.

32. Responding to the allegations of Paragraphs 53, 54, 55, 56, 57, 58, and 59, Defendants admit that they were not aware of the rental of 115 Third Avenue, SW in Aiken, South Carolina or that the security video camera had not been turned off or deactivated. Defendants specifically deny any tortious acts and omissions, wrongdoing, and/or liability. Any additional or remaining allegations of Paragraphs 53, 54, 55, 56, 57, 58, and 59 are denied.

FOR A FIRST DEFENSE
TO THE FOURTH CAUSE ACTION
(Constructive Fraud/Misrepresentation)

33. Responding to the allegations of Paragraph 60, Defendants incorporate herein their responses to Paragraphs 1 through 59 of the Complaint as if set forth verbatim.

34. Responding to the allegations of Paragraphs 61, 62, 63, 64, 65, 66, 67, 68, 69, and 70, Defendants admit that they were not aware of the rental of 115 Third Avenue, SW in Aiken, South Carolina or that the security video camera had not been turned off or deactivated. Defendants specifically deny any tortious acts and omissions, wrongdoing, and/or liability. Any additional or remaining allegations of Paragraphs 61, 62, 63, 64, 65, 66, 67, 68, 69, and 70 are denied.

FOR A FIFTH DEFENSE
TO THE FIFTH CAUSE ACTION
(Negligence *per se*)

35. Responding to the allegations of Paragraph 71, Defendants incorporate herein their responses to Paragraphs 1 through 70 of the Complaint as if set forth verbatim.

36. Responding to the allegations of Paragraphs 72, 73, 74, 75, 76, 77, 77, 78, 79, 80, 81, 82, and 83, Defendants deny they leased or offered for lease 115 Third Avenue, SW in Aiken, South Carolina or received any financial remuneration. As to the allegations regarding duties and licensing, Defendants crave reference to South Carolina law applicable to the specific facts and circumstances at issue and deny all allegations as to duties owed and licensing inconsistent therewith. Defendants deny any and all alleged negligent, reckless, and unlawful acts, any tortious acts and omissions, wrongdoing, and/or liability. All remaining or inconsistent allegations of Paragraphs 72, 73, 74, 75, 76, 77, 77, 78, 79, 80, 81, 82, and 83 are denied.

37. Defendants deny that Plaintiff is entitled to what she seeks as reflected in the Prayer for Relief.

FOR A SECOND DEFENSE
(Failure to State a Claim)

38. The Complaint and each purported cause of action therein fails to state facts sufficient to constitute any cause of action or any claim upon which relief may be granted against Defendants and should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE
(Lack of Representation and/or Reliance)

39. Defendants made no representations to Plaintiff and Plaintiff did not rely on any representation by Defendants. Therefore, Plaintiff's Complaint is barred in whole or in part.

FOR A FOURTH DEFENSE
(Proximate Cause)

40. No acts or omissions on the part of Defendants were the proximate cause or cause in fact of some or all damages allegedly suffered by Plaintiff (the existence of such damages being denied). Defendants did not proximately cause any of the losses, damages, injuries, or harms, if any, alleged. Therefore, Plaintiff's Complaint is barred in whole or in part.

FOR A FIFTH DEFENSE
(Plaintiff's Negligence)

41. Plaintiff's own negligence, gross negligence, recklessness, or willfulness contributed to her alleged damages (the existence of such damages being denied) in a manner which should reduce or completely bar any award in this matter.

FOR A SIXTH DEFENSE
(Alleged Damages Caused by Third-Party)

42. Some or all damages allegedly sustained by Plaintiff (the existence of such damages being denied) were a direct or proximate result of the acts or omissions of another party or parties over whom Defendants had no control or duty to control. Defendants plead the acts of another party or parties as a complete defense to all claims.

FOR A SEVENTH DEFENSE
(Third Party's Negligence)

43. Some or all damages allegedly sustained by Plaintiff (the existence of such damages being denied) were a direct or proximate result of the intervening or superseding negligence, gross negligence, recklessness, willfulness, and wantonness of a third party or parties over whom Defendants had no control or duty to control.

FOR AN EIGHTH DEFENSE

(Unclean Hands)

44. With regard to some or all causes of action appearing in the Complaint, Plaintiff's claims are barred by the doctrine of unclean hands.

FOR A NINTH DEFENSE

(Waiver and Laches)

45. With regard to some or all causes of action appearing in the Complaint, Plaintiff's claims are barred by the doctrine of waiver and laches.

FOR A TENTH DEFENSE

(Assumption of Risk)

46. With regard to some or all causes of action appearing in the Complaint, Plaintiff's claims are barred by assumption of risk.

FOR AN ELEVENTH DEFENSE

(Intervening/Superseding Causes)

47. Some or all of the damages allegedly sustained by Plaintiff (the existence of such damages being denied) were a proximate result of one or more independent, efficient, intervening and/or superseding causes, which Defendants plead as a bar to this action.

FOR A TWELFTH DEFENSE

(Estoppel)

48. With regard to some or all of the causes of action appearing in the Complaint, Plaintiff's claims are barred by the doctrine of estoppel.

FOR A THIRTEENTH DEFENSE

(Plaintiff's Own Negligence)

49. Plaintiff's own negligence, gross negligence, recklessness, or willfulness contributed to her/their alleged damages (the existence of such damages being denied) in a manner which should reduce or completely bar any award in this matter.

FOR A FOURTEENTH DEFENSE
(Failure to Mitigate)

50. Plaintiff's claims are barred in whole or in part because of Plaintiff's failure to mitigate any alleged damages (the existence of such damages being denied).

FOR A FIFTEENTH DEFENSE
(Comparative Negligence)

51. Defendants plead the law and doctrine of comparative negligence and alleges the negligence and recklessness of Plaintiff and/or the other defendants was greater than the negligence, if any, which might be established against Defendants and, therefore, Plaintiff are barred from any recovery in this action.

FOR A SIXTEENTH DEFENSE
(Punitive Damages)

52. Defendants would show the claim of Plaintiff for punitive damages cannot be had because any award of punitive damages under South Carolina law without bifurcation of the trial so that any punitive damage issues are tried only after and if liability on the merits of this action has been found will violate Defendants' due process rights guaranteed by the United States Constitution and the South Carolina Constitution, and would violate the common law and public policy of the State of South Carolina.

53. The claim of Plaintiff for punitive damages cannot be had because an award of punitive damages under South Carolina law without being subject to a predetermined limit on the amount of punitive damages that a jury might impose would violate Defendant's due process rights guaranteed by United States Constitution and the South Carolina Constitution, and would violate the common law of the State of South Carolina.

54. The claim of Plaintiff for punitive damages cannot be had because an award of punitive damages under South Carolina law by a jury that is not:

- (a) Provided with sufficiently clear standards for determining the appropriateness of a punitive damage award or the size of such award;
- (b) Provided with adequate instructions as to the limits of punitive damage awards as determined by the principles underlying such an award;
- (c) Instructed that awarding punitive damages on invidiously discriminatory characteristics of Defendants is improper;
- (d) Instructed to consider punitive damages under a standard for determining the amount that is neither vague, arbitrary, nor capricious and that defines with reasonable clarity the actions of Defendants upon which an award of punitive damages may be based; and
- (e) Subjected to judicial review at both the trial and appellate court level under objective standards for determining appropriateness and reasonableness; would violate Defendant's equal protection and due process rights as guaranteed by the United States Constitution and the South Carolina Constitution and would also violate the laws of the State of South Carolina.
- (f) A punitive damages award cannot be had absent compliance with South Carolina Code Ann. § 15-32-350 including a post-trial review ensuring that any award of punitive damages is not grossly disproportionate to the severity of the offense or conduct of the liable parties, with a written opinion addressing the evidence, or lack of evidence, as it relates to liability or the amount of punitive damages.
- (g) Defendants would show that any award of punitive damages is subject to the limitations set forth in South Carolina Code § 15-32-530.
- (h) The provisions of the South Carolina Fairness in Civil Justice Act of 2011 and/or similar and/or related state statutes and limitations barring, reducing, capping or otherwise impacting awards of punitive damages, including but not limited to the punitive damages evaluation factors and caps set forth in S.C. Code Ann. § 15-32-520 and § 15-32-530, are hereby asserted as defenses to claims against Defendants in his matter.
- (i) Defendants assert as a defense and does not waive whatever rights that Defendants may have to request bifurcation of the trial of this matter pursuant to S.C. Code Ann. § 15-32-520.
- (j) Defendants are entitled to all caps and/or limitations of punitive damages and liabilities as set forth S.C. Code Ann. Sections 15-32-530 and 15-32-520 and other applicable state and federal law.

FOR A SEVENTEENTH DEFENSE

(Lack of Intent)

55. Plaintiff's claims are barred by Defendants' lack of intent.

FOR AN EIGHTEENTH DEFENSE

(Statute of Limitations)

56. Plaintiff's claims are barred by the applicable statute of limitations.

FOR A NINETEENTH DEFENSE

(No Actionable Invasion)

57. Plaintiff's claims are barred because there has been no appropriation or exploitation of Plaintiff's personality, the publicizing of Plaintiff's private affairs with which the public has no legitimate concern, or the wrongful intrusion into Plaintiff's private activities, in such manner as to outrage or cause mental suffering, shame, or humiliation to a person of ordinary sensibilities

FOR A TWENTIETH DEFENSE

(No Deliberate or Conscious Conduct)

58. Plaintiff's claims are barred due to the lack of any deliberate or conscious conduct by Defendants.

FOR A TWENTY-FIRST DEFENSE

(Lack of Exposure or Publicizing)

59. Plaintiff's claims are barred because Defendants did not expose or publicize any facets of Plaintiff's personal life or privacy.

FOR A TWENTY-SECOND DEFENSE

(Lack of Damages)

60. Plaintiff's claims are barred due to a lack of damages.

FOR A TWENTY- THIRD DEFENSE

(Punitive Damages)

61. Plaintiff are not entitled to punitive damages because Defendants had no duty to Plaintiff, Defendants did not breach any duty to Plaintiff, and Plaintiff incurred no actual damages as a result of any action or inaction by Defendants.

FOR A TWENTY-FOURTH DEFENSE

(Incorporation of Defenses set forth in SCRCP 8(c)
and reservation and non-waiver of Additional Defenses)

62. Defendants hereby incorporate any and all other affirmative defenses set forth in SCRCP 8(c) and reserves the right to assert and plead all additional and/or affirmative defenses which may become apparent during discovery, and as are consistent with the South Carolina Rules of Civil Procedure.

WHEREFORE, having fully answered Plaintiff's Complaint, Defendants request that the claims and relief sought by Plaintiff be denied in every respect, Plaintiff's claims against Defendants be dismissed in their entirety with prejudice for fees and costs to be awarded to Defendants, and for such other and further relief as this Court may deem just and proper.

<Signature page to follow>

MCANGUS GOUDELOCK & COURIE, L.L.C.

s/Julie Jeffords Moose

JULIE JEFFORDS MOOSE (SC Bar No. 12944)

julie.moose@mgclaw.com

Post Office Box 12519

1320 Main Street, 10th Floor (29201)

Columbia, South Carolina 29211

Telephone: (803) 779-2300

Facsimile: (803) 748-0526

JOHN W. HARTE (SC Bar No. 2773)

john@jwartelaw.com

Law Offices of John W. Harte

P.O. Box 7215

Aiken, South Carolina 29804

Telephone: 803-226-0755

ATTORNEYS FOR RHETT RIVIERE AND
CHASE ENTERPRISES, LLC OF SOUTH
CAROLINA

Columbia, South Carolina
June 28, 2021

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

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

JULIANNE FOSTER)
Plaintiff,)
v.)
RHETT RIVIERE, KATHERINE A.)
THOMAS, CHASE ENTERPRISES,)
LLC OF SOUTH CAROLINA, AND)
AIRBNB, INC.,)
Defendants.)
_____)

ANSWER OF AIRBNB, INC.
TO PLAINTIFF'S COMPLAINT

COMES NOW the Defendant, AIRBNB, INC. ("Airbnb" or "Defendant"), and responds to the allegations contained in the Plaintiff's Complaint, and while reserving all rights to compel mandatory contractual arbitration, and without waiving such rights, would allege and state as follows:

NATURE OF THE ACTION

1. Julianne Foster, ("Plaintiff") brings this complaint for damages against Rhett Riviere ("Riviere"), Chase Enterprises LLC of South Carolina ("Chase Enterprises"), Katherine A. Thomas ("Thomas"), and Airbnb, Inc. ("Airbnb") (hereinafter collectively referred to as "Defendants") for injuries and damages that Plaintiff suffered due to a wrongful invasion into her private affairs that occurred on or around May 17, 2019, through May 18, 2019, and was caused by Defendants' negligent and/or willful, wanton and reckless conduct.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, Defendant Airbnb denies that Plaintiff suffered any harm due to Airbnb's conduct. Defendant Airbnb lacks sufficient knowledge or information to form a belief as to

the truth of the remaining allegations in this paragraph and therefore denies the same.

2. Plaintiff seeks monetary damages from Defendants negligent, reckless, and unlawful acts, all in contravention to South Carolina law.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, Defendant Airbnb denies that it engaged in negligent, reckless, or unlawful acts or acts in contravention of South Carolina law. Defendant Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies the same.

PARTIES

3. At all times relevant to this Complaint, Plaintiff, Julianne Foster, has been a citizen of the state of South Carolina.

ANSWER: Defendant Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

4. At all times relevant to this Complaint, Defendant Chase Enterprises has been a South Carolina limited liability corporation with its principal place of business located in Aiken, South Carolina. Upon information and belief, Chase Enterprises is used to invest in real estate.

ANSWER: Defendant Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

5. At all times relevant to this Complaint, Defendant Rhett Riviere has been a citizen of the state of South Carolina, and upon information and belief was the controlling manager and sole member of Chase Enterprises.

ANSWER: Defendant Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

6. At all times relevant to this Complaint, Defendant Thomas has been a resident of the state of South Carolina.

ANSWER: Defendant Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

7. Defendant Airbnb, Inc., ("Airbnb") is a corporation incorporated under the laws of Delaware with its principal place of business located in San Francisco, California.

ANSWER: Admitted.

8. At all times relevant to this action, Airbnb conducted and continues to regularly conduct business in the state of South Carolina.

ANSWER: Denied.

JURISDICTION & VENUE

9. The incident that is the subject matter of this case occurred in Aiken County in South Carolina, and the Defendants are citizens and residents of Aiken County, South Carolina, and/or conducted business or owned property in Aiken County, South Carolina.

ANSWER: Defendant Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the allegation that "[t]he incident that is the subject

matter of this case occurred in Aiken County in South Carolina” and therefore denies the same. To the extent that the remaining allegations in this paragraph are addressed to Airbnb, all such allegations are denied. To the extent that the remaining allegations in this paragraph are addressed to other named Defendants, Airbnb is not required to respond on their behalf and lacks sufficient knowledge or information to form a belief as to the truth of these allegations and therefore denies the same.

10. Jurisdiction and venue are proper in this court under S.C. Code § 15-7-30.

ANSWER: Defendant Airbnb does not contest personal jurisdiction or venue. Except as expressly provided, Airbnb denies the allegations in this paragraph.

FACTUAL ALLEGATIONS

11. Plaintiff re-alleges the preceding paragraphs as though repeated verbatim herein.

ANSWER: Defendant Airbnb re-alleges and incorporates each and every answer of paragraphs 1 through 10 as if repeated verbatim herein.

12. The incident that is the subject of this case occurred on or around May 17, 2019, through May 18, 2019, on Defendant's property ("the Airbnb property"), located at 115 Third Ave SW, Aiken, South Carolina, in Aiken County.

ANSWER: Defendant Airbnb denies that the property at 115 Third Ave SW, Aiken, South Carolina (the “Subject Property”) is an “Airbnb property.” Airbnb denies that it owns, manages, controls, or has the right to access the Subject Property. Defendant Airbnb lacks sufficient knowledge or information to form a

belief as to the truth of the remaining allegations in this paragraph and therefore denies the same.

13. According to Aiken County, South Carolina Register of Deeds, the Airbnb property was owned by Chase Enterprises on the dates in question.

ANSWER: Defendant Airbnb denies that that the Subject Property is an “Airbnb property.” Airbnb denies that it owns, manages, controls, or has the right to access the Subject Property. Defendant Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies the same.

14. Chase Enterprises is also known as Chase Enterprises, LLC of South Carolina. This business is registered with the South Carolina Secretary of State and is specifically managed by Defendant Riviere.

ANSWER: Defendant Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

15. Upon information and belief, Chase Enterprises is an LLC pass-through business whereby Chase Enterprises does not pay federal income taxes; instead, the owner(s) report business income and pay the business tax on their personal tax returns.

ANSWER: Defendant Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

16. Plaintiff's friend used Airbnb, an internet platform whereby homeowners pay a fee to advertise the renting of their homes, to locate the rental that is subject to this case.

ANSWER: Admitted that Airbnb provides an online marketplace that enables individuals who wish to offer accommodations, known as "hosts," and those seeking to book accommodations, known as "guests," to contract with each other. Defendant Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies the same.

17. Plaintiff and her friends relied upon Airbnb's name, reputation and claims it would provide only safe and trustworthy rental facilities.

ANSWER: Denied.

18. In booking the Airbnb property, Plaintiff's friend communicated with Thomas, who held herself out to be the "host" and/or property manager for the property.

ANSWER: Defendant Airbnb denies that the Subject Property is an "Airbnb property." Airbnb denies that it owns, manages, controls, or has the right to access the Subject Property. Defendant Airbnb admits that Defendant Thomas registered as a host as defined by Airbnb's Terms of Service and used the Airbnb online platform to list the Subject Property. Defendant Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies the same.

19. At all times relevant, Thomas acted as part of the Defendants' property rental enterprise, leasing, offering to lease property and, therefore, had a duty to protect

their guests, including Plaintiff, and to take reasonable steps to ensure guest safety policies were followed.

ANSWER: Defendant Airbnb denies that it was engaged in any “property rental enterprise” with Thomas or Defendants. Defendant Airbnb admits that Defendant Thomas was registered as a host on the Airbnb platform, listed the Subject Property on the Airbnb platform, and entered into contractual arrangements with prospective guests, all pursuant to Airbnb’s Terms of Service. The remaining allegations in this paragraph consist of argument and legal conclusions to which no response is required; to the extent a response is required, Airbnb denies the same.

20. At all relevant times, Airbnb held itself out, and continues to hold itself out, as "a trusted community marketplace for people to list, discover, and book unique accommodations around the world." Airbnb holds itself out as a company that prioritizes guest safety.

ANSWER: Airbnb admits that, on or before May 17-18, 2019, one or more pages on its website contained the phrase “a trusted community marketplace for people to list, discover, and book unique accommodations around the world.” The remaining allegations in this paragraph consist of argument and legal conclusions to which no response is required and are so vague and ambiguous that a response is not required; to the extent a response is required, Airbnb denies the same.

21. Airbnb states that its hosts are required to inform guests of any cameras or devices on their property, even if they are turned off, and undisclosed recording devices are never permitted. However, it does little, if anything, to enforce this policy.

ANSWER: In response to the first sentence of this paragraph, Airbnb admits that, at present time, one or more pages on its website contains the statement: "Always be mindful of your guests' privacy. Fully disclose whether there are security cameras or other surveillance equipment at or around your listing. Make sure you are aware of and comply with applicable federal, state, and local laws." Airbnb further admits that, at present time, its website contains additional information about the use of cameras and recording devices at <https://www.airbnb.com/help/article/3061/use-of-cameras-and-recording-devices>. The remaining allegations in the first sentence of this paragraph consist of argument and legal conclusions to which no response is required; to the extent a response is required, Airbnb denies the same. Airbnb denies the allegations in the second sentence of this paragraph.

22. In establishing an individual as a host or lessor within the Airbnb system, little to no effort is undertaken by Airbnb by way of a vetting process with respect to these hosts to ensure the safety and welfare of the third parties renting properties through Airbnb.

ANSWER: Airbnb admits that it is a provider and/or user of an interactive computer service pursuant to 47 U.S.C. § 230. Airbnb further admits that it did not physically inspect the Subject Property, nor did it have a right to access the Subject Property. The remaining allegations in this paragraph consist of argument and legal conclusions to which no response is required; to the extent a response is required, Airbnb denies the same.

23. At all relevant times in the instant matter, Airbnb:

- a) failed to engage in any meaningful background checks of the lessor;
- b) failed to adequately and fully verify personal details of the lessor;
- c) failed to verify information and details about the property being rented out by the lessor; and
- d) failed to put into place or enforce policies and procedures to protect the constitutionally protected rights of privacy and seclusion of the third parties renting the properties through Airbnb.

ANSWER: Airbnb admits that it is a provider and/or user of an interactive computer service pursuant to 47 U.S.C. § 230. Airbnb admits that, on or before May 17-18, 2019, it did not attempt to determine the truth or falsity of statements made by Airbnb users about the Subject Property, nor did it have an obligation to. Airbnb admits that it had no duty to enforce or protect any rights of privacy and seclusion that Plaintiff might have. Airbnb admits that it did not physically inspect the Subject Property, nor did it have a right to access the Subject Property. The remaining allegations in this paragraph consist of argument and legal conclusions to which no response is required; to the extent a response is required, Airbnb denies the same.

24. At the time of this incident, Plaintiff was staying at the Defendants' property with her friends for a tennis tournament.

ANSWER: To the extent that "Defendants" refers to Airbnb, Defendant Airbnb denies the allegations in this paragraph. To the extent that "Defendants" refers to other named defendants, Defendant Airbnb is not required to respond on their behalf and lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies the same.

25. Plaintiff and her friends paid the Defendants to rent the Airbnb property.

ANSWER: Defendant Airbnb denies that the Subject Property is an “Airbnb property.” Airbnb denies that it owns, manages, controls, or has the right to access the Subject Property. Defendant Airbnb lacks sufficient knowledge or information to form a belief as to whether Plaintiff and her friends paid the Defendants to rent the Subject Property and therefore denies this allegation.

26. Plaintiff stayed for the weekend and, during her stay, she undressed and changed clothes in the privacy of the bedroom she had rented.

ANSWER: Defendant Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

27. Unbeknownst to Plaintiff and without her consent, Defendant had set up video surveillance and secretly recorded Plaintiff while she was in the bedroom.

ANSWER: To the extent “Defendant” refers to Airbnb, Defendant Airbnb denies the allegations in this paragraph. To the extent “Defendant” refers to another named defendant, Defendant Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

28. At no time did Defendants inform Plaintiff or her friends that there was any recording device on the property.

ANSWER: Defendant Airbnb admits that it was not aware of any recording device on the Subject Property on or before May 17-18, 2019. Defendant Airbnb further admits that it did not inform anyone of any recording device on the Subject Property on or before May 17-18, 2019. To the extent “Defendants” refers to

Defendants other than Airbnb, Defendant Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

29. Plaintiff and her friends did not consent to being recorded in any manner and were unaware that a video camera was located on the property. Defendant recorded Plaintiff multiple times changing clothes while in the rented bedroom.

ANSWER: Defendant Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the allegations in the first sentence of this paragraph and therefore denies the same. To the extent that “Defendant” refers to Airbnb, Defendant Airbnb denies the allegations. To the extent “Defendant” refers to another named defendant, Defendant Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the allegations in the second sentence of this paragraph and therefore denies the same.

30. Plaintiff was informed by an agent from the South Carolina Law Enforcement Division that there were videos of her from her stay at Defendant's property, which included extremely private images of her undressing and without clothing.

ANSWER: Defendant Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

31. That upon information and belief, the video recording device was on top of a dresser on the left side of the room positioned so as to capture the entire bed and almost the entire bedroom.

ANSWER: Defendant Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

32. Plaintiff remains extremely upset and was devastated to learn that she had been secretly recorded. Plaintiff remains concerned nude images and videos of her undressing have been shared and/or could make their way onto the internet.

ANSWER: Defendant Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

33. As a result of this incident, Plaintiff is very concerned about her level of privacy and this concern has negatively impacted her life in a variety of ways.

ANSWER: Defendant Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

34. As a result of this incident, Plaintiff has suffered severe emotional distress.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

FIRST CAUSE OF ACTION
(Negligence and/or Gross Negligence)

35. Plaintiff re-alleges the preceding paragraphs as though repeated verbatim herein.

ANSWER: Defendant Airbnb re-alleges and incorporates each and every answer of paragraphs 1 through 34 as if repeated verbatim herein.

36. Defendants created a business enterprise whereby they lease, offer to lease, place for rent, solicit listings of places for rent, solicit prospective tenants and/or collect rent from real property in exchange for financial remuneration. This affirmative act places upon Defendants an obligation of due and reasonable care in accord with the laws of South Carolina.

ANSWER: To the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied. To the extent that the allegations in this paragraph are addressed to other named Defendants, Airbnb is not required to respond on their behalf and lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

37. Defendant Riviere has acknowledged that he knows he has a duty to immediately deactivate a recording device / camera when a rental guest of the Airbnb occupies the property.

ANSWER: The allegations in this paragraph are addressed solely to Rhett Riviere, and therefore no response by Airbnb is required. To the extent that the allegations in this paragraph are addressed to Airbnb, Defendant Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

38. Defendants were negligent/grossly negligent in the use and/or operation of cameras/video recording equipment inside the Airbnb property from May 17 through May 18, 2019.

ANSWER: To the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied. Airbnb denies that the Subject Property is an “Airbnb property” and that Airbnb “use[d] and/or operate[d] cameras/video recording equipment inside the Subject Property from May 17 through May 18, 2019.” Airbnb denies that it owns, manages, controls, or has the right to access the Subject Property. To the extent that the allegations in this paragraph are addressed to other named defendants, Airbnb is not required to respond on their behalf and lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

39. Defendants breached this duty, which resulted in the secret recording of Plaintiff, without their knowledge or consent while Plaintiff and her friends were authorized paying Airbnb rental guests.

ANSWER: To the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied. To the extent that the allegations in this paragraph are addressed to other named Defendants, Airbnb is not required to respond on their behalf and lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph.

40. Upon information and belief, Defendant Airbnb conducted no background investigation of the Defendants Riviere and Thomas; nor did Airbnb engage in any

reasonable evaluation of these hosts or the property prior to allowing it to be posted on its site.

ANSWER: Airbnb admits that it is a provider and/or user of an interactive computer service pursuant to 47 U.S.C. § 230. Airbnb admits that, on or before May 17-18, 2019, it did not attempt to determine the truth or falsity of statements made by Airbnb users about the Subject Property, nor did it have an obligation to. Airbnb admits that it did not physically inspect the Subject Property, nor did it have a right to access the Subject Property. Airbnb denies the remaining allegations in this paragraph.

41. In failing to engage in little, if any, investigation of lessors before allowing lessors to post their property on its site, Airbnb has created and continues to create a foreseeable risk of harm to parties such as this Plaintiff.

ANSWER: Denied.

42. As a direct and proximate result of Defendants' misfeasance, Plaintiff has suffered general damages, including, but not limited to, humiliation, shock, embarrassment, intimidation, physical distress and injury, fear, stress, and other damages to be proven at the time of trial.

ANSWER: To the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied. To the extent that the allegations in this paragraph are addressed to other named Defendants, Airbnb is not required to respond on their behalf and lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

43. As a direct and proximate result of Defendants' misfeasance, Plaintiff has also suffered special damages to be proven at the time of trial.

ANSWER: To the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied. To the extent that the allegations in this paragraph are addressed to other named Defendants, Airbnb is not required to respond on their behalf and lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

44. Plaintiff, upon information and belief, alleges that Defendants committed the acts delineated herein in conscious disregard for Plaintiff's rights. Accordingly, Plaintiff is entitled to recover punitive damages in an amount according to proof.

ANSWER: To the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied. To the extent that the allegations in this paragraph are addressed to other named Defendants, Airbnb is not required to respond on their behalf and lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

SECOND CAUSE OF ACTION

(Invasion of Privacy - Wrongful Intrusion into Private Affairs by Rhett Riviere)

45. Plaintiff re-alleges the preceding paragraphs as though repeated verbatim herein.

ANSWER: Defendant Airbnb re-alleges and incorporates each and every answer of paragraphs 1 through 44 as if repeated verbatim herein.

46. On May 17, 2019, through May 18, 2019, Defendant's watching, prying and video recording, intruded into Plaintiff's private affairs.

ANSWER: The allegations in this paragraph are addressed solely to Rhett Riviere, and therefore no response by Airbnb is required. To the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied.

47. At all times relevant herein, Plaintiff had a legally protected right of privacy while a guest on Defendant's Airbnb property. Plaintiff never consented to being recorded, nor was she even aware that she was being recorded. Plaintiff had a reasonable expectation of privacy that she would not be viewed by anyone who was not present in the room with her while staying in the Defendant's Airbnb property.

ANSWER: The allegations in this paragraph are addressed solely to Rhett Riviere, and therefore no response by Airbnb is required. To the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied.

48. Defendant's intrusion into Plaintiff's privacy would be highly offensive to a reasonable person. The intrusion was into aspects of Plaintiff's life that were private and which Plaintiff would normally expect to be free from exposure to Defendant and other third parties.

ANSWER: The allegations in this paragraph are addressed solely to Rhett Riviere, and therefore no response by Airbnb is required. To the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied.

49. The intrusion was substantial and unreasonable enough to be legally cognizable.

ANSWER: The allegations in this paragraph are addressed solely to Rhett Riviere, and therefore no response by Airbnb is required. To the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied.

50. Defendant intentionally intruded on Plaintiff's private affairs and violated her most personal rights.

ANSWER: The allegations in this paragraph are addressed solely to Rhett Riviere, and therefore no response by Airbnb is required. To the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied.

51. Plaintiff has suffered and continues to experience humiliation, shame, and other presumed damages and is entitled to recover for her actual and punitive damages from Defendant's actions as proven at trial.

ANSWER: The allegations in this paragraph are addressed solely to Rhett Riviere, and therefore no response by Airbnb is required. To the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied.

THIRD CAUSE OF ACTION
(Intentional Infliction of Emotional Distress by Rhett Riviere)

52. Plaintiff re-alleges the preceding paragraphs as though repeated verbatim herein.

ANSWER: Defendant Airbnb re-alleges and incorporates each and every answer of paragraphs 1 through 51 as if repeated verbatim herein.

53. By recording Plaintiff in private moments, Defendant intentionally or recklessly inflicted severe emotional distress or was certain or substantially certain that such distress would result from his conduct.

ANSWER: The allegations in this paragraph are addressed solely to Rhett Riviere, and therefore no response by Airbnb is required. To the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied.

54. Plaintiff was in a special relationship with Defendant based on the rental agreement between the parties.

ANSWER: The allegations in this paragraph are addressed solely to Rhett Riviere, and therefore no response by Airbnb is required. To the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied.

55. Defendant's conduct was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious, and utterly intolerable in a civilized community.

ANSWER: The allegations in this paragraph are addressed solely to Rhett Riviere, and therefore no response by Airbnb is required. To the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied.

56. Defendant's actions caused Plaintiff severe emotional distress when he intentionally videotaped the Plaintiff and invaded aspects of her life that were private and which Plaintiff would normally expect to be free from exposure to the Defendant.

ANSWER: The allegations in this paragraph are addressed solely to Rhett Riviere, and therefore no response by Airbnb is required. To the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied.

57. Plaintiff has suffered and continues to suffer from severe emotional distress, including, but not limited to, grief, anxiety, shock, humiliation, embarrassment, shame, and feelings of powerlessness.

ANSWER: The allegations in this paragraph are addressed solely to Rhett Riviere, and therefore no response by Airbnb is required. To the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied.

58. Plaintiff's emotional distress was so severe that no reasonable person could be expected to endure it.

ANSWER: The allegations in this paragraph are addressed solely to Rhett Riviere, and therefore no response by Airbnb is required. To the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied.

59. Plaintiff suffered presumed, actual, and punitive damages from Defendant's intentional infliction of emotional distress.

ANSWER: The allegations in this paragraph are addressed solely to Rhett Riviere, and therefore no response by Airbnb is required. To the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied.

FOURTH CAUSE OF ACTION
(Constructive Fraud / Misrepresentation by Rhett Riviere)

60. Plaintiff re-alleges the preceding paragraphs as though repeated verbatim herein.

ANSWER: Defendant Airbnb re-alleges and incorporates each and every answer of paragraphs 1 through 59 as if repeated verbatim herein.

61. Plaintiff was in a special relationship with Defendant based on the rental agreement between the parties.

ANSWER: The allegations in this paragraph are addressed solely to Rhett Riviere, and therefore no response by Airbnb is required. To the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied.

62. Defendant did not disclose that there were cameras located in the bedroom, that would later record the Plaintiff and her friend into aspects of Plaintiff's life that were private and which Plaintiff would normally expect to be free from exposure to the Defendant.

ANSWER: The allegations in this paragraph are addressed solely to Rhett Riviere, and therefore no response by Airbnb is required. To the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied.

63. An objective, reasonable person would have viewed the presence of the cameras and/or their active recording of cameras inside the listing as sufficiently important and significant that it would have played a significant role in the decision to enter the contractual relationship.

ANSWER: The allegations in this paragraph are addressed solely to Rhett Riviere, and therefore no response by Airbnb is required. To the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied.

64. Defendant knowingly did not disclose any security cameras or recording devices in or around the listing occupied by the Plaintiff, despite his duty to do so.

ANSWER: The allegations in this paragraph are addressed solely to Rhett Riviere, and therefore no response by Airbnb is required. To the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied.

65. Defendant intended to have Plaintiff stay in the bedroom and had reason to expect that she would have refrained from staying in the bedroom if she was made aware of the actively recording camera that was located in there.

ANSWER: The allegations in this paragraph are addressed solely to Rhett Riviere, and therefore no response by Airbnb is required. To the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied.

66. Plaintiff was not provided written notice of any type of security camera or other recording device in or around the listing.

ANSWER: The allegations in this paragraph are addressed solely to Rhett Riviere, and therefore no response by Airbnb is required. To the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied.

67. Plaintiff relied on the integrity and honesty of the Defendant to stay in the Airbnb property and had a right to rely on aspects of her life that were private to be free from exposure to the Defendant.

ANSWER: The allegations in this paragraph are addressed solely to Rhett Riviere, and therefore no response by Airbnb is required. To the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied.

68. Defendant acted in reckless and conscious disregard of Plaintiff's rights.

ANSWER: The allegations in this paragraph are addressed solely to Rhett Riviere, and therefore no response by Airbnb is required. To the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied.

69. As a direct and proximate result of Defendant's actions, Plaintiff is entitled to recovery for her damages to be proven at trial.

ANSWER: The allegations in this paragraph are addressed solely to Rhett Riviere, and therefore no response by Airbnb is required. To the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied.

70. Defendant committed these acts in conscious disregard for Plaintiff's rights. Plaintiff is entitled to an award of punitive damages.

ANSWER: The allegations in this paragraph are addressed solely to Rhett Riviere, and therefore no response by Airbnb is required. To the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied.

FIFTH CAUSE OF ACTION
(Negligence *per se* by Riviere, Thomas and Airbnb)

71. Plaintiff re-alleges the preceding paragraphs as though repeated verbatim herein.

ANSWER: Defendant Airbnb re-alleges and incorporates each and every answer of paragraphs 1 through 70 as if repeated verbatim herein.

72. Defendants leased, offered to lease or rent, solicited rentals and prospective tenants and/or collected rent from real property within the definition of a real estate broker as set forth in S.C. Code Ann. § 40-57-20.

ANSWER: To the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied. To the extent that the allegations in this paragraph are addressed to other named Defendants, Airbnb is not required to respond on their behalf and lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

73. Pursuant to § 40-57-20, real estate brokers must be licensed in the State of South Carolina.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, Airbnb denies that it engaged or engages in activities of a real estate broker and denies that it is required to hold a broker's license pursuant to South Carolina Code § 40-57-20.

74. The purpose of this statute is to protect the public from incompetent and untrustworthy individuals engaging in enumerated activities within the real estate field.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, Airbnb denies the allegations in this paragraph.

75. Plaintiff falls within the class of people sought to be protected.

ANSWER: Denied.

76. Despite Defendants engaging in activities of a real estate broker, on information and belief, none of the Defendants holds a broker's license as required by § 40-57-20.

ANSWER: To the extent that the allegations in this paragraph are addressed to Airbnb, Airbnb denies that it engaged or engages in activities of a real estate broker and denies that it is required to hold a broker's license pursuant to South Carolina Code § 40-57-20. To the extent that the allegations in this paragraph are addressed to other named Defendants, Airbnb is not required to respond on their behalf and lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

77. In failing to engage in little, if any, investigation of hosts, Defendants including specifically Airbnb created and continues to create a foreseeable risk of harm to parties, such as the Plaintiff, who rely upon Airbnb's assertion that it has created "a trusted community marketplace for people to list, discover, and book unique accommodations around the world."

ANSWER: Defendant Airbnb admits that, on or before May 17-18, 2019, one or more pages on its website contained the phrase "a trusted community marketplace for people to list, discover, and book unique accommodations around the world." The remaining allegations in the first sentence of this paragraph consist of argument and legal conclusions to which no response is required; to the extent a response is required, Defendant Airbnb denies the remaining allegations in this paragraph.

78. Upon information and belief, Defendants including specifically Airbnb failed to conduct a background investigation of Defendants Riviere and Thomas, and did not engage in any reasonable evaluation of these hosts or property managers prior to allowing the rental to be posted on its website.

ANSWER: Denied.

79. On information and belief, Defendants including specifically Airbnb did not have reasonable policies or procedures in place to protect lessors.

ANSWER: Denied.

80. To the extent policies were in place, those policies were not enforced, ignored and /or violated.

ANSWER: Denied.

81. As a result of Defendants failure to adhere to state licensing requirements, Plaintiff has suffered general damages, including but not limited to humiliation, shock, embarrassment, intimidation, distress, fear, stress and other damages to be proven at the time of trial.

ANSWER: To the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied. To the extent that the allegations in this paragraph are addressed to other named Defendants, Airbnb is not required to respond on their behalf and lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

82. As a direct and proximate result of Defendants' failure to adhere to state licensing requirements, Plaintiff has also suffered special damages to be proven at the time of trial.

ANSWER: To the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied. To the extent that the allegations in this paragraph are addressed to other named Defendants, Airbnb is not required to respond on their behalf and lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

83. Defendants committed these acts in conscious disregard for Plaintiff's rights. Accordingly, Plaintiff is entitled to an award of punitive damages.

ANSWER: To the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied. To the extent that the

allegations in this paragraph are addressed to other named Defendants, Airbnb is not required to respond on their behalf and lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

AFFIRMATIVE DEFENSES

Defendant Airbnb asserts the following affirmative defenses to Plaintiff's Complaint and hereby reserves its right to amend or supplement these defenses as information becomes available.

FIRST AFFIRMATIVE DEFENSE

Defendant Airbnb owed no duty to Plaintiff for any negligent acts or omissions alleged, including because the Terms of Service between the parties govern resolution of such alleged acts or omissions, which Airbnb denies having committed.

SECOND AFFIRMATIVE DEFENSE

The Complaint and all of its claims are barred, in whole or in part, because they fail to state a claim against Defendant Airbnb upon which relief can be granted, and, accordingly, should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. Defendant Airbnb renews its affirmative defense that it owed no duty to Plaintiff and the real estate broker statute is inapplicable to Plaintiff's claims.

THIRD AFFIRMATIVE DEFENSE

Even if Airbnb, Inc. is deemed negligent or to have breached any duties alleged in the Complaint, both of which are denied, then to the extent Plaintiff may be found to have failed to exercise reasonable care to protect her own interests, and was comparatively negligent in causing her damages, and Defendant pleads such comparative negligence to bar, or reduce, any recovery by the Plaintiff in this action.

FOURTH AFFIRMATIVE DEFENSE

Even if Defendant Airbnb was negligent or breached any duties alleged in the Complaint, which is denied, to the extent the assumption of the risk doctrine may be found to apply to Plaintiff's causes of action and may bar any or all of her claims, Defendant Airbnb pleads assumption of the risk to bar, or reduce, any recovery by the Plaintiff in this action.

FIFTH AFFIRMATIVE DEFENSE

The Plaintiff's alleged damages were proximately caused by the actions of other defendants or third parties over which Defendant Airbnb had no control; accordingly, such other causes were the intervening proximate cause or the superseding proximate cause of their alleged damages. Therefore, Defendant Airbnb should not be held responsible for any such damages.

SIXTH AFFIRMATIVE DEFENSE

The Complaint and all of its claims are barred, in whole or in part, to the extent that the Plaintiff failed to mitigate or minimize her own alleged damages.

SEVENTH AFFIRMATIVE DEFENSE

The Complaint and all of its claims are barred, in whole or part, because any damages Plaintiff may have suffered were caused in whole or in part by the negligence and/or other wrongful conduct of other defendants or third parties for whose conduct Defendant Airbnb is not responsible or liable.

EIGHTH AFFIRMATIVE DEFENSE

Defendants Katherine Thomas, Chase Enterprises LLC, and Rhett Riviere were not acting as the agent or employee of Defendant Airbnb at any time. Consequently, Defendant Airbnb is not responsible for the conduct of Defendants Thomas and Riviere through the principles of agency, vicarious liability, *respondeat superior*, or otherwise. Defendant Airbnb pleads lack of agency, and inapplicability of *respondeat superior* as affirmative defenses and complete bars to recovery.

NINTH AFFIRMATIVE DEFENSE

Plaintiff's alleged damages were solely the result of unforeseeable intervening or superseding events over which Defendant Airbnb had no control.

TENTH AFFIRMATIVE DEFENSE

To the extent Plaintiff sustained any injuries or incurred any expenses as alleged in the Complaint, responsibility for 51% or more of those injuries or expenses lie with Plaintiff and/or parties or entities other than Defendant Airbnb for whose actions and omissions Defendant Airbnb has no responsibility. Therefore, at most, Defendant Airbnb may only be severally liable for Plaintiff's injuries or expenses.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff is not entitled to an award of punitive damages as there can be no showing by clear and convincing evidence that Plaintiff's alleged damages were the result of willful, wanton, or reckless conduct by Defendant Airbnb.

TWELFTH AFFIRMATIVE DEFENSE

Punitive damages as requested by Plaintiff, which Defendant Airbnb denies are recoverable at all, are not permitted by law to the extent Plaintiff's request violates the United States Constitution and all governing state law (including but not limited to *State Farm v. Campbell*, 538 U.S.408 (2003) and its progeny) regarding the recoverability and amount of punitive damages.

THIRTEENTH AFFIRMATIVE DEFENSE

Punitive damages as requested by Plaintiff, which Defendant Airbnb denies are recoverable at all, are subject to the limitations of South Carolina Code 15-32-520 *et seq.* including but not limited to the bifurcation of trial as to punitive damages and the caps and limitations upon awards of punitive damages under governing law.

FOURTEENTH AFFIRMATIVE DEFENSE

In the unlikely event that Defendant Airbnb is found liable to Plaintiff, Defendant Airbnb is entitled to a credit or offset for any and all sums that Plaintiff has received, or may hereafter receive, by way of any and all settlements arising from Plaintiff's claims and causes of action.

FIFTEENTH AFFIRMATIVE DEFENSE

Any verdict or judgment that might be recovered by Plaintiff must be reduced by those amounts that have already or will in the future, with reasonable certainty, indemnify Plaintiff in whole or in part for any past or future claimed economic loss from any collateral source.

SIXTEENTH AFFIRMATIVE DEFENSE

The Complaint and all of its claims are barred and/or limited, in whole or in part, pursuant to applicable statutory and common law regarding limitations on awards, caps on recovery, and setoffs.

SEVENTEENTH AFFIRMATIVE DEFENSE

The Complaint and all of its claims are barred, in whole or in part, and/or preempted by the Communications Decency Act. See 47 U.S.C. § 230, *et. seq.*

EIGHTEENTH AFFIRMATIVE DEFENSE

The Complaint and all of its claims are barred, in whole or in part, because Plaintiff, who did not reserve the Subject Property but was a guest of the booking guest, cannot claim greater rights or entitlements than would be available to the booking guest, whose rights were subject to the limitations provided in Airbnb's Terms of Service to which the booking guest consented.

NINETEENTH AFFIRMATIVE DEFENSE

Defendant Airbnb reserves the right to allege any additional affirmative defenses, as the facts become known.

WHEREFORE, Defendant Airbnb, Inc. respectfully requests that judgment be rendered in favor of Airbnb and against Plaintiff on all causes of action alleged in the Complaint, and such other and further relief as this Court deems appropriate.

BUTLER WEIHMULLER KATZ CRAIG LLP

/s/L. Andrew Watson

L. Andrew Watson

SC Bar No.: 100322

Ryan P. Duffy

SC Bar No.: 103400

11605 North Community House Road, Suite 150

Charlotte, NC 28277

PH: (704) 543-2321

FX: (704) 543-2324

E: awatson@butler.legal

E: rduffy@butler.legal

Attorneys for Airbnb, Inc.

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing **ANSWER OF AIRBNB, INC. TO PLAINTIFF'S COMPLAINT** was served this 4th day of February, 2022 by electronic means via the South Carolina E-Filing System to the following:

Wesley D. Few
Wesley D. Few, LLC
P.O. Box 9398
Greenville, SC 29604
Attorney for Plaintiff

Deborah B. Barbier
Deborah B. Barbier, LLC
1811 Pickens Street
Columbia, SC 29201

Attorney for Plaintiff

Ryan L. Beasley
Ryan L. Beasley, Attorney at Law, P.A.
416 East North Street, 2nd Floor
Greenville, SC 29601
Attorney for Plaintiff

Julie Jeffords Moose
McAngus Goudelock & Courie, LLC
1320 Main Street, 10th Floor
Columbia, SC 29211
*Attorney for Rhett Riviere and Chase
Enterprises, LLC of South Carolina*

John W. Harte
Law Offices of John W. Harte
P.O. Box 7215
Aiken, SC 29804
*Attorney for Rhett Riviere and Chase
Enterprises, LLC of South Carolina*

/s/ L. Andrew Watson
L. Andrew Watson

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

2nd JUDICIAL CIRCUIT

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

AMENDED SUMMONS
(Jury Trial Requested)

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Respectfully Submitted,

Deborah B. Barbier, S.C. Bar No. 6920
DEBORAH B. BARBIER, LLC
1811 Pickens Street
Columbia, South Carolina 29201
803-445-1032 | dbb@deborahbarbier.com

s/Wes Few/
WESLEY D. FEW, LLC
Wesley D. Few, S.C. Bar No. 15565
Post Office Box 9398
Greenville, South Carolina 29604
(864) 527-5906 | wes@wesleyfew.com

Ryan L. Beasley, SC Bar No. 68307
RYAN L. BEASLEY, ATTORNEY AT LAW, P.A.
416 East North Street, 2nd Floor
Greenville, South Carolina 29601
(864) 679-7777 | rlb@ryanbeasleylaw.com

ATTORNEYS FOR PLAINTIFF

September 2, 2022
Greenville, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	
	)	2 nd JUDICIAL CIRCUIT
JULIANNE FOSTER	)	
	)	
	)	C/A No.: 2021-CP-02-00889
PLAINTIFF,	)	
v.	)	AMENDED COMPLAINT
	)	(Jury Trial Requested)
RHETT RIVIERE, KATHERINE A.	)	
THOMAS, CHASE ENTERPRISES, LLC	)	
OF SOUTH CAROLINA, AND AIRBNB,	)	
INC.,	)	
	)	
DEFENDANTS.	)	

COMES NOW THE PLAINTIFF, by and through her undersigned counsel of record, and brings this Amended Complaint against the Defendants, alleging as follows:

NATURE OF THE ACTION

1. Julianne Foster (“Plaintiff”) brings this Amended Complaint for damages against Rhett Riviere (“Riviere”), Chase Enterprises LLC of South Carolina (“Chase Enterprises”), Katherine A. Thomas (“Thomas”), and Airbnb, Inc. (“Airbnb”) (hereinafter collectively referred to as “Defendants”) for injuries and damages Plaintiff suffered due to a wrongful invasion into her private affairs that occurred on May 17, 2019 through May 18, 2019, and was caused by Defendants’ negligent and / or willful, wanton and reckless conduct.

2. Plaintiff seeks injunctive relief, monetary damages, attorneys’ fees, and costs from Defendants for Defendants’ negligent, reckless, and unlawful acts, all in contravention to South Carolina law.

INTRODUCTION

3. This case presents the quintessential perfect storm: an individual defendant with a history of voyeurism who rents out his property with hidden cameras in private spaces to

unsuspecting guests through a company that touts its commitment to trust and guest privacy and safety, but, in reality, woefully fails to protect its guests from any such misconduct, despite knowing that incidents like this are occurring in its Host's rentals with some frequency.

4. Airbnb touts itself as a company that prioritizes guest privacy and safety and specifically informs its guests that "Your safety is our priority" and that "Airbnb is designed with safety - both online and off - in mind." Airbnb promises that "[e]very Airbnb reservation is scored for risk before it's confirmed," claiming they are "flag[ging] and investigat[ing] suspicious activity before it happens." Unfortunately, for many, including Plaintiff, these statements ring hollow.

5. Airbnb guests reasonably expect that they can rely on Airbnb to have adequately vetted the properties and Hosts it promotes and advertises. Airbnb, however, while touting safety is its top priority, does not conduct adequate reviews on its Hosts or properties. The surreptitious recording of Airbnb guests by hidden cameras placed there by Airbnb Hosts is not a new problem for Airbnb. Moreover, Airbnb is fully aware that its guests routinely find hidden cameras in bedrooms and bathrooms of their Airbnb rentals, where cameras are "allegedly" strictly forbidden by Airbnb.

6. 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.

7. For example, in Clairemont, California, a couple found three cameras in their Airbnb rental with one directed at the bed. In Miami, Florida, a guest found hidden cameras in his Airbnb apartment rental pointed at his bed. These guests were in some respects fortunate to have discovered the hidden recording devices.

8. Oftentimes, however, as in the instant case, the victims do not discover the cameras themselves; they are subsequently contacted by law enforcement and informed that there are

recordings of them in a state of undress or during intimate moments and conversations.

9. For example, in Maine, a couple was contacted by local police and informed that when they were Airbnb guests a month earlier, a hidden camera in a clock radio next to the bed had captured recordings of them in the bedroom undressed and during intimate moments and private conversations.

10. In Texas, several women only learned that they had been recorded during their stay at an Airbnb rental when they were contacted by the Sheriff's Office more than six months after their stay and four months after Airbnb was notified of the hidden camera and its recordings of Airbnb guests.

11. These incidents occur regularly and are reported to Airbnb, and Airbnb fails to take appropriate action, if any action.

12. Airbnb's promotes its rental properties across the world and touts its commitment to safety and trust and claims that in cases of sexual assault and sexual harassment, that it "prioritize[s] supporting and empowering survivors in the healing process," and aims to "do[] the right thing . . . where things go wrong." However, in reality, despite knowledge that hidden cameras are being discovered in Airbnb rentals with alarming frequency, Airbnb does nothing to protect its guests from this known danger.

13. Moreover, when a hidden recording device is discovered and reported to Airbnb, Airbnb does not do the right thing. Rather, it acts only to minimize bad publicity for Airbnb.

14. Even after a hidden camera is reported in an Airbnb property, Airbnb does not act to protect its guests. In the Texas case noted above, a guest discovered a hidden camera and notified Airbnb. Airbnb failed to notify previous guests that they may have been secretly recorded, and, even more appalling, after one of the Hosts had been arrested and the local news station had aired a story about the hidden camera, Airbnb allowed the listing to remain on its website for at least a month.

15. According to multiple witnesses and evidence uncovered in this case, Defendant Riviere has a long history of voyeurism and surreptitiously recording guests in his rental houses and boat, including climbing a ladder or tree to view inside women's bedrooms to watch them undress and causing one woman to hire security to patrol her property to prevent Riviere from trespassing and conducting his voyeuristic activities.

16. Riviere has earned the reputation of being an infamous "Peeping Tom" in the town of Aiken, South Carolina, where he has lived most of his life.

17. Despite this history and his well-known reputation, Riviere and Thomas have collectively acted as Airbnb Hosts and agents for years. And for years, Riviere surreptitiously recorded guests in his Airbnb rentals in a state of undress or other intimate moments.

18. Riviere was actively communicating with Airbnb guests regarding their rental and stay in the Airbnb properties that he owned through Chase Enterprises during the entire time relevant to this Amended Complaint.

19. Thomas was even awarded the "prestigious" designation as an Airbnb Super Host by Airbnb, which apparently did not require a background check or a property inspection.

20. On August 27, 2019, the South Carolina Law Enforcement Division ("SLED") executed a search warrant on properties owned by Riviere after being informed (by Thomas) that Riviere was secretly videotaping Airbnb guests.

21. As a result of the execution of this search warrant, thousands of video recordings (some containing audio) have been discovered from the computer equipment seized by SLED in Riviere's properties, which he owned in his individual name, via Chase Enterprises, and / or jointly with Thomas. These videos span many decades and include people who are unaware that they are being recorded while they are nude; while they are undressing; while they are going to the bathroom; getting in the shower; having sex; and during other intimate and private moments.

22. On June 2, 2021, Riviere was arrested by SLED and criminally charged with voyeurism as a result of his recordings of Plaintiff Julianne Foster.

23. On July 29, 2022, Riviere was arrested (again) by SLED and criminally charged with two more counts of voyeurism as a result of his recordings of two other individuals. SLED's investigation of Riviere continues.

24. The crime of "Voyeurism" under South Carolina law, is set forth in S.C. Code Ann. § 16-17-470, in Chapter 17 of Title 40, entitled, "Offenses Against Public Policy."

25. Given the availability and affordability of digital recording and streaming devices in 2019 (and more so now), preventing these types of crimes as alleged against Riviere is in the utmost of the public's interests, as compared to his *not-so-secret* reputation in Aiken for "peeping" in windows, in 2019, fingernail sized (or smaller) cameras can be placed where they are not likely to be found by guests, and can immediately stream recorded content to an off-site device / Internet.

26. Riviere was well aware of the capabilities of these types of devices, as shown by his social media post on Sept. 6, 2017, advising his FaceBook friends and relations as follows:



27. Preventing Voyeursim of this kind is in the public interest.

28. Airbnb apparently uses an “automated” Artificial Intelligence (“AI”) program, which it purchased in 2017, to exclusively conduct what it touts to the public as its “background” check process for its prospective Hosts.¹

29. By representing itself as a safe and trustworthy provider of short-term and long-term leasing services, Airbnb deceives the public into believing they will not be subject to an unwanted invasion of their privacy in the private bedrooms and bathrooms of its Host’s rentals.

30. Under S.C. Code Ann. §§’s 39-5-50(a) and 140(b), Plaintiff is calling upon the Clerk of Court for Aiken County to send a copy of this Amended Complaint to the Attorney General for the state of South Carolina to investigate the business practices of Airbnb to prevent further inevitable and irreparable harm to persons unwittingly being recorded in their Airbnb rentals in this state without their knowledge, warning, or consent.

31. Each Defendant needs to be held accountable for their part in this intolerable invasion of privacy, which, due to Airbnb’s continued lack of care, is occurring repeatedly throughout the state of South Carolina, and elsewhere.

32. As an example of Airbnb’s gross negligence, specifically with respect to compliance with S.C. law regarding “Real Estate Brokers, Brokers-in-Charge, Salespersons, and Property Managers,” their most recent online definition / description of an Airbnb Host(s), reads as follows:

Types of Hosts

There are 3 types of Hosts who can manage a reservation.

- **Listing owner:** The person who lists the space in their Airbnb account. This is usually the person who owns or lives on the property.
- **Co-Host:** Someone, usually a friend or family member, who helps the Host manage their place. The listing owner decides if the Co-Host appears as the primary Host on the listing.
- **Hosting team:** A hosting team is a business or team of people that manages places to stay on behalf of the listing owner. They may do everything from setting pricing, to meeting guests at check-in, to scheduling property maintenance.

Learn more about what [hosting teams](#) and [Co-Hosts](#) can do on Airbnb.

¹ See e.g., “Airbnb’s AI Can Dig Through Your Social Media For Clues You’re A Psychopath,” Science Alert, Jan. 6, 2020 (<https://www.sciencealert.com/airbnb-s-ai-will-dig-through-your-social-media-for-clues-you-re-a-psychopath>).

33. S.C. Code Ann. § 40-57-10, entitled “South Carolina Real Estate Commission created; purpose,” states, “The purpose of this commission is to regulate the real estate industry so as to protect the public's² interest when involved in real estate transactions.” *Id.* (emphasis added).

34. S.C. Code Ann. § 40-57-20, entitled “Valid Licensure Requirement for Real Estate Brokers, Salespersons, and Property Managers,” states: “It is unlawful for an individual to act as a real estate broker, real estate salesperson, or real estate property manager or to advertise or provide services as such without an active, valid license issued by the commission.” *Id.* (emphasis added).

35. S.C. Code Ann. § 40-57-30(1), entitled “Definitions,” defines an “Agent” as follows: “‘Agent’ means one authorized and empowered by a written agency agreement to perform actions for a client. A real estate brokerage firm is the agent of a buyer, seller, landlord, or tenant, and the real estate brokerage firm's ‘associated licensees’ are its subagents.” *Id.* (emphasis added).

36. S.C. Code Ann. § 40-57-30(6), entitled “Definitions,” defines a “Client” as follows: “‘Client’ means a person who enters a written agreement establishing an agency relationship with a real estate brokerage firm through its broker-in-charge, a property manager-in-charge, or an associated licensee.” *Id.* (emphasis added).

37. S.C. Code Ann. § 40-57-30(20), also under “Definitions,” defines a “Property Manager” as follows:

"Property manager" means an associated licensee who meets educational requirements and passes the examination for a property manager license, and who will for a fee, salary, commission, other valuable consideration or with the intent or expectation of receiving compensation:

(a) negotiates or attempts to negotiate the rental or leasing of real estate or improvements to the real estate;

² Further, § 40-57-135(A)(4), requires a licensed property manager to be “available to the public during business hours in order to discuss or resolve complaints and disputes that arise during the course of real estate transactions in which the broker-in-charge or property manager-in-charge or an associated licensee is involved.” *Id.* (emphasis added).

(b) lists or offers to list and provide a service in connection with the leasing or rental of real estate or improvements to the real estate; or

(c) advertises or otherwise represents to the public as being engaged in an activity in subitems (a) and (b).

Id. (emphasis added).

38. A plain reading of the above-referenced code provisions shows that both Airbnb and its Hosts, specifically non-property owning Hosts such as Thomas here, must be licensed by LLR to comply with § 40-57-20.

39. On information and belief, Airbnb and the property advertising and leasing enterprise at issue in this case, on information and belief, failed to comply with other public safety laws and regulations, as will be shown in discovery and at trial.

40. On information and belief, to the extent Airbnb collects and remits taxes in the same manner as a hotel or motel operator, for purposes of creating an argument that they are not subject to § 40-57-20, Airbnb must be held to the same liability standards under Premises Liability laws, as those motel and hotel operators.

41. On information and belief, Airbnb has done nothing to contact the S.C. Real Estate Commission to obtain any sort of exception for compliance with this code provision, either for itself or its Hosts in South Carolina.

42. Involvement of local licensed personnel, and / or requiring licensed local persons to assert proper licensing status and register same with Airbnb would cut down (and perhaps eliminate) voyeuristic behavior by reputed voyeurs such as Riviere.

43. As set forth herein, some local licensed real estate agents refused to promote or offer Riviere's rental properties due to knowledge of his reputation.

44. On information and belief, and based on discovery responses received in this case, Airbnb does absolutely nothing to check to see if its Hosts in South Carolina: (i) are licensed as

required § 40-57-20, (ii) own the property being registered for Airbnb Hosting, or (iii) have a contractual right to “manage” the “place” with the real property owner of record.

45. Airbnb did not ask Katherine Thomas or Rhett Riviere if either of them was a licensed real estate “agent” or “property manager” in South Carolina.

46. Airbnb does not conduct interviews with its proposed Hosts, despite the availability of Skype, Zoom, WebEx and / or mobile telephone or FaceTime to do so.

47. A telephone interview would enable Airbnb to ensure and / or remind their proposed Hosts about their “alleged” no camera policy, which would serve to protect the public from harm.

48. Airbnb has grown from a start-up company in circa 2007, the year of a significant financial market crash, to a 75 billion company in 2020, and 113 billion in 2021. The phrase “too big to fail,” became part of the American vernacular after the infamous 2007 financial markets crash, particularly with respect to such entities as: (i) Bear Stearns, (ii) AIG Insurance, (iii) Bank of America, (iv) Morgan Stanley, (v) Goldman Sachs, and (vi) JPMorgan Chase. Airbnb now apparently considers itself “too big to comply” with *little-old* South Carolina law.

PARTIES

49. At all times relevant to this Amended Complaint, Plaintiff, Julianne Foster, has been a citizen of the state of South Carolina.

50. At all times relevant to this Amended Complaint, Defendant Chase Enterprises, LLC has been a South Carolina limited liability corporation with its principal place of business located in Aiken, South Carolina. Rhett Riviere is the registered agent of Chase Enterprises. Upon information and belief, Chase Enterprises is used to invest in real estate.

51. At all times relevant to this Amended Complaint, Riviere has been a citizen of the state of South Carolina, and upon information and belief was the controlling manager and sole

member of Chase Enterprises.

52. At all times relevant to this Amended Complaint, Thomas has been a resident of the state of South Carolina.

53. Airbnb is a corporation incorporated under the laws of Delaware with its principal place of business located in San Francisco, California.

54. At all times relevant to this action, Airbnb conducted and continues to regularly conduct business in the state of South Carolina.

JURISDICTION & VENUE

55. The incident that is the subject matter of this case occurred in Aiken County in South Carolina, and the Defendants are citizens and residents of Aiken County, South Carolina, and / or conducted business or owned property in Aiken County, South Carolina.

56. Jurisdiction and venue are proper in this court under S.C. Code Ann. § 15-7-30.

FACTUAL ALLEGATIONS

Airbnb “Touts” its Business as Premised on “Trust” and “Safety”

57. Plaintiff re-alleges the preceding paragraphs as though repeated verbatim herein.

58. Airbnb is a hospitality company that facilitates vacation rentals between Hosts, usually a homeowner, and guests or renters through its website and brand name “Airbnb.” Airbnb promotes its business as an alternative to traditional lodging in hotels, and its business is based upon the premise of bringing together and building trust between “perfect strangers” and “ensuring people are safe.”³

59. On its website, Airbnb holds itself out as “a trusted community marketplace for people to list, discover, and book unique accommodations around the world” and a “global travel community”

³ Nick Shapiro, *Perfect Strangers: How Airbnb is building trust between Hosts and guests*, Airbnb, Dec. 1, 2017, <https://news.airbnb.com/perfect-strangers-how-airbnb-is-building-trust-between-Hosts-and-guests/>.

where “[h]osts must meet and maintain quality standards.”

60. Airbnb states on its website that it performs “risk scoring” so that “[e]very Airbnb reservation is scored for risk before it’s confirmed” and that its “goal is to make Airbnb the safest and most trusted way to travel.”

61. Further, Airbnb states it is “designed with safety-both online and off-in mind” and that “Airbnb is committed to earning the trust and ensuring the safety and security of its global community.”

Airbnb “Controls” its Hosts through Its Standards and Policies

62. Airbnb solicits Hosts, property owners or tenants, to make their properties or portions of their properties available for rent on Airbnb’s website to Airbnb’s customers. After Hosts register and create an account with Airbnb, Airbnb solicits information from them to create a rental listing that conforms to Airbnb’s standardized format and Airbnb’s Content Policy, so that each listing includes: the location of the property, the nightly rate, and whether the entire property is offered for rent or just a portion.

63. Airbnb designates what information is permitted in the rental listings offered on its website. Only after Hosts have created a rental listing conforming to Airbnb’s standardized format and Content Policy, does Airbnb make the rental available for rent to its customers.

64. Airbnb’s guests pay Airbnb the fees for all rentals. Airbnb retains a portion of the fee, generally 17.2 percent, and then compensates the Host with the remainder of the fee. All payments related to a rental must run through the Airbnb platform. Airbnb does not allow Hosts to collect any additional fees or charges outside the Airbnb platform unless expressly authorized by Airbnb.

65. Airbnb controls all aspects of the customers’ interactions with its Hosts, from what information is presented in a rental listing to how Hosts are required to respond to rental inquiries and how quickly.

66. Airbnb controls all refunds, cancellations, and other disputes between guests and Hosts.

For example, as to the cancellation policies, Hosts with short-term rentals must choose one of Airbnb's four cancellation policies. A guest wanting to cancel a reservation must log in to their Airbnb account, navigate through the Airbnb platform, and request a cancellation. If a cancellation is approved, the Airbnb guest is notified through the Airbnb platform.

67. Airbnb sets many standards that Hosts must follow, such as cleanliness, how quickly Hosts must respond to a guest's messages, and where cameras may be placed. Airbnb also reserves the right to unilaterally change any of its standards at any time for any reason.

68. Airbnb can penalize Hosts for failing to follow its policies, including the failure to disclose the existence of cameras. For example, Airbnb can deduct fees from a Host's payouts, restrict or block a Host's ability to make reservations, cancel reservations, deactivate listings, suspend users' accounts, remove badges (such as "SuperHost" or "Plus"), and permanently remove Hosts from its platform.

69. Airbnb can also fire / terminate a Host at will for any or no reason.

Airbnb Creates the Impression It Has Vetted "Host" Properties Listed on Its Website

70. In addition to claiming that "trust" and "safety" are its priorities, Airbnb induces its customers to trust it by giving certain rental listings labels or badges such as: "SuperHost," "Plus," "Luxe," and "Identity Verified."

71. Airbnb's badges and their descriptions cause guests to believe rental properties booked through Airbnb Hosts have undergone an inspection and have been found to be safe and / or reliable. For example, Airbnb describes "SuperHosts" as "experienced, highly rated Hosts who are committed to providing great stays for guests" that "[g]uests trust . . . [and] are the best of the best." Hosts with the "Identity Verified" badge signify that Airbnb has verified the identity of the Host.

72. Airbnb designates certain properties with "Plus" or "Luxe" badges, which are usually offered at a premium rental rate. Airbnb states that "Airbnb Luxe" properties "sit[] above Airbnb Plus"

and must pass “strict evaluation” that includes “300 points of inspection to ensure each Airbnb Luxe listing meets the highest standards.”

73. Despite claiming in its policies / public literature that it has “program” for performing “in-person inspections,” Airbnb does not perform any in-person inspection or investigation for the vast majority of Host properties it offers for rent on its website.

Airbnb Guests “Must Rely” on Airbnb to Provide Safety and Security Accommodations

74. Prior to booking a rental through Airbnb, guests are not able to independently perform any research on either the Hosts or the properties. The only information potential guests have is the information that Airbnb allows the Hosts to provide.

75. Airbnb does not allow a guest to see the address of the rental property or the contact information of the Host until after the guest has made a reservation. Airbnb Hosts often use only their first name in their listing, and, in many instances, the names listed on their Airbnb profile may not match their real identity.

76. Therefore, guests must rely entirely on Airbnb’s assurances that the rental property is safe and secure, and that the Host is trustworthy.

77. Airbnb tells its guests that staying in one of its rental properties is safe, and guests are forced to rely on these assurances because Airbnb’s rules make it impossible for guests to do any due diligence on the Host or property.

78. In fact, on July 6, 2022, when Airbnb was ordered to respond to interrogatories in this case and to identify employees responsible for guest safety, they acknowledged in their response that they do not have *any* employees responsible for guest safety. The following is an excerpt from Airbnb’s response to Interrogatory Number 4, which was verified under oath by an Airbnb representative:

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 **Airbnb, for many years, Has Been Aware of Hidden Cameras Found in its Rentals**

79. For at least a decade, in hundreds of instances, guests have discovered hidden cameras in Airbnb rentals, often disguised as smoke detectors, clocks, or computer equipment and reported them to Airbnb. Airbnb, however, has failed to adequately address this known issue, and instead, often blames the guests themselves. For example, in January 2019, a Mr. Max Vest found cameras hidden in his Miami, Florida Airbnb rental. In fear for his safety, Mr. Vest immediately fled the rental property and contacted Airbnb's safety team. Mr. Vest asserts that during his communications with Airbnb employees, following this incident, they treated him as a "frustrated guest" rather than a victim of a crime, which he was. Worse still, Airbnb told Mr. Vest to contact and meet with the rental property Host after he had discovered and reported the hidden cameras, as Mr. Vest left with the Host's keys in his haste in leaving the night of the incident. Airbnb prioritized the return of the Host's keys, who had violated Mr. Vest's privacy, as well as Airbnb terms of service, over Mr. Vest's safety and comfort.⁴

⁴ Sidney Fussell, *Airbnb Has a Hidden-Camera Problem*, The Atlantic, Mar. 26, 2019, <https://www.theatlantic.com/technology/archive/2019/03/what-happens-when-you-find-cameras-your-airbnb/585007/>.

80. Airbnb has also been on legal notice of this issue since at least 2015, when Yvonne Schumacher filed suit against the company for hidden cameras found during her stay at an Airbnb rental.⁵ In December 2013, Schumacher, a German woman, was an identified guest of a third-party Airbnb renter. Several days into their rental period, both Schumacher and the other guest observed a hidden camera in the living room that had been audio and video recording them during moments of undress and intimate conversations without their consent. Schumacher filed suit in 2015 in the United States District Court for the Northern District of California against Airbnb for negligence and invasion of privacy, among other claims. Mere months later, Airbnb settled the case; however, upon information and belief, that settlement remains confidential.⁶

81. Another lawsuit was filed as a class action against Airbnb in December 2016 in Nevada, *Marshall et al. v. Rogers et al*, again, putting Airbnb on notice of the perilous hidden camera issue. The plaintiffs, there, alleged that the smoke detectors in the bathrooms, bedrooms, and other private areas in the Airbnb rental property contained small, obscured cameras. Law enforcement also discovered copies of private images of the plaintiffs/guests on the Airbnb property owners' computers.⁷

82. A similar lawsuit was filed in May 2018 in Manatee County, Florida.⁸ There, John and Jane Doe entered and went about their activities at a Florida Airbnb rental property without any knowledge that their intimate moments and interactions would be audio/video recorded. At the time of

⁵ See *Yvonne Edith Maria Schumacher v. Airbnb Inc. et al.*, No. 3:15-cv-05734-JCS, 2015 WL 9161227 (N.D. Cal. Dec. 14, 2015); see also *Yvonne Edith Maria Schumacher v. Airbnb Inc. et al.*, No. 4:15-cv-05734-CW, 2016 WL 11499624 (N.D. Cal. July 21, 2016).

⁶ Andrew L. Smith and Candace Padgett, *A Way for Prying Eyes: As Airbnb Gains in Popularity, Privacy and Coverage Issues Bubble to the Surface*, CLM Magazine, May 2018, <https://rolfeshenry.com/wp-content/uploads/2018/02/Airbnb.pdf>.

⁷ *Id.*

⁸ (See *John Doe and Jane Doe, individually, Plaintiffs, vs. Wayne Natt and Airbnb, Inc., a foreign corp.* Compl. filed on May 15, 2018).

their stay, neither John nor Jane Doe were aware of recording devices present, and so it follows that neither consented to being recorded either. The victims alleged that Airbnb allowed the rental property owner to violate their privacy by failing to ensure there were no undisclosed cameras at the property and failing to warn them of prior invasion of privacy instances known to have occurred at other Airbnb-endorsed properties.

83. Each of the above-mentioned instances provide are merely examples of Airbnb's full awareness of cameras frequently being hidden in the rental properties it endorses. Yet, Airbnb has continued to fail its guests by not adequately addressing or even warning guests of the perilous issue at hand.

84. Airbnb represents that it has developed "community standards to help guide user behavior and codify the company's values" as to certain subjects, including safety, security, fairness, authenticity, and reliability.

85. Airbnb states that its Hosts are required to inform guests of any cameras or recording devices on their property, even if they are turned off, and undisclosed cameras and recording devices are never permitted to be located in private spaces, such as a bedroom or bathroom. However, Airbnb does nothing to enforce or effectuate this policy.

86. Airbnb states that it is "always working to make sure [its community standards are] upheld and enforced." However, Airbnb does not perform any in-person inspection or investigation at the vast majority of properties available for rent on Airbnb's website.

87. Upon information and belief, when a hidden camera has been discovered and reported to it, Airbnb does not notify guests that they may have been recorded in their most vulnerable and private moments without their consent. Airbnb apparently leaves that burden to law enforcement who must then attempt to determine whose privacy has been violated from the recordings.

88. At all relevant times in the instant matter, Airbnb has:

- a) failed to engage in any meaningful criminal background checks of Airbnb Hosts;
- b) failed to even attempt to gather relevant information about Airbnb Hosts;
- c) failed to adequately and fully verify personal details of its Host;
- d) failed to inspect the properties being used as Airbnb properties;
- e) failed to verify ownership information and other details about the property being rented out by its Host; and
- f) failed to put into place or enforce policies and procedures to protect the constitutionally protected rights of privacy and seclusion of the third parties renting the properties through Airbnb.

Plaintiff Stays at an Airbnb Property Trusting it to be Safe

89. The incident that is the subject of this case occurred on or around May 17, 2019, through May 18, 2019, on Defendant Chase Enterprise's property ("the Airbnb property"), located at 115 Third Ave SW, Aiken, South Carolina, in Aiken County.

90. According to Aiken County, South Carolina Register of Deeds, the Airbnb property was owned by Chase Enterprises on the dates in question.

91. Chase Enterprises is also known as Chase Enterprises, LLC of South Carolina. This business is registered with the South Carolina Secretary of State and is specifically managed by Defendant Riviere.

92. Upon information and belief, Chase Enterprises is a LLC pass-through business whereby Chase Enterprises does not pay federal income taxes; instead, the owner(s)' report business income and pay the business tax on their personal tax returns.

93. Plaintiff's friend used Airbnb to locate the rental that is the subject of this case.

94. Plaintiff and her friends relied upon Airbnb's name, reputation, and claims that it would provide only safe and trustworthy rental facilities.

95. In booking the Airbnb property, Plaintiff's friend initially communicated with Defendant Thomas, who held herself out to be the "Host" and / or property manager for the property.

96. At all times relevant, Thomas acted as part of the Defendants' property rental enterprise, leasing, offering to lease property and, therefore, had a duty to protect their guests, including Plaintiff, and to take reasonable steps to ensure guest safety policies were followed.

97. In establishing an individual as a Host or lessor within the Airbnb system, little to no effort is undertaken by Airbnb by way of a vetting process with respect to these Hosts to ensure the safety and welfare of the third parties renting properties through Airbnb.

98. In fact, Airbnb refers to its process as a "registration," as opposed to an "application," to become an Airbnb Host.

99. At the time of this incident, Plaintiff was staying on the Defendants' property with her friends for a tennis tournament.

100. Plaintiff and her friends paid the Defendants to rent the Airbnb property.

101. The funds provided to rent the Airbnb property were paid directly to Airbnb, not to Riviere, Chase Enterprises, or Thomas.

102. The arrangements made to lease the Airbnb property here were substantially identical to booking a room at a Hilton or a Marriott hotel, and / or of leasing a beach house through a licensed property manager, found on their web-site.⁹ Airbnb apparently wishes to avoid each of these established regulatory schemes, each designed to protect the public from undisclosed harm(s).

103. Plaintiff stayed for the weekend, and, during her stay, she undressed and changed clothes in the privacy of the bedroom she had rented. Unbeknownst to Plaintiff and without her consent, the Airbnb property contained a surreptitiously placed video camera positioned to capture recordings

⁹ The web-site of a licensed property manager in South Carolina and Airbnb are on the same Internet, which is also the same Internet as web-sites of well-known lodging brands, such as Hilton, Hyatt and / or Marriott.

in the bedroom of the rental.

104. Defendant Riviere had set up video surveillance equipment and secretly recorded Plaintiff while she was in the bedroom. Riviere has been criminally charged in Aiken County, South Carolina with voyeurism and violating a place of privacy, and those charges are still pending.

105. At no time did Defendants inform Plaintiff or her friends that there was any recording device(s) on the Airbnb property.

106. Plaintiff and her friends did not consent to being recorded in any manner and were unaware that a video camera or recording device was located on the property.

107. Defendant recorded Plaintiff multiple times while she was changing clothes and having private conversations in the rented bedroom.

108. Plaintiff was informed by a SLED agent that there were recordings of her from her stay at Defendant's property, which included videos with extremely private images of her undressing and without clothing.

109. Plaintiff remains extremely upset and was devastated to learn she had been secretly recorded while undressing and engaging in private conversations.

110. Plaintiff remains concerned nude images and videos of her undressing have been streamed, shared and / or disseminated and/or could make their way onto the internet.

111. As a result of this incident, Plaintiff is very concerned about her level of privacy and this concern has negatively impacted her life in a variety of ways.

112. As a result of this incident, Plaintiff has suffered severe emotional distress.

113. Through the discovery process, thousands of video recordings (some containing audio) containing images of other people have been discovered on Riviere's seized digital devices. Many of these images are naked women; naked young girls; and naked men. There are also many images of people engaged in sexual activity and in intimate moments while in Riviere's properties

114. Riviere placed a recording device on top of a dresser on the left side of the room positioned so as to capture the entire bed and almost the entire bedroom where Plaintiff was staying.

115. Upon information and belief, Riviere has a long history of voyeurism and local realtors were so concerned about undisclosed cameras in Riviere's rental properties that they sought to have the South Carolina Association of Realtors require him to disclose the cameras.

116. Upon information and belief, a local realtor called the police who found Riviere hiding under her front porch one night with a ladder after he had been looking into her bedroom while she was getting undressed. Thereafter, she refused to rent Riviere's houses because of his voyeuristic behavior.

117. Upon information and belief, shortly after beginning her relationship with Riviere, Defendant Thomas discovered hidden cameras in the bedroom of the home she shared with Riviere and knew for a long time that Riviere had cameras with recording devices in the Airbnb rentals before she took any action.

118. Upon information and belief, after ending her relationship with Riviere and settling civil litigation with him, Thomas claims to have found two SD cards containing images of people in various states of undress in their Airbnb rental houses.

119. Upon information and belief, Thomas confided in friends that she had discovered videos of nude people in the Airbnb rentals and showed a thumb drive of images from the recording devices to numerous people.

120. In discovery responses in this lawsuit, Riviere acknowledged he knew he had placed recording devices in his Airbnb properties, admitting, "that a security video camera was used at 115 Third Avenue, SW in Aiken, South Carolina when the property was not rented."

121. As shown in her lawsuit, Michele Jain, Plaintiff's tennis teammate and the person that arranged the Airbnb rental at issue in this lawsuit, made a telephone call and spoke to Rhett

Riviere during the time period that they were renting the property.

122. Despite his specific telephone conversation with Jain on May 18, 2019, neither Riviere, nor any other Defendant, ever advised Plaintiff or any of her tennis teammates, of the existence of any video recording devices on the Airbnb property.

FIRST CAUSE OF ACTION

Negligence and / or Gross Negligence (Against All Defendants)

123. Plaintiff realleges the preceding paragraphs as though repeated verbatim herein.

124. Defendants created a business enterprise whereby they lease, offer to lease, place for rent, solicit listings of places for rent, solicit prospective tenants and/or collect rent from real property in exchange for financial remuneration. This affirmative act places upon Defendants an obligation of due and reasonable care in accord with the laws of South Carolina.

125. Defendant Riviere has acknowledged that he knows he has a duty to immediately deactivate a recording device / camera when a rental guest of the Airbnb occupies the property.

126. Defendant Airbnb, individually, and by and through its agents and/or joint venturers, Hosts, had a duty to exercise reasonable and ordinary care and caution about the ownership, management, maintenance, supervision, control, and operations of the rental; its reservation system; and each of its employees, agents, servants, and independent contractors, all to the benefit of guests, patrons, business invitees and persons, like Plaintiff Julianne Foster.

127. At all relevant times, Defendant Airbnb operated, controlled, managed, supervised, handled reservations for and were otherwise responsible for its Airbnb rental properties.

128. Defendant Airbnb, by and through its agents, employees, servants, and or independent contractors, was negligent in its acts and / or omission, by, among other things, failing to discover that Riviere had placed or cause to be placed a hidden camera in the Airbnb rental, thereby allowing the surreptitious recordings to be taken of Plaintiff by Riviere.

129. Defendants were negligent / grossly negligent in the use and/or operation of cameras/video recording equipment inside the Airbnb property from May 17 through May 18, 2019.

130. Defendants breached this duty, which resulted in the secret recording of Plaintiff, without their knowledge or consent while Plaintiff and her friends were authorized paying Airbnb rental guests.

131. Defendant Airbnb's employees conducted no background investigation of the Defendants Riviere and Thomas; nor did Airbnb engage in any reasonable evaluation of these Hosts or the property prior to allowing it to be posted on its site.

132. In failing to engage in little, if any, investigation of lessors before allowing lessors to post their property on its site, Airbnb has created and continues to create a foreseeable risk of harm to parties such as this Plaintiff.

133. As a direct and proximate result of the above conduct of Defendants, Plaintiff has suffered and continues to suffer from, including but not limited to, humiliation, shock, embarrassment, intimidation, physical distress and injury, fear, stress, and other damages to be proven at the time of trial.

134. As a direct and proximate result of Defendants' misfeasance, Plaintiff has also suffered special damages to be proven at the time of trial.

135. Upon information and belief, Defendants committed the acts delineated herein in conscious disregard for Plaintiff's rights. Accordingly, Plaintiff is entitled to recover punitive damages in an amount according to proof.

SECOND CAUSE OF ACTION

Negligent Hiring, Supervision, or Retention of Employees (Against Airbnb)

136. Plaintiff realleges the preceding paragraphs as though repeated verbatim herein.

137. Airbnb created a business enterprise whereby it leases, offers to lease, places for rent,

solicits listings of places for rent, solicits prospective tenants and/or collects rent from real property in exchange for financial remuneration.

138. Airbnb's business enterprise depends upon bringing two or more strangers together for the purpose of leasing a particular piece of property. Indeed, Airbnb's former Global Head of Trust & Risk Management Nick Shapiro has described Airbnb's business as "building trust" between "perfect strangers," by among other things "ensuring people are safe." To that end, Airbnb has held itself out to the public as a "trusted community" to attract the public to its website to engage in real estate leasing transactions.

139. At all relevant times, Defendant Airbnb was the agent and/or joint venture of Defendant Riviere, and at all relevant times as such acting within the course, scope, and authority of said agency, and/or venture, and that Airbnb acting as a principal, was negligent in the selection, hiring, training, and supervision of its Host, acting as an agent and/or joint venturer. Airbnb had a proprietary interest in its Hosts, a right to govern the policies of the rentals, and a share in the profits.

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 their particular vulnerability to being filmed in a private area without their consent in an Airbnb rental and/or because Airbnb has a special relationship with its Hosts, who are agents and/or employees of Airbnb.

141. Airbnb exercises significant control over its Hosts.

142. Airbnb Hosts must register through Airbnb's platform to offer their properties for rent.

143. Airbnb controls the information that its Hosts provide on their listings and the format in which certain information is provided in a listing.

144. Airbnb has numerous standards which Hosts must abide by and which Airbnb can unilaterally change at any time. These include cleanliness standards, monitoring Hosts' performance through reviews, mandating cancellation policy procedures for long term rentals and requiring Hosts

to select one of four short term cancelation policies.

145. All cancellations, refunds, and disputes between Hosts and guests must go through Airbnb's platform.

146. Airbnb penalizes Hosts for failure to follow its rules and standards by deducting fees from payouts, cancelling bookings, restricting bookings, and permanently banning Hosts.

147. Airbnb can terminate a Host at will for any reason.

148. Airbnb has the ability to mitigate the risk of its guests being recorded without their consent in properties offered for rent on the Airbnb website. For example, Airbnb could require Hosts to engage in anti-harassment or other similar training, alerting Hosts of the criminal consequences of installing hidden cameras in Airbnb rentals, utilize technology that scans properties for all wirelessly connected devices, or perform in-person inspections of properties offered for rent on its website. In fact, Airbnb currently has the infrastructure to perform in-person inspections of certain Airbnb rentals, but only uses that infrastructure for select rentals. While Airbnb has established codes of conduct against use of video cameras in private areas in properties offered for rent through its website, it does nothing to enforce its codes prior to any incident.

149. Security experts have noted how most people "don't have the skill, knowledge, and more importantly . . . equipment" to prevent or even detect that they are being secretly monitored. On the other hand, Airbnb, unlike most people, has the skill, knowledge, and ability to use current technology to mitigate the risk of its guests being filmed via hidden cameras without their consent. For example, applications exist that can scan wireless networks to determine how many and what type of devices are connected to the wireless network to determine whether there are any cameras utilizing a specific wireless network.

150. Airbnb guests are especially vulnerable to sexual harassment because Hosts have the opportunity to non-consensually record guests during their most private moments, including while

nude. Airbnb guests are often travelling to destinations they are not accustomed to and have had no opportunity to inspect. Thus, Airbnb guests are dependent on Airbnb to ensure the safety of their accommodations.

151. Airbnb profits from offering unsuspecting guests accommodations at properties offered for rent on its website. Airbnb encourages guests to trust itself, its platform, its agents and employees, and the accommodations provided on its website.

152. Airbnb engages in numerous tactics to induce its guests to trust its Hosts, despite the fact that the parties are “perfect strangers.” For example, Airbnb features “SuperHost” badges and check marks with the words “Identity verified” below the names of certain Hosts, creating the appearance of higher safety and reliability.

153. Airbnb engaged in little, if any, investigation of Riviere, Chase Enterprise or Thomas before allowing them to act as Hosts and post their property on its site. Chase Enterprise and Riviere’s ownership of the Airbnb rental properties was a matter of public record.

154. Prior to booking through Airbnb, guests are not able to independently perform any research on either the Hosts of the properties or the properties themselves. Airbnb Hosts often only have their first name visible, and, in many instances, the names listed on their Airbnb profile may not match their real identity. Airbnb does not make the address of the property available to the guest until after the guest has booked the reservation and paid a preliminary fee. Thus, due to Airbnb’s own restrictive policies, guests must rely entirely on Airbnb to ensure their accommodations are safe and secure.

155. Airbnb knew or should have known that some of its Hosts were installing hidden cameras in private areas of Airbnb rentals. There have been hundreds of instances of Airbnb guests finding hidden cameras in their Airbnb rentals as evidenced by the hundreds of complaints Airbnb has received on its social media pages about guests’ discovery of hidden cameras.

156. If any due diligence had been performed, Airbnb would have known or should have known that Riviere had a propensity, proclivity, or course of conduct that he had voyeuristic tendencies sufficient to put it on notice of the possible danger he posed to third parties.

157. Airbnb knew of or should have known that its employment of Riviere, Chase Enterprise and Thomas created an undue risk of harm to third parties.

158. Airbnb knew or had reason to know of the necessity and opportunity for exercising control over Riviere, Chase Enterprise and Thomas.

159. Airbnb breached its duty to Plaintiff by failing to (a) warn or notify Plaintiff of the possibility of being filmed in private areas without her consent; (b) adequately inspect properties offered for rent on its website; and / or (c) adequately investigate its Hosts.

160. Airbnb knew or should have known that its guests are particularly vulnerable to harm, *i.e.*, being filmed in private areas without their consent, especially given the prevalence of hidden cameras in properties offered for rent on the Airbnb website.

161. Airbnb's failure to (a) warn or notify Plaintiff of the possibility of being filmed in private areas without her consent; (b) adequately inspect properties offered for rent on its website; and / or (c) adequately investigate its Hosts was a substantial factor in causing Plaintiff's harm.

THIRD CAUSE OF ACTION
Negligent Hiring, Supervision, Training, or Retention of Employees, or Alternatively Independent Contractors (Against Airbnb)

162. Plaintiff realleges the preceding paragraphs as though repeated verbatim herein.

163. Airbnb created a business enterprise whereby it leases, offers to lease, places for rent, solicits listings of places for rent, solicits prospective tenants and/or collects rent from real property in exchange for financial remuneration.

164. Airbnb's business enterprise depends upon bringing two or more strangers together for the purpose of leasing a particular piece of property. Indeed, Airbnb's former Global Head of Trust &

Risk Management Nick Shapiro described Airbnb's business as "building trust" between "perfect strangers," by among other things "ensuring people are safe." Airbnb holds itself out as a "trusted community" to attract the public to its website to engage in real estate leasing transactions.

165. Airbnb owed a duty to Plaintiff because Plaintiff had a special relationship with Airbnb, by virtue of their staying at an accommodation rented through Airbnb and their particular vulnerability to being filmed in a private area without their consent in an Airbnb rental and/or because Airbnb has a special relationship with its Hosts, who are agents and/or employees of Airbnb.

166. Airbnb hired Thomas, Riviere and Chase Enterprise to make the Airbnb rental available for temporary lease through Airbnb's website. Thomas, Riviere and Chase Enterprise were agents and employees of Airbnb.

167. Airbnb exercises significant control over its Hosts.

168. Airbnb Hosts must register through Airbnb's platform to offer their properties for rent.

169. Airbnb controls the information that its Hosts provide on their listings and the format in which certain information is provided in a listing.

170. Airbnb has numerous standards which Hosts must abide by and which Airbnb can unilaterally change at any time. These include cleanliness standards, monitoring Hosts' performance through reviews, mandating cancellation policy procedures for long term rentals and requiring Hosts select one of four short term cancelation policies.

171. All cancellations, refunds, and disputes between Hosts and guests must go through Airbnb's platform.

172. Airbnb penalizes Host for failure to follow its rules and standards by deducting fees from payouts, cancelling bookings, restricting bookings, and permanently banning Hosts.

173. Airbnb can terminate a Host at will for any reason.

174. Airbnb created a business enterprise whereby it leases, offers to lease, places for rent, solicits listings of places for rent, solicits prospective tenants and/or collects rent from real property in exchange for financial remuneration. Airbnb takes a service fee from both guests and the Hosts based on the total for the booking.

175. Airbnb's Hosts are an integral part of Airbnb's regular business and do not furnish an independent business or professional service. In Airbnb's own words, "Hosting makes Airbnb, Airbnb" and "Airbnb's Hosts are the foundation of [Airbnb's] community and business." Moreover, Airbnb would be unable to operate if it no longer hired Hosts and/or its Hosts no longer worked for Airbnb. Airbnb has no significant source of revenue and profits apart from the money brought in through the rental of properties by its Hosts.

176. Airbnb provides supplies, such as smoke and carbon monoxide alarms, to Hosts. Airbnb also provides Hosts activation and merchandising, pricing tools that suggest prices for listing, data insignia into Host occupancy rates, scheduling tools, damage protection and liability coverage.

177. Thomas and Riviere were unfit to perform the work for which they were hired as Riviere intentionally installed a hidden camera into the Airbnb rental for the purpose of secretly recording Plaintiff without her consent, during private and intimate affairs, including during various stages of undress; and Thomas knew Riviere had previously installed hidden cameras to secretly record women without their consent, during private and intimate affairs, including during various stages of undress.

178. Airbnb failed to employ measures to adequately supervise its agents. Airbnb does not provide anti-harassment or other training to its Hosts prior to permitting them to make listings available for rent on Airbnb's website. Also, Airbnb does not perform any in-person review or other investigation into most of the properties available for rent through its website.

179. Airbnb knew or should have known that offering properties for lease without having performed any in-person review; title search; or other investigation creates a particular risk to others of

being filmed without their consent. Airbnb knew or should have known of the prevalence of hidden cameras in properties offered for rent on the Airbnb website. Indeed, Airbnb propagates regulations on the use of cameras in properties offered for rent through Airbnb's website. Further, there have been hundreds of reports and complaints about hidden cameras in Airbnb properties.

180. Thomas and Riviere's unfitness for the work for which they were hired harmed Plaintiffs.

181. Airbnb's negligence in hiring, supervising, or retaining Thomas, Riviere, and Chase Enterprises was a substantial factor in causing Plaintiff's harm.

FOURTH CAUSE OF ACTION **Premises Liability - (All Defendants)**

182. Plaintiff realleges the preceding paragraphs as though repeated verbatim herein.

183. Defendants collectively advertised and promoted, and arranged and invited Plaintiff to the Airbnb property for the benefit of Defendants.

184. Defendants owed Plaintiff a duty of care to protect her and keep her safe from unknown or undisclosed hazards while at the property.

185. Defendants failed to warn Plaintiff of the existence of video recording devices in the Airbnb property bedroom.

186. Defendants breached this duty by enabling and allowing the existence of secret video recording devices in the bedroom of the Airbnb property.

187. As a result of the Defendants' breach of duty, Plaintiff suffered damages proximately caused by the breach.

188. Due to the egregious nature of the conduct at issue, grossly negligence, recklessness, and utter lack of care by Defendants to prevent the harm to Plaintiff, Plaintiff is entitled to an award of punitive damages.

FIFTH CAUSE OF ACTION **Invasion of Privacy – Wrongful Intrusion into Private Affairs (Against Riviere)**

189. Plaintiff realleges the preceding paragraphs as though repeated verbatim herein.

190. On May 17, 2019, through May 18, 2019, Defendant's watching, spying, prying and recording, intruded into Plaintiff's private affairs.

191. At all times relevant herein, Plaintiff had a legally protected right of privacy while a guest on Defendant's Airbnb property. Plaintiff never consented to being recorded, nor was she even aware that she was being recorded. Plaintiff had a reasonable expectation of privacy that she would not be viewed or recorded by anyone who was not present in the room with her while staying in the Defendant's Airbnb property.

192. Defendant's intrusion into Plaintiff's privacy would be highly offensive to a reasonable person. The intrusion was into aspects of Plaintiff's life that were private and which Plaintiff would normally expect to be free from exposure to Defendant and other third parties.

193. The intrusion was substantial and unreasonable enough to be legally cognizable.

194. Defendant intentionally intruded on Plaintiff's private affairs and violated her most personal rights.

195. Plaintiff has suffered and continues to experience humiliation, shame, and other presumed damages and is entitled to recover for her actual and punitive damages from Defendant's actions as proven at trial.

SIXTH CAUSE OF ACTION
Vicarious Liability for Invasion of Privacy (Against Airbnb)

196. Plaintiff realleges the preceding paragraphs as though repeated verbatim herein.

197. Airbnb is vicariously liable for the torts of its Hosts, employees, and agents through the theories of respondeat superior, nondelegable duties, agency, and ostensible agency.

198. Airbnb's business brings two or more strangers together for the purpose of renting a property. Airbnb's Global Head of Trust & Risk Management, Nick Shapiro, has described Airbnb's

business as “building trust” between “perfect strangers,” by among other things “ensuring people are safe.”

199. Airbnb created a business whereby it leases or offers to lease places for rent, solicits listings of places for rent, and prospective tenants and collects rent in exchange for a percentage of the rent.

200. Airbnb exercises significant control over its Hosts.

- a. Hosts must register on Airbnb’s platform to offer their property for rent there.
- b. Airbnb claims to verify the properties offered for rent on its website for “accuracy of the listing (including accuracy of photos, addresses, and listing details) and quality standards (including cleanliness, safety, and basic home amenities)” and for such verification.
- c. Airbnb controls what information Hosts are allowed to provide on its platform and the format under which certain information is presented.
- d. Airbnb has numerous standards and other controls over the Hosts and the rental properties which it can change at any time for any or no reason, including: cleanliness standards, monitoring Hosts’ performance via reviews, mandating the long-term rental cancellation policies and providing four options for the cancellation policies for short-term rentals. Airbnb can.
- e. All cancellations, refunds, and other disputes between Hosts and guests must go through Airbnb’s platform.
- f. Airbnb can penalize Hosts for failing to follow its rules by deducting fees from payouts, cancelling bookings, restricting bookings, and permanently banning Hosts.
- g. Airbnb can terminate Hosts at will for any or no reason.

201. Airbnb’s Hosts and agents are an integral part of Airbnb’s regular business and do not furnish an independent business or professional service. In Airbnb’s own words “Hosting makes

Airbnb, Airbnb” and “Airbnb’s Hosts are the foundation of [Airbnb’s] community and business.” Moreover, Airbnb would be unable to operate if it no longer hired Hosts and/or its Hosts no longer worked for Airbnb. Airbnb has no significant source of revenue and profits without the money brought in through the rental of properties by its Hosts.

202. Airbnb provides supplies, such as smoke and carbon monoxide alarms, to its Hosts. Airbnb also provides its Hosts with activation and merchandising, pricing tools that suggest prices for listing, data insignia into Host occupancy rates, scheduling tools, damage protection and liability coverage.

203. Riviere and Thomas committed tortious and wrongful acts while acting in the course and scope of their employment with Airbnb, as agents and/or employees of Airbnb. As a part of their employment with Airbnb, Riviere and Thomas made the Airbnb rental available for accommodation by Airbnb guests. Airbnb has rules regarding where and under what circumstances its Hosts may place recording devices in Airbnb rentals.

204. Riviere and Thomas’ invasion into Plaintiff’s privacy was incidental to their employment with Airbnb. Riviere and Thomas’ invasion into Plaintiff’s privacy was reasonably foreseeable in light of Airbnb’s business.

205. Plaintiff stayed at the Airbnb House because of Riviere and Thomas’ affiliation with Airbnb.

206. As Airbnb touts that its business involves connecting “perfect strangers,” often for the purposes of a short-term rental, it knew, or should have known, that offering properties for lease without having performed any in-person review or other investigation creates a particular risk to others of being filmed without their consent.

207. Airbnb knew, or should have known, of the prevalence of hidden cameras in properties offered for rent through the Airbnb website. Indeed, Airbnb propagates regulations on the

use of cameras in properties offered for rent on the Airbnb website. Further, there have been hundreds of reports and complaints about hidden cameras in Airbnb properties.

208. Plaintiff had a reasonable expectation of privacy in the Airbnb House during the duration of her stay.

209. During the course and scope of their employment, Riviere and Thomas intentionally intruded into Plaintiff's private affairs by having a hidden recording device in the bedroom of the Airbnb rental during Plaintiff's stay for the purpose of recording, viewing, and/or broadcasting Plaintiff's private and intimate affairs, including during various stages of undress and while engaged in private conversations, without Plaintiff's knowledge or consent.

210. Riviere and Thomas were agents and/or employees of Airbnb at the time they harmed Plaintiff.

211. Riviere and Thomas' intrusion would be highly offensive to a reasonable person. Riviere and Thomas recorded Plaintiff without her consent during private, intimate moments, including while partially or completely nude.

212. Plaintiff was harmed by Riviere and Thomas' intrusion.

213. Riviere and Thomas' conduct was a substantial factor in causing Plaintiff's harm.

SEVENTH CAUSE OF ACTION
Intentional Infliction of Emotional Distress (Against Riviere)

214. By recording Plaintiff in private moments, Defendant intentionally or recklessly inflicted severe emotional distress or was certain or substantially certain that such distress would result from his conduct.

215. Plaintiff was in a special relationship with Defendant based on the rental agreement between the parties.

216. Defendant's conduct was so extreme and outrageous as to exceed all possible bounds

of decency and must be regarded as atrocious, and utterly intolerable in a civilized community.

217. Defendant's actions caused Plaintiff severe emotional distress when he intentionally recorded the Plaintiff and invaded aspects of her life that were private and which Plaintiff would normally expect to be free from exposure to the Defendant.

218. Plaintiff has suffered and continues to suffer from severe emotional distress, including, but not limited to, grief, anxiety, shock, humiliation, embarrassment, shame, and feelings of powerlessness.

219. Plaintiff's emotional distress was so severe that no reasonable person could be expected to endure it.

220. Plaintiff suffered presumed, actual, and punitive damages from Defendant's intentional infliction of emotional distress.

EIGHTH CAUSE OF ACTION

Constructive Fraud / Misrepresentation (Against Riviere and Airbnb)

221. Plaintiff realleges the preceding paragraphs as though repeated verbatim herein.

222. Plaintiff was in a special relationship with Defendant based on the rental agreement between the parties.

223. Defendants did not disclose that there were cameras and / or recording devices located in the bedroom, which would later record the Plaintiff and her friend into aspects of Plaintiff's life that were private and which Plaintiff would normally expect to be free from exposure to the Defendant.

224. An objective, reasonable person would have viewed the presence of the cameras and / or recording devices and their active recording inside the listing as sufficiently important and significant that it would have played a role in the decision to enter into the contractual relationship.

225. One or more Defendants knowingly did not disclose any security cameras or recording devices in or around the listing occupied by the Plaintiff, despite his duty to do so.

226. Defendants intended to have Plaintiff stay in the bedroom and had reason to expect that she would have refrained from staying in the bedroom if she was made aware of the actively recording camera or other recording device that was located in there.

227. Plaintiff was not provided written notice of any type of security camera or other recording device in or around the listing.

228. Plaintiff relied on the integrity and honesty of the Defendants to stay in the Airbnb property and had a right to rely on aspects of her life that were private to be free from exposure to the Defendant.

229. Defendants acted in reckless and conscious disregard of Plaintiff's rights.

230. As a direct and proximate result of Defendants' actions, Plaintiff is entitled to recovery for her damages to be proven at trial.

231. Defendants committed these acts in conscious disregard for Plaintiff's rights.

232. Plaintiff is entitled to an award of punitive damages.

NINTH CAUSE OF ACTION

Negligence *per se* (Against Riviere, Chase, Thomas, and Airbnb)

233. Plaintiff re-alleges the preceding paragraphs as though repeated verbatim herein.

234. Defendants leased, offered to lease or rent, solicited rentals and prospective tenants and/or collected rent from real property within the definition of a real estate broker as set forth in S.C. Code Ann. § 40-57-20.

235. Pursuant to S.C. Code Ann. § 40-57-20, real estate brokers must be licensed in the State of South Carolina.

236. The purpose of this statute is to protect the public from incompetent and untrustworthy individuals engaging in enumerated activities within the real estate field.

237. Plaintiff falls within the class of people sought to be protected.

238. Despite Defendants engaging in activities of a real estate broker, on information and belief, none of the Defendants holds a broker's license as required by § 40-57-20.

239. In failing to engage in little, if any, investigation of Hosts, Defendants including specifically Airbnb created and continues to create a foreseeable risk of harm to parties, such as the Plaintiff who rely upon Airbnb's assertion that it has created "a trusted community marketplace for people to list, discover, and book unique accommodations around the world."

240. Upon information and belief, Defendants including specifically Airbnb failed to conduct a background investigation of Defendants Riviere and Thomas and did not engage in any reasonable evaluation of these Hosts or property managers prior to allowing the rental to be posted on its website.

241. On information and belief, Defendants including specifically Airbnb did not have reasonable policies or procedures in place to protect lessees.

242. To the extent policies were in place, those policies were not enforced, ignored and/or violated.

243. As a result of Defendants failure to adhere to state licensing requirements, Plaintiff has suffered general damages, including but not limited to humiliation, shock, embarrassment, intimidation, distress, fear, stress and other damages to be proven at the time of trial.

244. As a direct and proximate result of Defendants' failure to adhere to state licensing requirements, Plaintiff has also suffered special damages to be proven at the time of trial.

245. Defendants committed these acts in conscious disregard for Plaintiff's rights. Accordingly, Plaintiff is entitled to an award of punitive damages.

TENTH CAUSE OF ACTION

Violation of Unfair Trade Practices Act ("SCUTPA") (Against all Defendants)

246. Plaintiff re-alleges the preceding paragraphs as though repeated verbatim herein.

247. By the foregoing acts and omissions, the Defendants' conduct constitutes false, misleading and deceptive acts, practices, and/or omissions in violation of the South Carolina Unfair Trade Practice Act, S.C. Code Ann. § 39-5-10, *et seq.*

248. Defendants engaged in unfair and deceptive acts and practices by misrepresenting that the Airbnb rental had certain characteristics or qualities.

249. Defendants misrepresented that no undisclosed cameras or recording devices would be in the Airbnb rental. Defendant Airbnb also misrepresented that certain procedure and practices were in place to ensure the privacy and safety of guests.

250. By representing the safety and privacy of the Airbnb rental property, Defendants misrepresented their goods and services were of a particular standard or quality when they were not.

251. Defendants knew or should have known their conduct was a violation of § 39-5-20.

252. Because 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.

253. Plaintiff has suffered actual, ascertainable damages as a result of the Defendants' use of the unlawful trade practices.

254. Defendants, by their continued and willful failure to comply with S.C. Code § 40-57-10 *et seq.*, have violated South Carolina law, yet continue to represent themselves as operating in compliance with the motel and / or hotel operators they compete with, as well as the licensed property managers they compete with for rental and leasing customers.

255. As a direct and proximate result of Defendants' deceptive trade practices, Plaintiff sustained damages that include but are not limited to (i) pain and mental anguish in the past and future; (ii) fear, humiliation, and embarrassment in the past and future; and (iii) reasonable and necessary medical bills incurred in the past and future.

256. Because Defendants' acts and conduct constitute unfair and deceptive acts or practices in violations of the South Carolina Unfair Trade Practices Act, Plaintiff is entitled to an award of damages, treble damages, attorneys' fees, and costs.

257. Plaintiff also seeks an order of this Court enjoining Defendants from further activities in violation of the SCUTPA, in accordance with, *inter alia*, S.C. Code § 39-5-140, and calls upon the S.C. Attorney General to intervene and take action, as specifically provided for in S.C. Code § 39-5-50(a), which provides:

Whenever the Attorney General has reasonable cause to believe that any person is using, has used or is about to use any method, act or practice declared by Section 39-5-20 to be unlawful, and that proceedings would be in the public interest, he may bring an action in the name of the State against such person to restrain by temporary restraining order, temporary injunction or permanent injunction the use of such method, act or practice.

Id.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for an order in her favor and against Defendants as follows:

- A. Award Plaintiff actual, compensatory, special, and / or consequential or liquidated damages in an amount to be determined at a trial of this matter;
- B. Award Plaintiff punitive and / or exemplary damages in an amount to be determined at a trial of this matter;
- C. Award treble damages;
- D. Award Plaintiff attorney's fees and costs;
- E. Award prejudgment and post-judgment interest as provided by law;
- F. Injunctive relief as set forth herein by the S.C. Attorney General's Office under S.C. Code Ann. § 39-5-50; and
- G. All such other relief in law or equity as this court deems just and proper.

Respectfully Submitted,

Deborah B. Barbier, S.C. Bar No. 6920
DEBORAH B. BARBIER, LLC
1811 Pickens Street
Columbia, South Carolina 29201
803-445-1032 | dbb@deborahbarbier.com

s/Wes Few/
WESLEY D. FEW, LLC
Wesley D. Few, S.C. Bar No. 15565
Post Office Box 9398
Greenville, South Carolina 29604
(864) 527-5906 | wes@wesleyfew.com

Ryan L. Beasley, SC Bar No. 68307
RYAN L. BEASLEY, ATTORNEY AT LAW, P.A.
416 East North Street, 2nd Floor
Greenville, South Carolina 29601
(864) 679-7777 | rlb@ryanbeasleylaw.com

ATTORNEYS FOR PLAINTIFF

September 2, 2022
Greenville, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

JULIANNE FOSTER)
)
 Plaintiff,)

Case No. 2021-CP-02-00899

v.)

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

**AIRBNB, INC.’S ANSWER
TO PLAINTIFF’S AMENDED
COMPLAINT AND CROSS-
CLAIM AGAINST KATHERINE
A. THOMAS**

AIRBNB, INC.,)
)
 Cross-Claimant,)

v.)

KATHERINE A. THOMAS,)
)
 Cross-Defendant.)
_____)

COMES NOW Defendant and Cross-Claimant Airbnb, Inc. (“Airbnb” or “Defendant”), by and through its undersigned counsel, and responds to the allegations contained in the Plaintiff’s Amended Complaint and brings a cross-claim against Katherine A. Thomas. Airbnb expressly reserves and does not waive all rights to compel mandatory contractual arbitration and to amend this Answer and assert cross-claims, if any, for contribution or indemnity. Except as expressly stated below, Airbnb denies each and every allegation in the Amended Complaint, including,

without limitation, any allegations contained in the headings and prayers for relief of the Amended Complaint. Airbnb further alleges and states as follows:

NATURE OF THE ACTION

1. Julianne Foster (“Plaintiff”) brings this Amended Complaint for damages against Rhett Riviere (“Riviere”), Chase Enterprises LLC of South Carolina (“Chase Enterprises”), Katherine A. Thomas (“Thomas”), and Airbnb, Inc. (“Airbnb”) (hereinafter collectively referred to as “Defendants”) for injuries and damages Plaintiff suffered due to a wrongful invasion into her private affairs that occurred on May 17, 2019 through May 18, 2019, and was caused by Defendants’ negligent and / or willful, wanton and reckless conduct.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, Airbnb denies that Plaintiff suffered any harm due to Airbnb’s conduct, and denies that Airbnb was negligent and/or willful, wanton or reckless in any way. Airbnb admits that Plaintiff is Julianne Foster and is bringing this Amended Complaint for damages against Riviere, Chase Enterprises, Thomas, and Airbnb, but denies that Airbnb is in any way liable or responsible for those damages. Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies the same.

2. Plaintiff seeks injunctive relief, monetary damages, attorneys’ fees, and costs from Defendants for Defendants’ negligent, reckless, and unlawful acts, all in contravention to South Carolina law.

ANSWER: The allegations in this paragraph consist of argument and legal

conclusions to which no response is required. To the extent a response is required, Airbnb admits that Plaintiff is seeking injunctive relief, monetary damages, attorneys' fees, and costs from Defendants, but denies that Airbnb is in any way liable or responsible for such monetary damages, attorneys' fees, or costs, and denies that injunctive relief is proper against Airbnb. Airbnb denies that it engaged in negligent, reckless, or unlawful acts or acts in contravention of South Carolina law. Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies the same.

INTRODUCTION

3. This case presents the quintessential perfect storm: an individual defendant with a history of voyeurism who rents out his property with hidden cameras in private spaces to unsuspecting guests through a company that touts its commitment to trust and guest privacy and safety, but, in reality, woefully fails to protect its guests from any such misconduct, despite knowing that incidents like this are occurring in its Host's rentals with some frequency.

ANSWER: The allegations in this paragraph are so vague and ambiguous that Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

4. Airbnb touts itself as a company that prioritizes guest privacy and safety and specifically informs its guests that "Your safety is our priority" and that "Airbnb is designed with safety - both online and off - in mind." Airbnb promises that "[e]very Airbnb reservation is scored

for risk before it's confirmed," claiming they are "flag[ging] and investigat[ing] suspicious activity before it happens." Unfortunately, for many, including Plaintiff, these statements ring hollow.

ANSWER: Airbnb admits that it prioritizes guest privacy and safety. Airbnb further admits that its website, at some point in time, has stated "Your safety is our priority" and that "Airbnb is designed with safety—both online and off—in mind." Airbnb admits that its website, at some point in time, has stated "Every Airbnb reservation is scored for risk before it's confirmed. We use predictive analytics and machine learning to instantly evaluate hundreds of signals that help us flag and investigate suspicious activity before it happens." Except as expressly admitted, Airbnb denies the allegations in this paragraph.

5. Airbnb guests reasonably expect that they can rely on Airbnb to have adequately vetted the properties and Hosts it promotes and advertises. Airbnb, however, while touting safety is its top priority, does not conduct adequate reviews on its Hosts or properties. The surreptitious recording of Airbnb guests by hidden cameras placed there by Airbnb Hosts is not a new problem for Airbnb. Moreover, Airbnb is fully aware that its guests routinely find hidden cameras in bedrooms and bathrooms of their Airbnb rentals, where cameras are "allegedly" strictly forbidden by Airbnb.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, Airbnb admits that it maintains policies that prohibit concealed and undisclosed cameras and recording devices monitoring common spaces, and cameras and recording devices located in or monitoring private spaces. Airbnb denies that Airbnb "does not conduct adequate reviews

on its Hosts or properties.” Pursuant to Airbnb’s Terms of Service, 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 ... or (iii) the performance or conduct of any Member or third party”; “does not endorse any Member”; and makes no “endorsement, certification or guarantee ... about any Member, including of the Member’s identity or background.” Airbnb’s Terms of Service further provide that Airbnb does “not assume any responsibility for the confirmation of any Member’s identity” and states that it “may, but ha[s] no obligation to” perform background checks when it has “sufficient information to identify a Member.” Except as expressly admitted, Airbnb denies the allegations in this paragraph.

6. 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.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, the allegations in this paragraph are so vague and ambiguous that Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

7. For example, in Clairemont, California, a couple found three cameras in their Airbnb rental with one directed at the bed. In Miami, Florida, a guest found hidden cameras in his

Airbnb apartment rental pointed at his bed. These guests were in some respects fortunate to have discovered the hidden recording devices.

ANSWER: Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

8. Oftentimes, however, as in the instant case, the victims do not discover the cameras themselves; they are subsequently contacted by law enforcement and informed that there are recordings of them in a state of undress or during intimate moments and conversations.

ANSWER: Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

9. For example, in Maine, a couple was contacted by local police and informed that when they were Airbnb guests a month earlier, a hidden camera in a clock radio next to the bed had captured recordings of them in the bedroom undressed and during intimate moments and private conversations.

ANSWER: Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

10. In Texas, several women only learned that they had been recorded during their stay at an Airbnb rental when they were contacted by the Sheriff's Office more than six months after their stay and four months after Airbnb was notified of the hidden camera and its recordings of Airbnb guests.

ANSWER: Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

11. These incidents occur regularly and are reported to Airbnb, and Airbnb fails to take appropriate action, if any action.

ANSWER: Airbnb admits that it maintains policies that prohibit concealed and undisclosed cameras and recording devices monitoring common spaces, and cameras and recording devices located in or monitoring private spaces. Airbnb denies that it owns, manages, controls, or has the right to access the properties listed on its platform. Except as expressly admitted, Airbnb denies the allegations in this paragraph.

12. Airbnb's promotes its rental properties across the world and touts its commitment to safety and trust and claims that in cases of sexual assault and sexual harassment, that it "prioritize[s] supporting and empowering survivors in the healing process," and aims to "do[] the right thing . . . where things go wrong." However, in reality, despite knowledge that hidden cameras are being discovered in Airbnb rentals with alarming frequency, Airbnb does nothing to protect its guests from this known danger.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, Airbnb denies that the properties listed on its platform are "its rental properties." Airbnb denies that it owns, manages, controls, or has the right to access the properties listed on its platform. Airbnb admits that it is committed to safety and trust. Airbnb admits that its website, at some point in time, has stated that, in the rare instances of sexual assault, Airbnb "prioritize[s] supporting and empowering survivors in their healing process," and that "[p]aramount to building trust is doing the right thing in the rare instances where things go

wrong.” Airbnb avers that it maintains policies that prohibit concealed and undisclosed cameras and recording devices monitoring common spaces, and cameras and recording devices located in or monitoring private spaces. Except as expressly admitted, Airbnb denies the allegations in this paragraph.

13. Moreover, when a hidden recording device is discovered and reported to Airbnb, Airbnb does not do the right thing. Rather, it acts only to minimize bad publicity for Airbnb.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, Airbnb denies the allegations in this paragraph.

14. Even after a hidden camera is reported in an Airbnb property, Airbnb does not act to protect its guests. In the Texas case noted above, a guest discovered a hidden camera and notified Airbnb. Airbnb failed to notify previous guests that they may have been secretly recorded, and, even more appalling, after one of the Hosts had been arrested and the local news station had aired a story about the hidden camera, Airbnb allowed the listing to remain on its website for at least a month.

ANSWER: The allegations in the first sentence of this paragraph consist of argument and legal conclusions to which no response is required; to the extent a response is required, Airbnb denies the same. With respect to the remaining allegations, Airbnb lacks sufficient knowledge or information to form a belief as to the truth of those allegations and therefore denies the same. Airbnb further avers that the unidentified document or documents from “the Texas case” referenced in this paragraph speak for themselves and

denies any characterization of the document or documents that is inconsistent with their meaning when they are read in their entirety and in context.

15. According to multiple witnesses and evidence uncovered in this case, Defendant Riviere has a long history of voyeurism and surreptitiously recording guests in his rental houses and boat, including climbing a ladder or tree to view inside women's bedrooms to watch them undress and causing one woman to hire security to patrol her property to prevent Riviere from trespassing and conducting his voyeuristic activities.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same. Further, Airbnb conducted a criminal background check of Riviere and found no criminal conviction records at all, and certainly not criminal conviction records suggesting the type of behavior alleged in the Amended Complaint. Airbnb was never notified by anyone of Riviere's alleged history or reputation before Plaintiff initiated this lawsuit.

16. Riviere has earned the reputation of being an infamous "Peeping Tom" in the town of Aiken, South Carolina, where he has lived most of his life.

ANSWER: Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

17. Despite this history and his well-known reputation, Riviere and Thomas have collectively acted as Airbnb Hosts and agents for years. And for years, Riviere surreptitiously recorded guests in his Airbnb rentals in a state of undress or other intimate moments.

ANSWER: As to the allegations in the first sentence of this paragraph: Airbnb admits that Katherine Thomas listed properties that were available to book via Airbnb's platform from December 2016 until August 2019; Airbnb denies that Rhett Riviere was a host on Airbnb's platform at any time; Airbnb suspended Katherine Thomas and Rhett Riviere from its platform; and Airbnb denies that Katherine Thomas or Rhett Riviere were ever agents for Airbnb. Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies the same. Further, Airbnb conducted criminal background checks of Thomas and Riviere and found no criminal conviction records at all, and certainly not criminal conviction records suggesting the type of behavior alleged in the Amended Complaint. Airbnb was never notified by anyone of Riviere's alleged history or reputation before Plaintiff initiated this lawsuit.

18. Riviere was actively communicating with Airbnb guests regarding their rental and stay in the Airbnb properties that he owned through Chase Enterprises during the entire time relevant to this Amended Complaint.

ANSWER: Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

19. Thomas was even awarded the “prestigious” designation as an Airbnb Super Host by Airbnb, which apparently did not require a background check or a property inspection.

ANSWER: Airbnb admits that that Defendant Thomas was a “Superhost” from July 1, 2017 until March 31, 2018. Airbnb denies that Defendant Thomas was a “Superhost” at the time of the reservation or the alleged incident. Airbnb further admits that it did not physically inspect 115 Third Ave SW, Aiken, South Carolina (“Subject Property”), nor did it have a right to access the Subject Property. Except as expressly admitted, Airbnb denies the remaining allegations in this paragraph.

20. On August 27, 2019, the South Carolina Law Enforcement Division (“SLED”) executed a search warrant on properties owned by Riviere after being informed (by Thomas) that Riviere was secretly videotaping Airbnb guests.

ANSWER: Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

21. As a result of the execution of this search warrant, thousands of video recordings (some containing audio) have been discovered from the computer equipment seized by SLED in Riviere’s properties, which he owned in his individual name, via Chase Enterprises, and / or jointly with Thomas. These videos span many decades and include people who are unaware that they are being recorded while they are nude; while they are undressing; while they are going to the bathroom; getting in the shower; having sex; and during other intimate and private moments.

ANSWER: Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

22. On June 2, 2021, Riviere was arrested by SLED and criminally charged with voyeurism as a result of his recordings of Plaintiff Julianne Foster.

ANSWER: Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

23. On July 29, 2022, Riviere was arrested (again) by SLED and criminally charged with two more counts of voyeurism as a result of his recordings of two other individuals. SLED's investigation of Riviere continues.

ANSWER: Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

24. The crime of "Voyeurism" under South Carolina law, is set forth in S.C. Code Ann. § 16-17-470, in Chapter 17 of Title 40, entitled, "Offenses Against Public Policy."

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, Airbnb admits that S.C. Code Ann. § 16-17-470 is entitled "Eavesdropping, peeping, voyeurism" and a portion of that statute sets forth the crime of voyeurism. Airbnb denies that this statute is contained in Chapter 17 of Title 40. Airbnb affirmatively states that the statute referenced in this paragraph and the South Carolina Code of Laws speaks for themselves and denies any characterization of the statute or the Code of Laws that is inconsistent with their meaning when read in their entirety and in context.

25. Given the availability and affordability of digital recording and streaming devices in 2019 (and more so now), preventing these types of crimes as alleged against Riviere is in the

utmost of the public's interests, as compared to his not-so-secret reputation in Aiken for "peeping" in windows, in 2019, fingernail sized (or smaller) cameras can be placed where they are not likely to be found by guests, and can immediately stream recorded content to an off-site device / Internet.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, the allegations in this paragraph are so vague and ambiguous that Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

26. Riviere was well aware of the capabilities of these types of devices, as shown by his social media post on Sept. 6, 2017, advising his FaceBook friends and relations as follows:



ANSWER: Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, including the picture contained therein, and therefore denies the same.

27. Preventing Voyeursim of this kind is in the public interest.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required.

28. Airbnb apparently uses an “automated” Artificial Intelligence (“AI”) program, which it purchased in 2017, to exclusively conduct what it touts to the public as its “background” check process for its prospective Hosts.¹

ANSWER: Airbnb avers that the document or documents referenced in this paragraph and the footnote thereto speak for themselves and denies any characterization of the document or documents that is inconsistent with their meaning when they are read in their entirety and in context. Airbnb denies the remaining allegations in this paragraph.

29. By representing itself as a safe and trustworthy provider of short-term and long-term leasing services, Airbnb deceives the public into believing they will not be subject to an unwanted invasion of their privacy in the private bedrooms and bathrooms of its Host’s rentals.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, Airbnb denies the allegations in this paragraph.

30. Under S.C. Code Ann. §§’s 39-5-50(a) and 140(b), Plaintiff is calling upon the Clerk of Court for Aiken County to send a copy of this Amended Complaint to the Attorney General for the state of South Carolina to investigate the business practices of Airbnb to prevent

¹ *See e.g.*, “Airbnb’s AI Can Dig Through Your Social Media For Clues You’re A Psychopath,” Science Alert, Jan. 6, 2020 (<https://www.sciencealert.com/airbnb-s-ai-will-dig-through-your-social-media-for-clues-you-re-a-psychopath>).

further inevitable and irreparable harm to persons unwittingly being recorded in their Airbnb rentals in this state without their knowledge, warning, or consent.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, Airbnb denies the allegations in this paragraph.

31. Each Defendant needs to be held accountable for their part in this intolerable invasion of privacy, which, due to Airbnb's continued lack of care, is occurring repeatedly throughout the state of South Carolina, and elsewhere.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, Airbnb denies the allegations in this paragraph.

32. As an example of Airbnb's gross negligence, specifically with respect to compliance with S.C. law regarding "Real Estate Brokers, Brokers-in-Charge, Salespersons, and Property Managers," their most recent online definition / description of an Airbnb Host(s), reads as follows:

Types of Hosts
There are 3 types of Hosts who can manage a reservation.

- **Listing owner:** The person who lists the space in their Airbnb account. This is usually the person who owns or lives on the property.
- **Co-Host:** Someone, usually a friend or family member, who helps the Host manage their place. The listing owner decides if the Co-Host appears as the primary Host on the listing.
- **Hosting team:** A hosting team is a business or team of people that manages places to stay on behalf of the listing owner. They may do everything from setting pricing, to meeting guests at check-in, to scheduling property maintenance.

Learn more about what [hosting teams](#) and [Co-Hosts](#) can do on Airbnb.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, Airbnb

denies the allegations in this paragraph. Airbnb further avers that the source represented by the picture contained in this paragraph speaks for itself and denies any characterization of its content that is inconsistent with its meaning when it is read in its entirety and in context.

33. S.C. Code Ann. § 40-57-10, entitled “South Carolina Real Estate Commission created; purpose,” states, “The purpose of this commission is to regulate the real estate industry so as to protect the public’s² interest when involved in real estate transactions.” *Id.* (emphasis added).

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, Airbnb avers that the statute referenced in this paragraph and the footnote thereto speaks for itself and denies any characterization of the statute that is inconsistent with its meaning when read in its entirety and in context. Airbnb further denies that it engaged or engages in activities of a real estate broker, salesperson, or property manager and denies that it is required to hold a broker’s, salesperson’s, or property manager’s license under South Carolina Code § 40-57-20.

34. S.C. Code Ann. § 40-57-20, entitled “Valid Licensure Requirement for Real Estate Brokers, Salespersons, and Property Managers,” states: “It is unlawful for an individual to act as a real estate broker, real estate salesperson, or real estate property manager or to advertise or

² Further, § 40-57-135(A)(4), requires a licensed property manager to be “available to the public during business hours in order to discuss or resolve complaints and disputes that arise during the course of real estate transactions in which the broker-in-charge or property manager-in-charge or an associated licensee is involved.” *Id.* (emphasis added).

provide services as such without an active, valid license issued by the commission.” *Id.* (emphasis added).

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, Airbnb admits that S.C. Code Ann § 40-57-20 is entitled “Valid Licensure Requirement for Real Estate Brokers, Salespersons, and Property Managers.” Airbnb admits that S.C. Code Ann § 40-57-20 states “It is unlawful for an individual to act as a real estate broker, real estate salesperson, or real estate property manager or to advertise or provide services as such without an active, valid license issued by the commission.” Airbnb denies that the statute contains any underlying or emphasis. Airbnb avers that the statute referenced in this paragraph speaks for itself and denies any characterization of the statute that is inconsistent with its meaning when read in its entirety and in context. Airbnb further denies that it engaged or engages in activities of a real estate broker, salesperson, or property manager and denies that it is required to hold a broker’s, salesperson’s, or property manager’s license under South Carolina Code § 40-57-20.

35. S.C. Code Ann. § 40-57-30(1), entitled “Definitions,” defines an “Agent” as follows: “‘Agent’ means one authorized and empowered by a written agency agreement to perform actions for a client. A real estate brokerage firm is the agent of a buyer, seller, landlord, or tenant, and the real estate brokerage firm’s ‘associated licensees’ are its subagents.” *Id.* (emphasis added).

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, Airbnb

admits that S.C. Code Ann. § 40-57-30 is entitled “Definitions.” Airbnb admits that subsection (1) of this statute defines “Agent” as “‘Agent’ means one authorized and empowered by a written agency agreement to perform actions for a client. A real estate brokerage firm is the agent of a buyer, seller, landlord, or tenant, and the real estate brokerage firm's ‘associated licensees’ are its subagents.” Airbnb denies that the statute contains any underlying or emphasis. Airbnb avers that the statute referenced in this paragraph speaks for itself and denies any characterization of the statute that is inconsistent with its meaning when read in its entirety and in context. Airbnb further denies that it engaged or engages in activities of a real estate broker, salesperson, or property manager and denies that it is required to hold a broker’s, salesperson’s, or property manager’s license under South Carolina Code § 40-57-20.

36. S.C. Code Ann. § 40-57-30(6), entitled “Definitions,” defines a “Client” as follows: “‘Client’ means a person who enters a written agreement establishing an agency relationship with a real estate brokerage firm through its broker-in-charge, a property manager-in-charge, or an associated licensee.” *Id.* (emphasis added).

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, Airbnb admits that S.C. Code Ann. § 40-57-30 is entitled “Definitions.” Airbnb admits that subsection (6) of this statute defines “Client” as “‘Client’ means a person who enters a written agreement establishing an agency relationship with a real estate brokerage firm through its broker-in-charge, a property manager-in-charge, or an associated licensee.” Airbnb denies

that the statute contains any underlying or emphasis. Airbnb avers that the statute referenced in this paragraph speaks for itself and denies any characterization of the statute that is inconsistent with its meaning when read in its entirety and in context. Airbnb further denies that it engaged or engages in activities of a real estate broker, salesperson, or property manager and denies that it is required to hold a broker's, salesperson's, or property manager's license under South Carolina Code § 40-57-20.

37. S.C. Code Ann. § 40-57-30(20), also under "Definitions," defines a "Property Manager" as follows:

"Property manager" means an associated licensee who meets educational requirements and passes the examination for a property manager license, and who will for a fee, salary, commission, other valuable consideration or with the intent or expectation of receiving compensation:

(a) negotiates or attempts to negotiate the rental or leasing of real estate or improvements to the real estate;

(b) lists or offers to list and provide a service in connection with the leasing or rental of real estate or improvements to the real estate; or

(c) advertises or otherwise represents to the public as being engaged in an activity in subitems (a) and (b).

Id. (emphasis added).

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, Airbnb admits that S.C. Code Ann. § 40-57-30 is entitled "Definitions." Airbnb admits that subsection (20) of this statute defines "Property manager" as "'Property manager' means an associated licensee who meets educational requirements and passes the examination for a

property manager license, and who will for a fee, salary, commission, other valuable consideration or with the intent or expectation of receiving compensation: (a) negotiates or attempts to negotiate the rental or leasing of real estate or improvements to the real estate; (b) lists or offers to list and provide a service in connection with the leasing or rental of real estate or improvements to the real estate; or (c) advertises or otherwise represents to the public as being engaged in an activity in subitems (a) and (b).” Airbnb denies that the statute contains any underlying or emphasis. Airbnb avers that the statute referenced in this paragraph speaks for itself and denies any characterization of the statute that is inconsistent with its meaning when read in its entirety and in context. Airbnb further denies that it engaged or engages in activities of a real estate broker, salesperson, or property manager and denies that it is required to hold a broker’s, salesperson’s, or property manager’s license under South Carolina Code § 40-57-20.

38. A plain reading of the above-referenced code provisions shows that both Airbnb and its Hosts, specifically non-property owning Hosts such as Thomas here, must be licensed by LLR to comply with § 40-57-20.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, Airbnb avers that the statute referenced in this paragraph speaks for itself and denies any characterization of the statute that is inconsistent with its meaning when read in its entirety and in context. Airbnb further denies that it engaged or engages in activities of a real estate broker, salesperson, or property manager and denies that it is required to hold a broker’s,

salesperson's, or property manager's license under South Carolina Code § 40-57-20, and denies all other allegations in this paragraph.

39. On information and belief, Airbnb and the property advertising and leasing enterprise at issue in this case, on information and belief, failed to comply with other public safety laws and regulations, as will be shown in discovery and at trial.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, Airbnb denies the allegations in this paragraph. Airbnb specifically denies that it violated any applicable law or regulation.

40. On information and belief, to the extent Airbnb collects and remits taxes in the same manner as a hotel or motel operator, for purposes of creating an argument that they are not subject to § 40-57-20, Airbnb must be held to the same liability standards under Premises Liability laws, as those motel and hotel operators.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, Airbnb denies that it engaged or engages in activities of a real estate broker, salesperson, or property manager and denies that it is required to hold a broker's, salesperson's, or property manager's license under South Carolina Code § 40-57-20. Airbnb further denies that premises liability applies to Airbnb, which does not own, control, or manage properties available to book via the Airbnb platform. Airbnb denies all other allegations in this paragraph.

41. On information and belief, Airbnb has done nothing to contact the S.C. Real Estate Commission to obtain any sort of exception for compliance with this code provision, either for itself or its Hosts in South Carolina.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, Airbnb denies that it engaged or engages in activities of a real estate broker, salesperson, or property manager and denies that it is required to hold a broker's, salesperson's, or property manager's license under South Carolina Code § 40-57-20. Therefore, Airbnb avers that, at all times relevant to the Amended Complaint, Airbnb was and is in compliance with South Carolina Code § 40-57-20. Accordingly, Airbnb admits that it has not contacted the S.C. Real Estate Commission to obtain an exception for compliance with code provisions with which Airbnb complies.

42. Involvement of local licensed personnel, and / or requiring licensed local persons to assert proper licensing status and register same with Airbnb would cut down (and perhaps eliminate) voyeuristic behavior by reputed voyeurs such as Riviere.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, Airbnb denies the allegations in this paragraph.

43. As set forth herein, some local licensed real estate agents refused to promote or offer Riviere's rental properties due to knowledge of his reputation.

ANSWER: Airbnb lacks sufficient knowledge or information to form a belief as to

the truth of the allegations in this paragraph and therefore denies the same. Airbnb conducted a criminal background check of Riviere and found no criminal conviction records at all, and certainly not criminal conviction records suggesting the type of behavior alleged in the Amended Complaint. Airbnb was never notified by anyone of Riviere's alleged history or reputation before Plaintiff initiated this lawsuit.

44. On information and belief, and based on discovery responses received in this case, Airbnb does absolutely nothing to check to see if its Hosts in South Carolina: (i) are licensed as required § 40-57-20, (ii) own the property being registered for Airbnb Hosting, or (iii) have a contractual right to "manage" the "place" with the real property owner of record.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, Airbnb denies the allegations in this paragraph. Airbnb further avers that, under Section 7.2.3 of its Terms of Service, Airbnb requires all hosts, including hosts in South Carolina, to "comply with all applicable laws (such as zoning laws), Tax requirements, and other rules and regulations (including having all required permits, licenses and registrations)."

45. Airbnb did not ask Katherine Thomas or Rhett Riviere if either of them was a licensed real estate "agent" or "property manager" in South Carolina.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, Airbnb avers that, in order to sign up as Airbnb users, Katherine Thomas and Rhett Riviere each had to agree to Airbnb's Terms of Service, which required them to "comply with all

applicable laws (such as zoning laws), Tax requirements, and other rules and regulations (including having all required permits, licenses and registrations).” Airbnb’s Terms of Service also made clear that “[h]osts alone are responsible for identifying, understanding, and complying with all laws, rules and regulations that apply to their Listings and Host Services.” Accordingly, this paragraph is admitted.

46. Airbnb does not conduct interviews with its proposed Hosts, despite the availability of Skype, Zoom, WebEx and / or mobile telephone or FaceTime to do so.

ANSWER: Airbnb admits it did not interview Katherine Thomas or Rhett Riviere in connection with their registration as users on Airbnb’s platform or in connection with Thomas’s listing of properties on Airbnb’s platform. Airbnb admits that in the normal course, it does not conduct interviews with individuals in connection with their registration on Airbnb’s platform. Airbnb denies all other allegations in this paragraph.

47. A telephone interview would enable Airbnb to ensure and / or remind their proposed Hosts about their “alleged” no camera policy, which would serve to protect the public from harm.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, Airbnb denies the allegations in this paragraph.

48. Airbnb has grown from a start-up company in circa 2007, the year of a significant financial market crash, to a 75 billion company in 2020, and 113 billion in 2021. The phrase “to big to fail,” became part of the American vernacular after the infamous 2007 financial markets

crash, particularly with respect to such entities as: (i) Bear Stearns, (ii) AIG Insurance, (iii) Bank of America, (iv) Morgan Stanley, (v) Goldman Sachs, and (vi) JPMorgan Chase. Airbnb now apparently considers itself “too big to comply” with *little-old* South Carolina law.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, Airbnb denies that it was founded in 2007, denies that it failed to comply with applicable laws and regulations, denies that it “considers itself ‘too big to comply’” with South Carolina law and denies Plaintiff’s characterization of South Carolina law as “*little-old*.” The remaining allegations in this paragraph are so vague and ambiguous that Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies the same.

PARTIES

49. At all times relevant to this Amended Complaint, Plaintiff, Julianne Foster, has been a citizen of the state of South Carolina.

ANSWER: Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

50. At all times relevant to this Amended Complaint, Defendant Chase Enterprises, LLC has been a South Carolina limited liability corporation with its principal place of business located in Aiken, South Carolina. Rhett Riviere is the registered agent of Chase Enterprises. Upon information and belief, Chase Enterprises is used to invest in real estate.

ANSWER: Airbnb lacks sufficient knowledge or information to form a belief as to

the truth of the allegations in this paragraph and therefore denies the same.

51. At all times relevant to this Amended Complaint, Riviere has been a citizen of the state of South Carolina, and upon information and belief was the controlling manager and sole member of Chase Enterprises.

ANSWER: Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

52. At all times relevant to this Amended Complaint, Thomas has been a resident of the state of South Carolina.

ANSWER: Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

53. Airbnb is a corporation incorporated under the laws of Delaware with its principal place of business located in San Francisco, California.

ANSWER: Admitted.

54. At all times relevant to this action, Airbnb conducted and continues to regularly conduct business in the state of South Carolina.

ANSWER: Denied.

JURISDICTION & VENUE

55. The incident that is the subject matter of this case occurred in Aiken County in South Carolina, and the Defendants are citizens and residents of Aiken County, South Carolina, and / or conducted business or owned property in Aiken County, South Carolina.

ANSWER: Airbnb lacks sufficient knowledge or information to form a belief as to

the truth of the allegation that “[t]he incident that is the subject matter of this case occurred in Aiken County in South Carolina” and therefore denies the same. To the extent that the remaining allegations in this paragraph are addressed to Airbnb, all such allegations are denied. To the extent that the remaining allegations in this paragraph are addressed to other named Defendants, Airbnb is not required to respond on their behalf and lacks sufficient knowledge or information to form a belief as to the truth of these allegations and therefore denies the same.

56. Jurisdiction and venue are proper in this court under S.C. Code Ann. § 15-7-30.

ANSWER: Airbnb does not contest personal jurisdiction or venue. Except as expressly provided, Airbnb denies the allegations in this paragraph.

FACTUAL ALLEGATIONS

Airbnb “Touts” its Business as Premised on “Trust” and “Safety”

57. Plaintiff re-alleges the preceding paragraphs as though repeated verbatim herein.

ANSWER: Airbnb re-alleges and incorporates each and every answer of paragraphs 1 through 56 as if repeated verbatim herein.

58. Airbnb is a hospitality company that facilitates vacation rentals between Hosts, usually a homeowner, and guests or renters through its website and brand name “Airbnb.” Airbnb promotes its business as an alternative to traditional lodging in hotels, and its business is based

upon the premise of bringing together and building trust between “perfect strangers” and “ensuring people are safe.”³

ANSWER: Airbnb admits that Airbnb provides an online marketplace that enables individuals who wish to offer accommodations, known as “hosts,” and those seeking to book accommodations, known as “guests,” to contract with each other. Airbnb further avers that the document or documents referenced in this paragraph and the footnote thereto speak for themselves and denies any characterization of the document or documents that is inconsistent with their meaning when they are read in their entirety and in context. Except as expressly admitted, Airbnb denies the remaining allegations in this paragraph.

59. On its website, Airbnb holds itself out as “a trusted community marketplace for people to list, discover, and book unique accommodations around the world” and a “global travel community” where “[h]osts must meet and maintain quality standards.”

ANSWER: Airbnb admits that, on or before May 17-18, 2019, one or more pages on its website contained the phrases “a trusted community marketplace for people to list, discover, and book unique accommodations around the world,” “a global travel community,” and “[h]osts must meet and maintain quality standards.” Airbnb avers that pages on its website speak for themselves and denies any characterization of pages on the Airbnb website that is inconsistent with their meaning when they are read in their entirety

³ Nick Shapiro, *Perfect Strangers: How Airbnb is building trust between Hosts and guests*, Airbnb, Dec. 1, 2017, <https://news.airbnb.com/perfect-strangers-how-airbnb-is-building-trust-between-Hosts-and-guests/>.

and in context. Airbnb denies any remaining allegations contained in this paragraph.

60. Airbnb states on its website that it performs “risk scoring” so that “[e]very Airbnb reservation is scored for risk before it’s confirmed” and that its “goal is to make Airbnb the safest and most trusted way to travel.”

ANSWER: Airbnb admits that one or more pages on Airbnb’s website contained, at different points in time, the phrases, “risk scoring,” “every Airbnb reservation is scored for risk before it’s confirmed,” and “goal is to make Airbnb the safest and most trusted way to travel.” Airbnb avers that pages on its website speak for themselves and denies any characterization of pages on the Airbnb website that is inconsistent with their meaning when they are read in their entirety and in context. Airbnb denies any remaining allegations contained in this paragraph.

61. Further, Airbnb states it is “designed with safety—both online and off—in mind” and that “Airbnb is committed to earning the trust and ensuring the safety and security of its global community.”

ANSWER: Airbnb admits that its website, at some point in time, has stated that “Airbnb is designed with safety—both online and off—in mind.” Except as expressly admitted, Airbnb denies the allegations in this paragraph. Airbnb avers that pages on its website speak for themselves and denies any characterization of pages on the Airbnb website that is inconsistent with their meaning when they are read in their entirety and in context. Airbnb denies any remaining allegations contained in this paragraph.

Airbnb “Controls” its Hosts through Its Standards and Policies

62. Airbnb solicits Hosts, property owners or tenants, to make their properties or portions of their properties available for rent on Airbnb’s website to Airbnb’s customers. After Hosts register and create an account with Airbnb, Airbnb solicits information from them to create a rental listing that conforms to Airbnb’s standardized format and Airbnb’s Content Policy, so that each listing includes: the location of the property, the nightly rate, and whether the entire property is offered for rent or just a portion.

ANSWER: Airbnb denies that it “Controls” Airbnb hosts. Airbnb admits that Airbnb provides an online marketplace that enables individuals who wish to offer accommodations, known as “hosts,” and those seeking to book accommodations, known as “guests,” to contract with each other. Airbnb admits that hosts must create an Airbnb account to list properties on Airbnb’s platform. Airbnb denies that it solicits information from hosts to create listings; Airbnb users who wish to host a property provide information regarding that property to create a listing on Airbnb’s platform. Airbnb avers that it maintains a Content Policy and that, by posting content on Airbnb, users agree to abide by Airbnb’s Content Policy. Airbnb admits that listings include a description of the property’s location, the nightly rate, and whether the entire property or just a portion of the property is available to book, but avers that hosts choose to provide any such information. Except as expressly provided, Airbnb denies the allegations in this paragraph.

63. Airbnb designates what information is permitted in the rental listings offered on its website. Only after Hosts have created a rental listing conforming to Airbnb's standardized format and Content Policy, does Airbnb make the rental available for rent to its customers.

ANSWER: Airbnb denies the allegations in this paragraph. Airbnb further avers that it maintains a Content Policy and that, by posting content on Airbnb, users agree to abide by Airbnb's Content Policy.

64. Airbnb's guests pay Airbnb the fees for all rentals. Airbnb retains a portion of the fee, generally 17.2 percent, and then compensates the Host with the remainder of the fee. All payments related to a rental must run through the Airbnb platform. Airbnb does not allow Hosts to collect any additional fees or charges outside the Airbnb platform unless expressly authorized by Airbnb.

ANSWER: Airbnb denies, specifically, that it has "guests" as that term is used in the first sentence of this paragraph. Airbnb admits that it charges a service fee when a booking is confirmed and that the service fee may be paid either by both the host and guest or by the host alone. Airbnb denies the remaining allegations in this paragraph.

65. Airbnb controls all aspects of the customers' interactions with its Hosts, from what information is presented in a rental listing to how Hosts are required to respond to rental inquiries and how quickly.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, Airbnb denies the allegations in this paragraph.

66. Airbnb controls all refunds, cancellations, and other disputes between guests and Hosts. For example, as to the cancellation policies, Hosts with short-term rentals must choose one of Airbnb's four cancellation policies. A guest wanting to cancel a reservation must log in to their Airbnb account, navigate through the Airbnb platform, and request a cancellation. If a cancellation is approved, the Airbnb guest is notified through the Airbnb platform.

ANSWER: Airbnb denies that it controls all refunds, cancellations, and other disputes between guests and hosts. Airbnb admits that hosts listing a property on the Airbnb platform must select a cancellation policy, but denies that there are only four cancellation policies. Airbnb admits that one way for guests to cancel a reservation is to log into their Airbnb account to request a cancellation, but Airbnb denies that it is the only way. Airbnb admits that a guest may be notified through the Airbnb platform if a cancellation is approved, but Airbnb denies that this is the only way the guest can be notified of a cancellation. Except as expressly provided, Airbnb denies the allegations in this paragraph.

67. Airbnb sets many standards that Hosts must follow, such as cleanliness, how quickly Hosts must respond to a guest's messages, and where cameras may be placed. Airbnb also reserves the right to unilaterally change any of its standards at any time for any reason.

ANSWER: Airbnb admits that it promulgates standards and policies, including for timely communication, for listing accuracy, for listing cleanliness, and regarding where recording devices may not be placed, and Airbnb reserves the right to unilaterally change any of its standards or policies. Airbnb denies that hosts "must follow" these standards and policies; although hosts agree that they will abide by these policies, Airbnb cannot control

whether hosts in fact do so. Airbnb denies any remaining allegations in this paragraph.

68. Airbnb can penalize Hosts for failing to follow its policies, including the failure to disclose the existence of cameras. For example, Airbnb can deduct fees from a Host's payouts, restrict or block a Host's ability to make reservations, cancel reservations, deactivate listings, suspend users' accounts, remove badges (such as "SuperHost" or "Plus"), and permanently remove Hosts from its platform.

ANSWER: Airbnb admits that, when it learns that a user, including a host, has violated Airbnb's Terms of Service and/or policies, including a violation of Airbnb's policy regarding the use of cameras and surveillance devices in listings, Airbnb's Terms of Service provide that Airbnb may take measures that include deducting fees from a host's payouts, cancelling bookings, deleting listings, suspending or terminating users' accounts, or revoking a host's "Superhost" or "Airbnb Plus" status. However, Airbnb denies that it had any knowledge or reason to know that Riviere or Thomas had violated Airbnb's Terms of Service and/or policies prior to Plaintiff's initiation of this lawsuit. Airbnb conducted criminal background checks of Riviere and Thomas and found no criminal conviction records at all, and certainly not criminal conviction records suggesting the type of behavior alleged in the Amended Complaint, and Airbnb was never notified by anyone of Riviere's alleged history or reputation before Plaintiff initiated this lawsuit. Airbnb denies any remaining allegations in this paragraph.

69. Airbnb can also fire / terminate a Host at will for any or no reason.

ANSWER: Airbnb denies that hosts on the Airbnb platform are employees of

Airbnb and that Airbnb can “fire” a host. Pursuant to Airbnb’s Terms of Service, the agreement between Airbnb and users of its platform is effective for a 30-day term after which it will automatically and continuously renew for subsequent 30-day terms, and Airbnb must give a user of its platform thirty days’ notice via email before terminating the agreement unless certain limited conditions are met, including but not limited to the user’s breach of an agreement with Airbnb and the user’s violation of laws, regulations, or third party rights. Except as expressly admitted, Airbnb denies the allegations in this paragraph.

Airbnb Creates the Impression It Has Vetted “Host” Properties Listed on Its Website

70. In addition to claiming that “trust” and “safety” are its priorities, Airbnb induces its customers to trust it by giving certain rental listings labels or badges such as: “SuperHost,” “Plus,” “Luxe,” and “Identity Verified.”

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, Airbnb denies the allegations in this paragraph.

71. Airbnb’s badges and their descriptions cause guests to believe rental properties booked through Airbnb Hosts have undergone an inspection and have been found to be safe and / or reliable. For example, Airbnb describes “SuperHosts” as “experienced, highly rated Hosts who are committed to providing great stays for guests” that “[g]uests trust . . . [and] are the best of the best.” Hosts with the “Identity Verified” badge signify that Airbnb has verified the identity of the Host.

ANSWER: As to the allegations in the first sentence of this paragraph: Airbnb

lacks sufficient knowledge or information to form a belief as to the truth of the allegations in the first sentence of this paragraph and therefore denies the same. Airbnb admits that one or more pages on its website state, “Superhosts are experienced, highly rated hosts who are committed to providing great stays for guests,” and contain the phrase “Guests trust that Superhosts are the best of the best.” Airbnb denies that “Hosts with the ‘Identity Verified’ badge signify that Airbnb has verified the identity of the Host.” Pursuant to Airbnb’s Terms of Service, “[a]ny 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.” Airbnb avers that the pages on its website speak for themselves and denies any characterization of pages on the Airbnb website that is inconsistent with their meaning when they are read in their entirety and in context. Airbnb also denies that Defendant Thomas was a “Superhost” at the time of the reservation or the alleged incident. Except as expressly admitted, Airbnb denies the allegations in this paragraph.

72. Airbnb designates certain properties with “Plus” or “Luxe” badges, which are usually offered at a premium rental rate. Airbnb states that “Airbnb Luxe” properties “sit[] above Airbnb Plus” and must pass “strict evaluation” that includes “300 points of inspection to ensure each Airbnb Luxe listing meets the highest standards.”

ANSWER: Airbnb admits that the Airbnb online platform includes an Airbnb

Luxe program and that one or more pages on its website at some point in time contained the phrases “sit[] above Airbnb Plus,” “strict evaluation,” and “300 points of inspection to ensure each Airbnb Luxe listing meets the highest standards.” Airbnb avers that the pages on its website speak for themselves and denies any characterization of pages on the Airbnb website that is inconsistent with their meaning when they are read in their entirety and in context. Except as expressly admitted, Airbnb denies the allegations in this paragraph.

73. Despite claiming in its policies / public literature that it has “program” for performing “in-person inspections,” Airbnb does not perform any in-person inspection or investigation for the vast majority of Host properties it offers for rent on its website.

ANSWER: Airbnb denies that it claims to have a “program” for performing “in-person inspections” of Airbnb listings. Airbnb admits that Airbnb does not perform in-person inspections of the vast majority of properties hosts offer on the Airbnb platform. Airbnb does not own, operate, manage, or have the right to access properties that hosts list on Airbnb’s platform. Airbnb denies that “it” “offers for rent” properties listed on Airbnb’s platform; hosts, and not Airbnb, list properties that guests can book. Airbnb further admits that it did not physically inspect the Subject Property, nor did it have a right to access the Subject Property. Except as expressly admitted, Airbnb denies the allegations in this paragraph.

Airbnb Guests “Must Rely” on Airbnb to Provide Safety and Security Accommodations

74. Prior to booking a rental through Airbnb, guests are not able to independently perform any research on either the Hosts or the properties. The only information potential guests have is the information that Airbnb allows the Hosts to provide.

ANSWER: Airbnb denies the allegations in the heading preceding this paragraph. Airbnb further denies the allegations in this paragraph. Airbnb further avers that guests and potential guests are able to perform research on hosts and host properties and guests are able to correspond with hosts before making a reservation and independently perform research on either the hosts or the properties.

75. Airbnb does not allow a guest to see the address of the rental property or the contact information of the Host until after the guest has made a reservation. Airbnb Hosts often use only their first name in their listing, and, in many instances, the names listed on their Airbnb profile may not match their real identity.

ANSWER: Airbnb admits that it does not provide guests or potential guests with the exact address of a property listed on the Airbnb platform before the guest books a reservation for that property. Airbnb denies that Airbnb does not allow guests to see the property location and that Airbnb does not allow guests to see contact information for the host. Airbnb avers that users and prospective guests can communicate with hosts via the Airbnb platform before making a reservation. Except as expressly admitted, Airbnb denies the allegations in this paragraph.

76. Therefore, guests must rely entirely on Airbnb's assurances that the rental property is safe and secure, and that the Host is trustworthy.

ANSWER: Denied.

77. Airbnb tells its guests that staying in one of its rental properties is safe, and guests are forced to rely on these assurances because Airbnb's rules make it impossible for guests to do any due diligence on the Host or property.

ANSWER: Denied.

78. In fact, on July 6, 2022, when Airbnb was ordered to respond to interrogatories in this case and to identify employees responsible for guest safety, they acknowledged in their response that they do not have any employees responsible for guest safety. The following is an excerpt from Airbnb's response to Interrogatory Number 4, which was verified under oath by an Airbnb representative:

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 SCR Rule

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, Airbnb admits that the text represented in the image included in this paragraph is an excerpt from Airbnb's Response to Plaintiff's Interrogatory No. 4, dated July 6, 2022. Airbnb further avers that its interrogatory responses, including but not limited to its Response to Interrogatory No. 4 referenced in this paragraph, speak for themselves and denies any characterization of its interrogatory responses that is inconsistent with their meaning when they are read in their entirety and in context. Except as expressly admitted, Airbnb denies the remaining allegations in this paragraph.

Airbnb, for many years, Has Been Aware of Hidden Cameras Found in its Rentals

79. For at least a decade, in hundreds of instances, guests have discovered hidden cameras in Airbnb rentals, often disguised as smoke detectors, clocks, or computer equipment and reported them to Airbnb. Airbnb, however, has failed to adequately address this known issue, and instead, often blames the guests themselves. For example, in January 2019, a Mr. Max Vest found cameras hidden in his Miami, Florida Airbnb rental. In fear for his safety, Mr. Vest immediately fled the rental property and contacted Airbnb's safety team. Mr. Vest asserts that during his communications with Airbnb employees, following this incident, they treated him as a "frustrated guest" rather than a victim of a crime, which he was. Worse still, Airbnb told Mr. Vest to contact and meet with the rental property Host after he had discovered and reported the hidden cameras, as Mr. Vest left with the Host's keys in his haste in leaving the night of the incident. Airbnb

prioritized the return of the Host's keys, who had violated Mr. Vest's privacy, as well as Airbnb terms of service, over Mr. Vest's safety and comfort.⁴

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, Airbnb avers that the document or documents referenced in the footnote thereto speak for themselves and denies any characterization of the document or documents that is inconsistent with their meaning when they are read in their entirety and in context. Further, Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same. Additionally, the allegations in this paragraph are so vague and ambiguous that Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

80. Airbnb has also been on legal notice of this issue since at least 2015, when Yvonne Schumacher filed suit against the company for hidden cameras found during her stay at an Airbnb rental.⁵ In December 2013, Schumacher, a German woman, was an identified guest of a third-party Airbnb renter. Several days into their rental period, both Schumacher and the other guest observed

⁴ Sidney Fussell, *Airbnb Has a Hidden-Camera Problem*, The Atlantic, Mar. 26, 2019, <https://www.theatlantic.com/technology/archive/2019/03/what-happens-when-you-find-cameras-your-airbnb/585007/>.

⁵ See *Yvonne Edith Maria Schumacher v. Airbnb Inc. et al.*, No. 3:15-cv-05734-JCS, 2015 WL 9161227 (N.D. Cal. Dec. 14, 2015); see also *Yvonne Edith Maria Schumacher v. Airbnb Inc. et al.*, No. 4:15-cv-05734-CW, 2016 WL 11499624 (N.D. Cal. July 21, 2016).

a hidden camera in the living room that had been audio and video recording them during moments of undress and intimate conversations without their consent. Schumacher filed suit in 2015 in the United States District Court for the Northern District of California against Airbnb for negligence and invasion of privacy, among other claims. Mere months later, Airbnb settled the case; however, upon information and belief, that settlement remains confidential.⁶

ANSWER: Airbnb admits that a lawsuit by Ms. Schumacher was filed against Airbnb in the United States District Court for the Northern District of California for claims of negligence and invasion of privacy in 2015. Airbnb avers that the documents referenced in this paragraph and the footnotes thereto speak for themselves and denies any characterization of those documents that are inconsistent with their meaning when they are read in their entirety and in context. Further, Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies the same. Except as expressly admitted, Airbnb denies the remaining allegations in this paragraph.

81. Another lawsuit was filed as a class action against Airbnb in December 2016 in Nevada, *Marshall et al. v. Rogers et al*, again, putting Airbnb on notice of the perilous hidden camera issue. The plaintiffs, there, alleged that the smoke detectors in the bathrooms, bedrooms, and other private areas in the Airbnb rental property contained small, obscured cameras. Law

⁶ Andrew L. Smith and Candace Padgett, *A Way for Prying Eyes: As Airbnb Gains in Popularity, Privacy and Coverage Issues Bubble to the Surface*, CLM Magazine, May 2018, <https://rolfeshenry.com/wp-content/uploads/2018/02/Airbnb.pdf>.

enforcement also discovered copies of private images of the plaintiffs/guests on the Airbnb property owners' computers.⁷

ANSWER: Airbnb admits that a lawsuit *Marshall, et al. v. Rogers, et al.* was filed against Airbnb in Nevada in December 2016. Airbnb avers that the document or documents referenced in this paragraph and the footnote thereto speak for themselves and denies any characterization of the document or documents that is inconsistent with their meaning when they are read in their entirety and in context. Further, Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies the same. Except as expressly admitted, Airbnb denies the remaining allegations in this paragraph.

82. A similar lawsuit was filed in May 2018 in Manatee County, Florida.⁸ There, John and Jane Doe entered and went about their activities at a Florida Airbnb rental property without any knowledge that their intimate moments and interactions would be audio/video recorded. At the time of their stay, neither John nor Jane Doe were aware of recording devices present, and so it follows that neither consented to being recorded either. The victims alleged that Airbnb allowed the rental property owner to violate their privacy by failing to ensure there were no undisclosed cameras at the property and failing to warn them of prior invasion of privacy instances known to have occurred at other Airbnb-endorsed properties.

⁷ *Id.*

⁸ (See *John Doe and Jane Doe, individually, Plaintiffs, vs. Wayne Natt and Airbnb, Inc., a foreign corp.* Compl. filed on May 15, 2018).

ANSWER: Airbnb admits that the lawsuit referenced in this paragraph and the footnote thereto was filed against Airbnb in 2018. Airbnb avers that the document or documents referenced in this paragraph and the footnote thereto speak for themselves and denies any characterization of the document or documents that is inconsistent with their meaning when they are read in their entirety and in context. Further, Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies the same. Except as expressly admitted, Airbnb denies the remaining allegations in this paragraph.

83. Each of the above-mentioned instances provide are merely examples of Airbnb's full awareness of cameras frequently being hidden in the rental properties it endorses. Yet, Airbnb has continued to fail its guests by not adequately addressing or even warning guests of the perilous issue at hand.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, Airbnb denies the allegations in this paragraph.

84. Airbnb represents that it has developed "community standards to help guide user behavior and codify the company's values" as to certain subjects, including safety, security, fairness, authenticity, and reliability.

ANSWER: Airbnb admits that, at some point in time, one or more pages on its website has contained the phrase "Community Standards to help guide behavior and codify the values that underpin our global community," and lists "safety, security, fairness,

authenticity, and reliability” as “pillars in our efforts to ensure safety and foster belonging.” Airbnb further avers that the pages on its website speak for themselves and denies any characterization of pages on the Airbnb website that is inconsistent with their meaning when they are read in their entirety and in context. Except as expressly admitted, Airbnb denies the allegations in this paragraph.

85. Airbnb states that its Hosts are required to inform guests of any cameras or recording devices on their property, even if they are turned off, and undisclosed cameras and recording devices are never permitted to be located in private spaces, such as a bedroom or bathroom. However, Airbnb does nothing to enforce or effectuate this policy.

ANSWER: In response to the first sentence of this paragraph, Airbnb admits that, at some point in time, one or more pages on its website has contained the statement: “Always be mindful of your guests’ privacy. Fully disclose whether there are security cameras or other surveillance equipment at or around your listing. Make sure you are aware of and comply with applicable federal, state, and local laws.” Airbnb further admits that, at some point in time, its website has contained additional information about the use of cameras and recording devices, including that Airbnb does not allow “[c]oncealed and undisclosed devices monitoring common spaces” or “[d]evices located in or monitoring private spaces,” and requires disclosure of “devices monitoring only public spaces and common spaces.” Airbnb denies the allegations in the second sentence of this paragraph, and denies any remaining allegations in this paragraph.

86. Airbnb states that it is “always working to make sure [its community standards are] upheld and enforced.” However, Airbnb does not perform any in-person inspection or investigation at the vast majority of properties available for rent on Airbnb’s website.

ANSWER: Airbnb admits that, at some point in time, one or more pages on its website has contained the phrase, in reference to Airbnb’s Community Standards, “always working to make sure they’re upheld and enforced.” Airbnb further avers that the pages on its website speak for themselves and denies any characterization of pages on the Airbnb website that is inconsistent with their meaning when they are read in their entirety and in context. Airbnb admits that Airbnb does not perform in-person inspections of the vast majority of properties hosts offer on the Airbnb platform. Airbnb further admits that it did not physically inspect the Subject Property, nor did it have a right to access the Subject Property. Except as expressly admitted, Airbnb denies the allegations in this paragraph.

87. Upon information and belief, when a hidden camera has been discovered and reported to it, Airbnb does not notify guests that they may have been recorded in their most vulnerable and private moments without their consent. Airbnb apparently leaves that burden to law enforcement who must then attempt to determine whose privacy has been violated from the recordings.

ANSWER: Airbnb avers that it is not a law enforcement entity and therefore admits that it does not conduct law enforcement investigations. Airbnb further avers that, when a user informs Airbnb that they wish to contact law enforcement, Airbnb provides that user with contact information for Airbnb’s law enforcement operations team so that law

enforcement can directly contact Airbnb. Except as expressly admitted, Airbnb denies the remaining allegations in this paragraph.

88. At all relevant times in the instant matter, Airbnb has:

- a) failed to engage in any meaningful criminal background checks of Airbnb Hosts;
- b) failed to even attempt to gather relevant information about Airbnb Hosts;
- c) failed to adequately and fully verify personal details of its Host;
- d) failed to inspect the properties being used as Airbnb properties;
- e) failed to verify owner ship information and other details about the property being rented out by its Host; and
- f) failed to put into place or enforce policies and procedures to protect the constitutionally protected rights of privacy and seclusion of the third parties renting the properties through Airbnb.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, Airbnb denies the allegations in this paragraph.

Plaintiff Stays at an Airbnb Property Trusting it to be Safe

89. The incident that is the subject of this case occurred on or around May 17, 2019, through May 18, 2019, on Defendant Chase Enterprise's property ("the Airbnb property"), located at 115 Third Ave SW, Aiken, South Carolina, in Aiken County.

ANSWER: Airbnb denies that the property at 115 Third Ave SW, Aiken, South Carolina (the "Subject Property") is an "Airbnb property." Airbnb denies that it owns, manages, controls, or has the right to access the Subject Property. Airbnb lacks sufficient

knowledge or information to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies the same.

90. According to Aiken County, South Carolina Register of Deeds, the Airbnb property was owned by Chase Enterprises on the dates in question.

ANSWER: Airbnb denies that that the Subject Property is an “Airbnb property.” Airbnb denies that it owns, manages, controls, or has the right to access the Subject Property. Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies the same.

91. Chase Enterprises is also known as Chase Enterprises, LLC of South Carolina. This business is registered with the South Carolina Secretary of State and is specifically managed by Defendant Riviere.

ANSWER: Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

92. Upon information and belief, Chase Enterprises is a LLC pass-through business whereby Chase Enterprises does not pay federal income taxes; instead, the owner(s)’ report business income and pay the business tax on their personal tax returns.

ANSWER: Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

93. Plaintiff’s friend used Airbnb to locate the rental that is the subject of this case.

ANSWER: Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

94. Plaintiff and her friends relied upon Airbnb's name, reputation, and claims that it would provide only safe and trustworthy rental facilities.

ANSWER: Denied.

95. In booking the Airbnb property, Plaintiff's friend initially communicated with Defendant Thomas, who held herself out to be the "Host" and / or property manager for the property.

ANSWER: Airbnb denies that the Subject Property is an "Airbnb property." Airbnb denies that it owns, manages, controls, or has the right to access the Subject Property. Airbnb admits that Defendant Thomas registered as a host as defined by Airbnb's Terms of Service and used the Airbnb online platform to list the Subject Property. Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies the same.

96. At all times relevant, Thomas acted as part of the Defendants' property rental enterprise, leasing, offering to lease property and, therefore, had a duty to protect their guests, including Plaintiff, and to take reasonable steps to ensure guest safety policies were followed.

ANSWER: Airbnb denies that it was engaged in any "property rental enterprise" with Thomas or Defendants. Airbnb admits that Defendant Thomas was registered as a host on the Airbnb platform, listed the Subject Property on the Airbnb platform, and entered into contractual arrangements with prospective guests, all pursuant to Airbnb's Terms of Service. The remaining allegations in this paragraph consist of argument and legal conclusions to which no response is required; to the extent a response is required, Airbnb

denies the same.

97. In establishing an individual as a Host or lessor within the Airbnb system, little to no effort is undertaken by Airbnb by way of a vetting process with respect to these Hosts to ensure the safety and welfare of the third parties renting properties through Airbnb.

ANSWER: Airbnb admits that it is a provider and/or user of an interactive computer service pursuant to 47 U.S.C. § 230. Airbnb further admits that it did not physically inspect the Subject Property, nor did it have a right to access the Subject Property. The remaining allegations in this paragraph consist of argument and legal conclusions to which no response is required; to the extent a response is required, Airbnb denies the same.

98. In fact, Airbnb refers to its process as a “registration,” as opposed to an “application,” to become an Airbnb Host.

ANSWER: Admitted.

99. At the time of this incident, Plaintiff was staying on the Defendants’ property with her friends for a tennis tournament.

ANSWER: To the extent that “Defendants” refers to Airbnb, Airbnb denies the allegations in this paragraph. To the extent that “Defendants” refers to other named defendants, Airbnb is not required to respond on their behalf and lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies the same.

100. Plaintiff and her friends paid the Defendants to rent the Airbnb property.

ANSWER: Airbnb denies that the Subject Property is an “Airbnb property.”

Airbnb denies that it owns, manages, controls, or has the right to access the Subject Property. Airbnb lacks sufficient knowledge or information to form a belief as to whether Plaintiff and her friends paid the Defendants to book the Subject Property and therefore denies this allegation.

101. The funds provided to rent the Airbnb property were paid directly to Airbnb, not to Riviere, Chase Enterprises, or Thomas.

ANSWER: Airbnb denies that the Subject Property is or was an “Airbnb property.” Airbnb denies that it owns, controls, manages, or has the right to access the Subject Property. Airbnb admits that Airbnb processed the payment for the booking of the Subject Property. Except as expressly admitted, Airbnb denies the allegations in this paragraph.

102. The arrangements made to lease the Airbnb property here were substantially identical to booking a room at a Hilton or a Marriott hotel, and / or of leasing a beach house through a licensed property manager, found on their web-site.⁹ Airbnb apparently wishes to avoid each of these established regulatory schemes, each designed to protect the public from undisclosed harm(s).

ANSWER: The allegations in this paragraph and the footnote thereto consist of argument and legal conclusions to which no response is required. To the extent a response is

⁹ The web-site of a licensed property manager in South Carolina and Airbnb are on the same Internet, which is also the same Internet as web-sites of well-known lodging brands, such as Hilton, Hyatt and / or Marriott.

required, Airbnb denies the allegations contained in this paragraph.

103. Plaintiff stayed for the weekend, and, during her stay, she undressed and changed clothes in the privacy of the bedroom she had rented. Unbeknownst to Plaintiff and without her consent, the Airbnb property contained a surreptitiously placed video camera positioned to capture recordings in the bedroom of the rental.

ANSWER: Airbnb denies that the Subject Property is an “Airbnb property.” Airbnb denies that it owns, manages, controls, or has the right to access the Subject Property. Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies the same.

104. Defendant Riviere had set up video surveillance equipment and secretly recorded Plaintiff while she was in the bedroom. Riviere has been criminally charged in Aiken County, South Carolina with voyeurism and violating a place of privacy, and those charges are still pending.

ANSWER: Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

105. At no time did Defendants inform Plaintiff or her friends that there was any recording device(s) on the Airbnb property.

ANSWER: Airbnb denies that the Subject Property is an “Airbnb property.” Airbnb denies that it owns, manages, controls, or has the right to access the Subject Property. Airbnb denies that it was aware of any recording device(s) on the Subject Property on or before May 17-18, 2019. Airbnb therefore admits that it did not inform anyone of what it did

not know. To the extent “Defendants” refers to Defendants other than Airbnb, Airbnb is not required to respond on their behalf and, to the extent a response is required, lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

106. Plaintiff and her friends did not consent to being recorded in any manner and were unaware that a video camera or recording device was located on the property.

ANSWER: Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

107. Defendant recorded Plaintiff multiple times while she was changing clothes and having private conversations in the rented bedroom.

ANSWER: To the extent that “Defendant” refers to Airbnb, Airbnb denies the allegations in this paragraph. To the extent that “Defendant” refers to another named defendant, Airbnb is not required to respond on their behalf and lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies the same.

108. Plaintiff was informed by a SLED agent that there were recordings of her from her stay at Defendant’s property, which included videos with extremely private images of her undressing and without clothing.

ANSWER: Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

109. Plaintiff remains extremely upset and was devastated to learn she had been secretly recorded while undressing and engaging in private conversations.

ANSWER: Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

110. Plaintiff remains concerned nude images and videos of her undressing have been streamed, shared and / or disseminated and/or could make their way onto the internet.

ANSWER: Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

111. As a result of this incident, Plaintiff is very concerned about her level of privacy and this concern has negatively impacted her life in a variety of ways.

ANSWER: Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

112. As a result of this incident, Plaintiff has suffered severe emotional distress.

ANSWER: Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

113. Through the discovery process, thousands of video recordings (some containing audio) containing images of other people have been discovered on Riviere's seized digital devices. Many of these images are naked women; naked young girls; and naked men. There are also many images of people engaged in sexual activity and in intimate moments while in Riviere's properties.

ANSWER: Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

114. Riviere placed a recording device on top of a dresser on the left side of the room positioned so as to capture the entire bed and almost the entire bedroom where Plaintiff was staying.

ANSWER: Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

115. Upon information and belief, Riviere has a long history of voyeurism and local realtors were so concerned about undisclosed cameras in Riviere's rental properties that they sought to have the South Carolina Association of Realtors require him to disclose the cameras.

ANSWER: Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

116. Upon information and belief, a local realtor called the police who found Riviere hiding under her front porch one night with a ladder after he had been looking into her bedroom while she was getting undressed. Thereafter, she refused to rent Riviere's houses because of his voyeuristic behavior.

ANSWER: Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

117. Upon information and belief, shortly after beginning her relationship with Riviere, Defendant Thomas discovered hidden cameras in the bedroom of the home she shared with Riviere and knew for a long time that Riviere had cameras with recording devices in the Airbnb rentals before she took any action.

ANSWER: Airbnb lacks sufficient knowledge or information to form a belief as to

the truth of the allegations in this paragraph and therefore denies the same.

118. Upon information and belief, after ending her relationship with Riviere and settling civil litigation with him, Thomas claims to have found two SD cards containing images of people in various states of undress in their Airbnb rental houses.

ANSWER: Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

119. Upon information and belief, Thomas confided in friends that she had discovered videos of nude people in the Airbnb rentals and showed a thumb drive of images from the recording devices to numerous people.

ANSWER: Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

120. In discovery responses in this lawsuit, Riviere acknowledged he knew he had placed recording devices in his Airbnb properties, admitting, “that a security video camera was used at 115 Third Avenue, SW in Aiken, South Carolina when the property was not rented.”

ANSWER: Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same. Airbnb further avers that the unidentified discovery responses referenced in this paragraph speak for themselves and denies any characterization of the discovery responses that is inconsistent with their meaning when they are read in their entirety and in context.

121. As shown in her lawsuit, Michele Jain, Plaintiff's tennis teammate and the person that arranged the Airbnb rental at issue in this lawsuit, made a telephone call and spoke to Rhett Riviere during the time period that they were renting the property.

ANSWER: Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

122. Despite his specific telephone conversation with Jain on May 18, 2019, neither Riviere, nor any other Defendant, ever advised Plaintiff or any of her tennis teammates, of the existence of any video recording devices on the Airbnb property.

ANSWER: Airbnb denies that it was aware of any recording device on the Subject Property on or before May 17-18, 2019. Airbnb therefore admits that it did not inform anyone of what it did not know. To the extent "Defendant" refers to another named Defendant, Airbnb is not required to respond on their behalf and, to the extent a response is required, lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

FIRST CAUSE OF ACTION

Negligence and / or Gross Negligence (Against All Defendants)

123. Plaintiff realleges the preceding paragraphs as though repeated verbatim herein.

ANSWER: Airbnb re-alleges and incorporates each and every answer of paragraphs 1 through 122 as if repeated verbatim herein.

124. Defendants created a business enterprise whereby they lease, offer to lease, place for rent, solicit listings of places for rent, solicit prospective tenants and/or collect rent from real

property in exchange for financial remuneration. This affirmative act places upon Defendants an obligation of due and reasonable care in accord with the laws of South Carolina.

ANSWER: To the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied. To the extent that the allegations in this paragraph are addressed to other named Defendants, Airbnb is not required to respond on their behalf and lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

125. Defendant Riviere has acknowledged that he knows he has a duty to immediately deactivate a recording device / camera when a rental guest of the Airbnb occupies the property.

ANSWER: The allegations in this paragraph are addressed solely to Rhett Riviere, and therefore no response by Airbnb is required. To the extent that the allegations in this paragraph are addressed to Airbnb, Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

126. Defendant Airbnb, individually, and by and through its agents and/or joint venturers, Hosts, had a duty to exercise reasonable and ordinary care and caution about the ownership, management, maintenance, supervision, control, and operations of the rental; its reservation system; and each of its employees, agents, servants, and independent contractors, all to the benefit of guests, patrons, business invitees and persons, like Plaintiff Julianne Foster.

ANSWER: Denied.

127. At all relevant times, Defendant Airbnb operated, controlled, managed, supervised, handled reservations for and were otherwise responsible for its Airbnb rental properties.

ANSWER: Denied.

128. Defendant Airbnb, by and through its agents, employees, servants, and or independent contractors, was negligent in its acts and / or omission, by, among other things, failing to discover that Riviere had placed or cause to be placed a hidden camera in the Airbnb rental, thereby allowing the surreptitious recordings to be taken of Plaintiff by Riviere.

ANSWER: Denied.

129. Defendants were negligent / grossly negligent in the use and/or operation of cameras/video recording equipment inside the Airbnb property from May 17 through May 18, 2019.

ANSWER: To the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied. Airbnb denies that the Subject Property is an “Airbnb property” and that Airbnb “use[d] and/or operate[d] cameras/video recording equipment inside the Subject Property from May 17 through May 18, 2019.” Airbnb denies that it owns, manages, controls, or has the right to access the Subject Property. To the extent that the allegations in this paragraph are addressed to other named defendants, Airbnb is not required to respond on their behalf and lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

130. Defendants breached this duty, which resulted in the secret recording of Plaintiff, without their knowledge or consent while Plaintiff and her friends were authorized paying Airbnb rental guests.

ANSWER: To the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied. To the extent that the allegations in this paragraph are addressed to other named Defendants, Airbnb is not required to respond on their behalf and lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph.

131. Defendant Airbnb's employees conducted no background investigation of the Defendants Riviere and Thomas; nor did Airbnb engage in any reasonable evaluation of these Hosts or the property prior to allowing it to be posted on its site.

ANSWER: Airbnb admits that it is a provider and/or user of an interactive computer service pursuant to 47 U.S.C. § 230. Airbnb admits that, on or before May 17-18, 2019, it did not attempt to determine the truth or falsity of statements made by Airbnb users about the Subject Property, and Airbnb denies that it had an obligation to do so. Airbnb admits that it did not physically inspect the Subject Property, nor did it have a right to access the Subject Property. Airbnb further admits that, prior to May 17-18, 2019, Airbnb conducted background checks of Thomas and Riviere and found no criminal records at all, and certainly not criminal conviction records suggesting the type of behavior alleged in the Amended Complaint. Airbnb denies the remaining allegations in this paragraph.

132. In failing to engage in little, if any, investigation of lessors before allowing lessors to post their property on its site, Airbnb has created and continues to create a foreseeable risk of harm to parties such as this Plaintiff.

ANSWER: Denied.

133. As a direct and proximate result of the above conduct of Defendants, Plaintiff has suffered and continues to suffer from, including but not limited to, humiliation, shock, embarrassment, intimidation, physical distress and injury, fear, stress, and other damages to be proven at the time of trial.

ANSWER: To the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied. To the extent that the allegations in this paragraph are addressed to other named Defendants, Airbnb is not required to respond on their behalf and lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

134. As a direct and proximate result of Defendants' misfeasance, Plaintiff has also suffered special damages to be proven at the time of trial.

ANSWER: To the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied. To the extent that the allegations in this paragraph are addressed to other named Defendants, Airbnb is not required to respond on their behalf and lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

135. Upon information and belief, Defendants committed the acts delineated herein in conscious disregard for Plaintiff's rights. Accordingly, Plaintiff is entitled to recover punitive damages in an amount according to proof.

ANSWER: To the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied. To the extent that the allegations in this paragraph are addressed to other named Defendants, Airbnb is not required to respond on their behalf and lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

SECOND CAUSE OF ACTION

Negligent Hiring, Supervision, or Retention of Employees (Against Airbnb)

136. Plaintiff realleges the preceding paragraphs as though repeated verbatim herein.

ANSWER: Airbnb re-alleges and incorporates each and every answer of paragraphs 1 through 135 as if repeated verbatim herein.

137. Airbnb created a business enterprise whereby it leases, offers to lease, places for rent, solicits listings of places for rent, solicits prospective tenants and/or collects rent from real property in exchange for financial remuneration.

ANSWER: Airbnb admits that Airbnb provides an online marketplace that enables individuals who wish to offer accommodations, known as "hosts," and those seeking to book accommodations, known as "guests," to contract with each other. Except as expressly admitted, Airbnb denies the allegations in this paragraph.

138. Airbnb's business enterprise depends upon bringing two or more strangers together for the purpose of leasing a particular piece of property. Indeed, Airbnb's former Global Head of

Trust & Risk Management Nick Shapiro has described Airbnb's business as "building trust" between "perfect strangers," by among other things "ensuring people are safe." To that end, Airbnb has held itself out to the public as a "trusted community" to attract the public to its website to engage in real estate leasing transactions.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, Airbnb avers that the unidentified document or documents referenced in this paragraph speak for themselves and denies any characterization of the document or documents that is inconsistent with their meaning when they are read in their entirety and in context, and otherwise denies the allegations in this paragraph.

139. At all relevant times, Defendant Airbnb was the agent and/or joint venture of Defendant Riviere, and at all relevant times as such acting within the course, scope, and authority of said agency, and/or venture, and that Airbnb acting as a principal, was negligent in the selection, hiring, training, and supervision of its Host, acting as an agent and/or joint venturer. Airbnb had a proprietary interest in its Hosts, a right to govern the policies of the rentals, and a share in the profits.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, Airbnb denies the allegations in this paragraph.

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 their particular

vulnerability to being filmed in a private area without their consent in an Airbnb rental and/or because Airbnb has a special relationship with its Hosts, who are agents and/or employees of Airbnb.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, Airbnb denies the allegations in this paragraph.

141. Airbnb exercises significant control over its Hosts.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, Airbnb denies the allegations in this paragraph.

142. Airbnb Hosts must register through Airbnb's platform to offer their properties for rent.

ANSWER: Denied.

143. Airbnb controls the information that its Hosts provide on their listings and the format in which certain information is provided in a listing.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, Airbnb denies the allegations in this paragraph.

144. Airbnb has numerous standards which Hosts must abide by and which Airbnb can unilaterally change at any time. These include cleanliness standards, monitoring Hosts'

performance through reviews, mandating cancellation policy procedures for long term rentals and requiring Hosts to select one of four short term cancellation policies.

ANSWER: Airbnb admits that it promulgates standards and policies, including for timely communication, for listing accuracy, for listing cleanliness, and regarding where recording devices may not be placed, and that Airbnb reserves the right to unilaterally change any of its standards or policies. Airbnb denies that hosts “must follow” these standards and policies; although hosts agree that they will abide by these policies, Airbnb cannot control whether hosts in fact do so. Airbnb denies that it monitors hosts’ performance through reviews, but admits that Airbnb’s website states that “Listings should maintain a high overall review rating and avoid too many low ratings.” Airbnb admits that hosts listing a property on the Airbnb platform must select a cancellation policy, but denies that hosts must select one of four short term cancellation policies. Airbnb denies the remaining allegations in this paragraph.

145. All cancellations, refunds, and disputes between Hosts and guests must go through Airbnb’s platform.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, the allegations in this paragraph are so vague and ambiguous that Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

146. Airbnb penalizes Hosts for failure to follow its rules and standards by deducting fees from payouts, cancelling bookings, restricting bookings, and permanently banning Hosts.

ANSWER: Airbnb admits that, when it learns that a user, including a host, has violated Airbnb's Terms of Service and/or policies, including a violation of Airbnb's policy regarding the use of cameras and surveillance devices in listings, Airbnb's Terms of Service provide that Airbnb may take measures that include deducting fees from a host's payouts, cancelling bookings, deleting listings, or suspending or terminating users' accounts. However, Airbnb denies that it had any knowledge or reason to know that Riviere or Thomas had violated Airbnb's Terms of Service and/or policies prior to Plaintiff's initiation of this lawsuit. Airbnb conducted criminal background checks of Riviere and Thomas and found no criminal conviction records at all, and certainly not criminal conviction records suggesting the type of behavior alleged in the Amended Complaint, and Airbnb was never notified by anyone of Riviere's alleged history or reputation before Plaintiff initiated this lawsuit.

147. Airbnb can terminate a Host at will for any reason.

ANSWER: To the extent the phrase "terminate ... at will" in this allegation implies an employment relationship, Airbnb denies that hosts on the Airbnb platform are employees of Airbnb. Airbnb admits that, pursuant to its Terms of Service, the agreement between Airbnb and users of its platform is effective for a 30-day term after which it will automatically and continuously renew for subsequent 30-day terms, and Airbnb must give a user of its platform thirty days' notice via email before terminating the agreement unless

certain limited conditions are met, including but not limited to the user's breach of an agreement with Airbnb and the user's violation of laws, regulations, or third party rights. Except as expressly admitted, Airbnb denies the allegations in this paragraph.

148. Airbnb has the ability to mitigate the risk of its guests being recorded without their consent in properties offered for rent on the Airbnb website. For example, Airbnb could require Hosts to engage in anti-harassment or other similar training, alerting Hosts of the criminal consequences of installing hidden cameras in Airbnb rentals, utilize technology that scans properties for all wirelessly connected devices, or perform in-person inspections of properties offered for rent on its website. In fact, Airbnb currently has the infrastructure to perform in-person inspections of certain Airbnb rentals, but only uses that infrastructure for select rentals. While Airbnb has established codes of conduct against use of video cameras in private areas in properties offered for rent through its website, it does nothing to enforce its codes prior to any incident.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, Airbnb admits that its policies prohibit concealed and undisclosed cameras and recording devices monitoring common spaces, and cameras and recording devices located in or monitoring private spaces. Airbnb admits that amenity-focused inspections are conducted for Airbnb Luxe properties, with the consent of the hosts who control the properties and who have applied for Airbnb Luxe. Airbnb denies the remaining allegations in this paragraph.

149. Security experts have noted how most people "don't have the skill, knowledge, and more importantly . . . equipment" to prevent or even detect that they are being secretly monitored.

On the other hand, Airbnb, unlike most people, has the skill, knowledge, and ability to use current technology to mitigate the risk of its guests being filmed via hidden cameras without their consent. For example, applications exist that can scan wireless networks to determine how many and what type of devices are connected to the wireless network to determine whether there are any cameras utilizing a specific wireless network.

ANSWER: Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

150. Airbnb guests are especially vulnerable to sexual harassment because Hosts have the opportunity to non-consensually record guests during their most private moments, including while nude. Airbnb guests are often travelling to destinations they are not accustomed to and have had no opportunity to inspect. Thus, Airbnb guests are dependent on Airbnb to ensure the safety of their accommodations.

ANSWER: Airbnb denies the allegations in the first sentence of this paragraph. As to the allegations in the second and third sentences of this paragraph, Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the allegations in the second and third sentences of this paragraph and therefore denies the same. The allegations in the fourth sentence of this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, Airbnb denies the allegations in the fourth sentence of this paragraph.

151. Airbnb profits from offering unsuspecting guests accommodations at properties offered for rent on its website. Airbnb encourages guests to trust itself, its platform, its agents and employees, and the accommodations provided on its website.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, Airbnb denies the allegations in this paragraph.

152. Airbnb engages in numerous tactics to induce its guests to trust its Hosts, despite the fact that the parties are “perfect strangers.” For example, Airbnb features “SuperHost” badges and check marks with the words “Identity verified” below the names of certain Hosts, creating the appearance of higher safety and reliability.

ANSWER: Airbnb admits that hosts who meet certain criteria may be referred to as Superhosts in the Airbnb platform. Airbnb admits that certain users who have verified their identity by, for example, adding a government ID to their Airbnb account may be referred to as “Identity Verified” in the Airbnb platform. Pursuant to Airbnb’s Terms of Service, “[a]ny 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.” Except as expressly admitted, Airbnb denies the allegations in this paragraph.

153. Airbnb engaged in little, if any, investigation of Riviere, Chase Enterprise or Thomas before allowing them to act as Hosts and post their property on its site. Chase Enterprise and Riviere's ownership of the Airbnb rental properties was a matter of public record.

ANSWER: The allegations in the first sentence of this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, Airbnb denies the allegations in the first sentence of this paragraph. Airbnb conducted criminal background checks of Thomas and Riviere and found no criminal conviction records at all, and certainly not criminal conviction records suggesting the type of behavior alleged in the Amended Complaint. As to the allegations in the second sentence of this paragraph, Airbnb denies that there are "Airbnb rental properties." Airbnb denies that it owns, controls, or manages properties available to book via the Airbnb platform, including the Subject Property. Moreover, Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the allegations in the second sentence of this paragraph and therefore denies the same.

154. Prior to booking through Airbnb, guests are not able to independently perform any research on either the Hosts of the properties or the properties themselves. Airbnb Hosts often only have their first name visible, and, in many instances, the names listed on their Airbnb profile may not match their real identity. Airbnb does not make the address of the property available to the guest until after the guest has booked the reservation and paid a preliminary fee. Thus, due to Airbnb's own restrictive policies, guests must rely entirely on Airbnb to ensure their accommodations are safe and secure.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, Airbnb denies the allegations in this paragraph. Airbnb admits that it does not provide guests or potential guests with the exact address of a property listed on the Airbnb platform before the guest books a reservation for that property. Airbnb avers that guests and potential guests are able to perform research on hosts and host properties and guests are able to correspond with hosts before making a reservation. Except as expressly admitted, Airbnb denies the allegations in this paragraph.

155. Airbnb knew or should have known that some of its Hosts were installing hidden cameras in private areas of Airbnb rentals. There have been hundreds of instances of Airbnb guests finding hidden cameras in their Airbnb rentals as evidenced by the hundreds of complaints Airbnb has received on its social media pages about guests' discovery of hidden cameras.

ANSWER: The allegations in the first sentence of this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, Airbnb denies the allegations in the first sentence of this paragraph. As to the allegations in the second sentence of this paragraph, Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the allegations in the second sentence of this paragraph and therefore denies the same.

156. If any due diligence had been performed, Airbnb would have known or should have known that Riviere had a propensity, proclivity, or course of conduct that he had voyeuristic tendencies sufficient to put it on notice of the possible danger he posed to third parties.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, Airbnb denies the allegations in this paragraph.

157. Airbnb knew of or should have known that its employment of Riviere, Chase Enterprise and Thomas created an undue risk of harm to third parties.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, Airbnb denies the allegations in this paragraph, including that there was any employment relationship between Airbnb and Riviere, Chase Enterprise, or Thomas.

158. Airbnb knew or had reason to know of the necessity and opportunity for exercising control over Riviere, Chase Enterprise and Thomas.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, Airbnb denies the allegations in this paragraph.

159. Airbnb breached its duty to Plaintiff by failing to (a) warn or notify Plaintiff of the possibility of being filmed in private areas without her consent; (b) adequately inspect properties offered for rent on its website; and / or (c) adequately investigate its Hosts.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, Airbnb denies the allegations in this paragraph.

160. Airbnb knew or should have known that its guests are particularly vulnerable to harm, *i.e.*, being filmed in private areas without their consent, especially given the prevalence of hidden cameras in properties offered for rent on the Airbnb website.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, Airbnb denies the allegations in this paragraph.

161. Airbnb's failure to (a) warn or notify Plaintiff of the possibility of being filmed in private areas without her consent; (b) adequately inspect properties offered for rent on its website; and / or (c) adequately investigate its Hosts was a substantial factor in causing Plaintiff's harm.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, Airbnb denies the allegations in this paragraph.

THIRD CAUSE OF ACTION

Negligent Hiring, Supervision, Training, or Retention of Employees, or Alternatively Independent Contractors (Against Airbnb)

162. Plaintiff realleges the preceding paragraphs as though repeated verbatim herein.

ANSWER: Airbnb re-alleges and incorporates each and every answer of paragraphs 1 through 161 as if repeated verbatim herein.

163. Airbnb created a business enterprise whereby it leases, offers to lease, places for rent, solicits listings of places for rent, solicits prospective tenants and/or collects rent from real property in exchange for financial remuneration.

ANSWER: Airbnb admits that Airbnb provides an online marketplace that

enables individuals who wish to offer accommodations, known as “hosts,” and those seeking to book accommodations, known as “guests,” to contract with each other. Except as expressly admitted, Airbnb denies the allegations in this paragraph.

164. Airbnb’s business enterprise depends upon bringing two or more strangers together for the purpose of leasing a particular piece of property. Indeed, Airbnb’s former Global Head of Trust & Risk Management Nick Shapiro described Airbnb’s business as “building trust” between “perfect strangers,” by among other things “ensuring people are safe.” Airbnb holds itself out as a “trusted community” to attract the public to its website to engage in real estate leasing transactions.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, Airbnb avers that the unidentified document or documents referenced in this paragraph speak for themselves and denies any characterization of the document or documents that is inconsistent with their meaning when they are read in their entirety and in context, and otherwise denies the allegations in this paragraph.

165. Airbnb owed a duty to Plaintiff because Plaintiff had a special relationship with Airbnb, by virtue of their staying at an accommodation rented through Airbnb and their particular vulnerability to being filmed in a private area without their consent in an Airbnb rental and/or because Airbnb has a special relationship with its Hosts, who are agents and/or employees of Airbnb.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, Airbnb

denies the allegations in this paragraph.

166. Airbnb hired Thomas, Riviere and Chase Enterprise to make the Airbnb rental available for temporary lease through Airbnb's website. Thomas, Riviere and Chase Enterprise were agents and employees of Airbnb.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, Airbnb denies the allegations in this paragraph, including that there was any employment relationship between Airbnb and Riviere, Chase Enterprise, or Thomas.

167. Airbnb exercises significant control over its Hosts.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, Airbnb denies the allegations in this paragraph.

168. Airbnb Hosts must register through Airbnb's platform to offer their properties for rent.

ANSWER: Denied.

169. Airbnb controls the information that its Hosts provide on their listings and the format in which certain information is provided in a listing.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, Airbnb denies the allegations in this paragraph.

170. Airbnb has numerous standards which Hosts must abide by and which Airbnb can unilaterally change at any time. These include cleanliness standards, monitoring Hosts' performance through reviews, mandating cancellation policy procedures for long term rentals and requiring Hosts select one of four short term cancelation polices.

ANSWER: Airbnb admits that it promulgates standards and policies, including for timely communication, listing accuracy, listing cleanliness, and recording devices, and Airbnb reserves the right to unilaterally change any of its standards or policies. Airbnb admits that its website addresses policies regarding reservation commitment, timely communication, listing accuracy, reservation commitment, and listing cleanliness, including on the webpage "Ground rules for Hosts," available at <https://www.airbnb.com/help/article/2895>. Airbnb admits that hosts listing a property on the Airbnb platform must select a cancellation policy, but denies that there are only four short term cancellation policies. Airbnb denies that it monitors hosts' performance through reviews. Airbnb denies any remaining allegations in this paragraph.

171. All cancellations, refunds, and disputes between Hosts and guests must go through Airbnb's platform.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, the allegations in this paragraph are so vague and ambiguous that Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

172. Airbnb penalizes Host for failure to follow its rules and standards by deducting fees from payouts, cancelling bookings, restricting bookings, and permanently banning Hosts.

ANSWER: Airbnb admits that, when it learns that a user, including a host, has violated Airbnb's Terms of Service and/or policies, including a violation of Airbnb's policy regarding the use of cameras and surveillance devices in listings, Airbnb's Terms of Service provide that Airbnb may take measures that include deducting fees from a host's payouts, cancelling bookings, deleting listings, or suspending or terminating users' accounts. However, Airbnb denies that it had any knowledge or reason to know that Riviere or Thomas had violated Airbnb's Terms of Service and/or policies prior to Plaintiff's initiation of this lawsuit. Airbnb conducted criminal background checks of Riviere and Thomas and found no criminal conviction records at all, and certainly not criminal conviction records suggesting the type of behavior alleged in the Amended Complaint, and Airbnb was never notified by anyone of Riviere's alleged history or reputation before Plaintiff initiated this lawsuit. Airbnb denies any remaining allegations in this paragraph.

173. Airbnb can terminate a Host at will for any reason.

ANSWER: To the extent the phrase "terminate ... at will" in this allegation implies an employment relationship, Airbnb denies that hosts on the Airbnb platform are employees of Airbnb. Airbnb admits that, pursuant to its Terms of Service, the agreement between Airbnb and users of its platform is effective for a 30-day term after which it will automatically and continuously renew for subsequent 30-day terms, and Airbnb must give a user of its platform thirty days' notice via email before terminating the agreement unless

certain limited conditions are met, including but not limited to the user's breach of an agreement with Airbnb and the user's violation of laws, regulations, or third party rights. Except as expressly admitted, Airbnb denies the allegations in this paragraph.

174. Airbnb created a business enterprise whereby it leases, offers to lease, places for rent, solicits listings of places for rent, solicits prospective tenants and/or collects rent from real property in exchange for financial remuneration. Airbnb takes a service fee from both guests and the Hosts based on the total for the booking.

ANSWER: Airbnb admits that Airbnb provides an online marketplace that enables individuals who wish to offer accommodations, known as "hosts," and those seeking to book accommodations, known as "guests," to contract with each other. Airbnb admits that it charges a service fee when a booking is confirmed and that the service fee may be paid either by both the host and guest or by the host alone. Except as expressly admitted, Airbnb denies the allegations in this paragraph.

175. Airbnb's Hosts are an integral part of Airbnb's regular business and do not furnish an independent business or professional service. In Airbnb's own words, "Hosting makes Airbnb, Airbnb" and "Airbnb's Hosts are the foundation of [Airbnb's] community and business." Moreover, Airbnb would be unable to operate if it no longer hired Hosts and/or its Hosts no longer worked for Airbnb. Airbnb has no significant source of revenue and profits apart from the money brought in through the rental of properties by its Hosts.

ANSWER: Airbnb admits that Airbnb hosts are an integral part of Airbnb's business. Airbnb denies that hosts are employees of Airbnb, that Airbnb hires hosts, or that

hosts work for Airbnb, as those terms are used in this paragraph. Airbnb further denies that hosts do not furnish an independent business or professional service. Except as expressly admitted, Airbnb denies the allegations in this paragraph. Airbnb further avers that the unidentified document or documents referenced in this paragraph speak for themselves and denies any characterization of the document or documents that is inconsistent with their meaning when they are read in their entirety and in context. Airbnb denies any remaining allegations in this paragraph.

176. Airbnb provides supplies, such as smoke and carbon monoxide alarms, to Hosts. Airbnb also provides Hosts activation and merchandising, pricing tools that suggest prices for listing, data insignia into Host occupancy rates, scheduling tools, damage protection and liability coverage.

ANSWER: Airbnb admits that certain hosts are eligible to apply for one free smoke and carbon monoxide alarm, subject to terms and conditions. Airbnb admits that it offers hosts various optimization tools, including for pricing and scheduling, that hosts at their discretion may elect to use. Airbnb admits that it provides liability insurance for hosts with active listings on the Airbnb platform. Except as expressly admitted, Airbnb denies the allegations in this paragraph.

177. Thomas and Riviere were unfit to perform the work for which they were hired as Riviere intentionally installed a hidden camera into the Airbnb rental for the purpose of secretly recording Plaintiff without her consent, during private and intimate affairs, including during various stages of undress; and Thomas knew Riviere had previously installed hidden cameras to

secretly record women without their consent, during private and intimate affairs, including during various stages of undress.

ANSWER: Airbnb denies that Thomas and Riviere, at any time relevant to the Amended Complaint, were “hired” by Airbnb, were employees or agents of Airbnb, or worked or performed any work for Airbnb. As to the remaining allegations in this paragraph, Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

178. Airbnb failed to employ measures to adequately supervise its agents. Airbnb does not provide anti-harassment or other training to its Hosts prior to permitting them to make listings available for rent on Airbnb’s website. Also, Airbnb does not perform any in-person review or other investigation into most of the properties available for rent through its website.

ANSWER: Airbnb admits that it did not provide anti-harassment training to Katherine Thomas, the host of the Subject Property. Airbnb denies that Thomas or Rhett Riviere were, at any time, Airbnb’s agents. Airbnb admits that Airbnb does not perform in-person inspections of the vast majority of properties hosts offer on the Airbnb platform. Airbnb further admits that it did not physically inspect the Subject Property, nor did it have a right to access the Subject Property. Except as expressly admitted, Airbnb denies the allegations in this paragraph.

179. Airbnb knew or should have known that offering properties for lease without having performed any in-person review; title search; or other investigation creates a particular risk to others of being filmed without their consent. Airbnb knew or should have known of the

prevalence of hidden cameras in properties offered for rent on the Airbnb website. Indeed, Airbnb propagates regulations on the use of cameras in properties offered for rent through Airbnb's website. Further, there have been hundreds of reports and complaints about hidden cameras in Airbnb properties.

ANSWER: Airbnb admits that it maintains policies that prohibit concealed and undisclosed cameras and recording devices monitoring common spaces, and cameras and recording devices located in or monitoring private spaces. Except as expressly admitted, Airbnb denies the allegations in this paragraph.

180. Thomas and Riviere' unfitness for the work for which they were hired harmed Plaintiffs.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, and to the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied. Airbnb specifically denies that Thomas and Riviere, at any time relevant to the Amended Complaint, were "hired" by Airbnb, were employees or agents of Airbnb, or worked or performed any work for Airbnb. To the extent that the allegations in this paragraph are addressed to other named Defendants, Airbnb is not required to respond on their behalf and lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

181. Airbnb's negligence in hiring, supervising, or retaining Thomas, Riviere, and Chase Enterprises was a substantial factor in causing Plaintiff's harm.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, and to the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied. Airbnb specifically denies that Thomas and Riviere, at any time relevant to the Amended Complaint, were “hired” by Airbnb, were employees or agents of Airbnb, or worked or performed any work for Airbnb. To the extent that the allegations in this paragraph are addressed to other named Defendants, Airbnb is not required to respond on their behalf and lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

FOURTH CAUSE OF ACTION
Premises Liability - (All Defendants)

182. Plaintiff realleges the preceding paragraphs as though repeated verbatim herein.

ANSWER: Airbnb re-alleges and incorporates each and every answer of paragraphs 1 through 181 as if repeated verbatim herein.

183. Defendants collectively advertised and promoted, and arranged and invited Plaintiff to the Airbnb property for the benefit of Defendants.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, and to the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied. To the extent that the allegations in this paragraph are addressed to other named Defendants, Airbnb is not required to respond on their behalf and lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and

therefore denies the same.

184. Defendants owed Plaintiff a duty of care to protect her and keep her safe from unknown or undisclosed hazards while at the property.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, and to the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied. To the extent that the allegations in this paragraph are addressed to other named Defendants, Airbnb is not required to respond on their behalf and lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

185. Defendants failed to warn Plaintiff of the existence of video recording devices in the Airbnb property bedroom.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, and to the extent that the allegations in this paragraph are addressed to Airbnb, Airbnb admits that it did not know and had no reason to know of the existence of any video recording devices in the listing; that Airbnb had not been advised of Plaintiff's intent to stay at the Subject Property that her friend booked; and that Airbnb did not warn Plaintiff of what it did not know. Airbnb denies that it had any duty to warn Plaintiff and further denies that the Subject Property was an "Airbnb property." Airbnb denies that it owned, controlled, managed, or had the right to access the Subject Property. Except as expressly admitted,

Airbnb denies the allegations in this paragraph. To the extent that the allegations in this paragraph are addressed to other named Defendants, Airbnb is not required to respond on their behalf and lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

186. Defendants breached this duty by enabling and allowing the existence of secret video recording devices in the bedroom of the Airbnb property.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, and to the extent that the allegations in this paragraph are addressed to Airbnb, Airbnb admits that it did not know and had no reason to know of the existence of any video recording devices in the listing; that Airbnb had not been advised of Plaintiff's intent to stay at the Subject Property that her friend booked; and that Airbnb did not warn Plaintiff of what it did not know. Airbnb denies that it had any duty to warn plaintiff and further denies that the Subject Property was an "Airbnb property." Airbnb denies that it owned, controlled, managed, or had the right to access the Subject Property. Except as expressly admitted, Airbnb denies the allegations in this paragraph. To the extent that the allegations in this paragraph are addressed to other named Defendants, Airbnb is not required to respond on their behalf and lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

187. As a result of the Defendants' breach of duty, Plaintiff suffered damages proximately caused by the breach.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, and to the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied. To the extent that the allegations in this paragraph are addressed to other named Defendants, Airbnb is not required to respond on their behalf and lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

188. Due to the egregious nature of the conduct at issue, grossly negligence, recklessness, and utter lack of care by Defendants to prevent the harm to Plaintiff, Plaintiff is entitled to an award of punitive damages.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, and to the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied. To the extent that the allegations in this paragraph are addressed to other named Defendants, Airbnb is not required to respond on their behalf and lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

FIFTH CAUSE OF ACTION

Invasion of Privacy – Wrongful Intrusion into Private Affairs (Against Riviere)

189. Plaintiff realleges the preceding paragraphs as though repeated verbatim herein.

ANSWER: Airbnb re-alleges and incorporates each and every answer of paragraphs 1 through 188 as if repeated verbatim herein.

190. On May 17, 2019, through May 18, 2019, Defendant's watching, spying, prying and recording, intruded into Plaintiff's private affairs.

ANSWER: The allegations in this paragraph are addressed solely to Rhett Riviere, and therefore no response by Airbnb is required. To the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied.

191. At all times relevant herein, Plaintiff had a legally protected right of privacy while a guest on Defendant's Airbnb property. Plaintiff never consented to being recorded, nor was she even aware that she was being recorded. Plaintiff had a reasonable expectation of privacy that she would not be viewed or recorded by anyone who was not present in the room with her while staying in the Defendant's Airbnb property.

ANSWER: The allegations in this paragraph are addressed solely to Rhett Riviere, and therefore no response by Airbnb is required. To the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied.

192. Defendant's intrusion into Plaintiff's privacy would be highly offensive to a reasonable person. The intrusion was into aspects of Plaintiff's life that were private and which Plaintiff would normally expect to be free from exposure to Defendant and other third parties.

ANSWER: The allegations in this paragraph are addressed solely to Rhett Riviere, and therefore no response by Airbnb is required. To the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied.

193. The intrusion was substantial and unreasonable enough to be legally cognizable.

ANSWER: The allegations in this paragraph are addressed solely to Rhett Riviere,

and therefore no response by Airbnb is required. To the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied.

194. Defendant intentionally intruded on Plaintiff's private affairs and violated her most personal rights.

ANSWER: The allegations in this paragraph are addressed solely to Rhett Riviere, and therefore no response by Airbnb is required. To the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied.

195. Plaintiff has suffered and continues to experience humiliation, shame, and other presumed damages and is entitled to recover for her actual and punitive damages from Defendant's actions as proven at trial.

ANSWER: The allegations in this paragraph are addressed solely to Rhett Riviere, and therefore no response by Airbnb is required. To the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied.

**B. SIXTH CAUSE OF ACTION
Vicarious Liability for Invasion of Privacy (Against Airbnb)**

196. Plaintiff realleges the preceding paragraphs as though repeated verbatim herein.

ANSWER: Airbnb re-alleges and incorporates each and every answer of paragraphs 1 through 195 as if repeated verbatim herein.

197. Airbnb is vicariously liable for the torts of its Hosts, employees, and agents through the theories of respondeat superior, nondelegable duties, agency, and ostensible agency.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, and to the

extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied, including that there is any employment or agency relationship between Airbnb and the hosts on its platform. To the extent that the allegations in this paragraph are addressed to other named Defendants, Airbnb is not required to respond on their behalf and lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

198. Airbnb's business brings two or more strangers together for the purpose of renting a property. Airbnb's Global Head of Trust & Risk Management, Nick Shapiro, has described Airbnb's business as "building trust" between "perfect strangers," by among other things "ensuring people are safe."

ANSWER: Airbnb admits that Airbnb provides an online marketplace that enables individuals who wish to offer accommodations, known as "hosts," and those seeking to book accommodations, known as "guests," to contract with each other. Airbnb further avers that the unidentified document or documents referenced in this paragraph speak for themselves and denies any characterization of the document or documents that is inconsistent with their meaning when they are read in their entirety and in context. Except as expressly admitted, Airbnb denies the remaining allegations in this paragraph.

199. Airbnb created a business whereby it leases or offers to lease places for rent, solicits listings of places for rent, and prospective tenants and collects rent in exchange for a percentage of the rent.

ANSWER: Airbnb admits that Airbnb provides an online marketplace that

enables individuals who wish to offer accommodations, known as “hosts,” and those seeking to book accommodations, known as “guests,” to contract with each other. Airbnb admits that it charges a service fee when a booking is confirmed and that the service fee may be paid either by both the host and guest or by the host alone. Except as expressly admitted, Airbnb denies the allegations in this paragraph.

200. Airbnb exercises significant control over its Hosts.

- a. Hosts must register on Airbnb’s platform to offer their property for rent there.
- b. Airbnb claims to verify the properties offered for rent on its website for “accuracy of the listing (including accuracy of photos, addresses, and listing details) and quality standards (including cleanliness, safety, and basic home amenities)” and for such verification.
- c. Airbnb controls what information Hosts are allowed to provide on its platform and the format under which certain information is presented.
- d. Airbnb has numerous standards and other controls over the Hosts and the rental properties which it can change at any time for any or no reason, including: cleanliness standards, monitoring Hosts’ performance via reviews, mandating the long-term rental cancellation policies and providing four options for the cancellation policies for short-term rentals. Airbnb can.
- e. All cancellations, refunds, and other disputes between Hosts and guests must go through Airbnb’s platform.

f. Airbnb can penalize Hosts for failing to follow its rules by deducting fees from payouts, cancelling bookings, restricting bookings, and permanently banning Hosts.

g. Airbnb can terminate Hosts at will for any or no reason.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, Airbnb denies that it exercises significant control over hosts; that Airbnb claims to verify the information that hosts provide about properties they list on its platform; that Airbnb controls what information hosts are allowed to provide on its platform and the format under which certain information is presented; that it controls all refunds, cancellations, and other disputes between guests and hosts; and that it monitors hosts' performance through reviews. Airbnb admits that all users, hosts and guests, must create an Airbnb account to list properties on Airbnb's platform; that Airbnb promulgates standards and policies, including for Content, timely communication, listing accuracy, reservation commitment, and listing cleanliness; that if users violate Airbnb's Terms of Service and/or policies, Airbnb may take measures that include deducting fees from payouts, cancelling bookings, deleting listings, or suspending or terminating users' accounts; and that Airbnb reserves the right to unilaterally change any of its standards or policies. Airbnb admits that hosts listing a property on the Airbnb platform must select a cancellation policy, but denies that there are only four short term cancellation policies. To the extent the phrase "terminate ... at will" in this allegation implies an employment relationship, Airbnb denies that hosts on the Airbnb platform are employees of Airbnb. Airbnb admits that, pursuant to its Terms of Service, the agreement

between Airbnb and users of its platform is effective for a 30-day term after which it will automatically and continuously renew for subsequent 30-day terms, and Airbnb must give a user of its platform thirty days' notice via email before terminating the agreement unless certain limited conditions are met, including but not limited to the user's breach of an agreement with Airbnb and the user's violation of laws, regulations, or third party rights. Except as expressly admitted, Airbnb denies the allegations in this paragraph.

201. Airbnb's Hosts and agents are an integral part of Airbnb's regular business and do not furnish an independent business or professional service. In Airbnb's own words "Hosting makes Airbnb, Airbnb" and "Airbnb's Hosts are the foundation of [Airbnb's] community and business." Moreover, Airbnb would be unable to operate if it no longer hired Hosts and/or its Hosts no longer worked for Airbnb. Airbnb has no significant source of revenue and profits without the money brought in through the rental of properties by its Hosts.

ANSWER: Airbnb admits that Airbnb hosts are an integral part of Airbnb's business. Airbnb denies that hosts are employees of Airbnb, that Airbnb hires hosts, or that hosts work for Airbnb. Airbnb further denies that hosts do not furnish an independent business or professional service. Except as expressly admitted, Airbnb denies the allegations in this paragraph. Airbnb further avers that the unidentified document or documents referenced in this paragraph speak for themselves and denies any characterization of the document or documents that is inconsistent with their meaning when they are read in their entirety and in context.

202. Airbnb provides supplies, such as smoke and carbon monoxide alarms, to its Hosts. Airbnb also provides its Hosts with activation and merchandising, pricing tools that suggest prices for listing, data insignia into Host occupancy rates, scheduling tools, damage protection and liability coverage.

ANSWER: Airbnb admits that certain hosts are eligible to apply for one free smoke and carbon monoxide alarm, subject to terms and conditions. Airbnb admits that it offers hosts various optimization tools, including for pricing and scheduling, that hosts at their discretion may elect to use. Airbnb admits that it provides liability insurance for hosts with active listings on the Airbnb platform. Except as expressly admitted, Airbnb denies the allegations in this paragraph. Further, the allegations in this paragraph are so vague and ambiguous that Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

203. Riviere and Thomas committed tortious and wrongful acts while acting in the course and scope of their employment with Airbnb, as agents and/or employees of Airbnb. As a part of their employment with Airbnb, Riviere and Thomas made the Airbnb rental available for accommodation by Airbnb guests. Airbnb has rules regarding where and under what circumstances its Hosts may place recording devices in Airbnb rentals.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, and to the extent that the allegations in this paragraph are addressed to Airbnb, Airbnb denies that there was any employment or agency relationship between Airbnb and Riviere or Thomas.

Airbnb admits that it maintains policies that prohibit concealed and undisclosed cameras and recording devices monitoring common spaces, and cameras and recording devices located in or monitoring private spaces. Except as expressly admitted, Airbnb denies the allegations in this paragraph. To the extent that the allegations in this paragraph are addressed to other named Defendants, Airbnb is not required to respond on their behalf and lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

204. Riviere and Thomas' invasion into Plaintiff's privacy was incidental to their employment with Airbnb. Riviere and Thomas' invasion into Plaintiff's privacy was reasonably foreseeable in light of Airbnb's business.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, and to the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied, including that there was any employment relationship between Airbnb and Riviere or Thomas. To the extent that the allegations in this paragraph are addressed to other named Defendants, Airbnb is not required to respond on their behalf and lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

205. Plaintiff stayed at the Airbnb House because of Riviere and Thomas' affiliation with Airbnb.

ANSWER: Denied.

206. As Airbnb touts that its business involves connecting “perfect strangers,” often for the purposes of a short-term rental, it knew, or should have known, that offering properties for lease without having performed any in-person review or other investigation creates a particular risk to others of being filmed without their consent.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, Airbnb denies the allegations in this paragraph.

207. Airbnb knew, or should have known, of the prevalence of hidden cameras in properties offered for rent through the Airbnb website. Indeed, Airbnb propagates regulations on the use of cameras in properties offered for rent on the Airbnb website. Further, there have been hundreds of reports and complaints about hidden cameras in Airbnb properties.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, Airbnb denies the allegations in this paragraph.

208. Plaintiff had a reasonable expectation of privacy in the Airbnb House during the duration of her stay.

ANSWER: Airbnb denies that that the Subject Property is an “Airbnb House.” Airbnb denies that it owns, manages, controls, or has the right to access the Subject Property. Moreover, the allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, and to the extent that the remaining allegations in this paragraph are addressed to Airbnb, Airbnb lacks sufficient

knowledge or information to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies the same. To the extent that the allegations in this paragraph are addressed to other named Defendants, Airbnb is not required to respond on their behalf and lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

209. During the course and scope of their employment, Riviere and Thomas intentionally intruded into Plaintiff's private affairs by having a hidden recording device in the bedroom of the Airbnb rental during Plaintiff's stay for the purpose of recording, viewing, and/or broadcasting Plaintiff's private and intimate affairs, including during various stages of undress and while engaged in private conversations, without Plaintiff's knowledge or consent.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, and to the extent that the allegations in this paragraph are addressed to Airbnb, Airbnb denies that Riviere and Thomas were Airbnb employees and that the conduct alleged in this paragraph were within the scope of any purported employment. Airbnb otherwise lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same. To the extent that the allegations in this paragraph are addressed to other named Defendants, Airbnb is not required to respond on their behalf and lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

210. Riviere and Thomas were agents and/or employees of Airbnb at the time they harmed Plaintiff.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, Airbnb denies the allegations in this paragraph.

211. Riviere and Thomas' intrusion would be highly offensive to a reasonable person. Riviere and Thomas recorded Plaintiff without her consent during private, intimate moments, including while partially or completely nude.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, and to the extent that the allegations in this paragraph are addressed to Airbnb, Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies the same. To the extent that the allegations in this paragraph are addressed to other named Defendants, Airbnb is not required to respond on their behalf and lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

212. Plaintiff was harmed by Riviere and Thomas' intrusion.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, and to the extent that the allegations in this paragraph are addressed to Airbnb, Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in this

paragraph and therefore denies the same. To the extent that the allegations in this paragraph are addressed to other named Defendants, Airbnb is not required to respond on their behalf and lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

213. Riviere and Thomas' conduct was a substantial factor in causing Plaintiff's harm.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, and to the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied. To the extent that the allegations in this paragraph are addressed to other named Defendants, Airbnb is not required to respond on their behalf and lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

SEVENTH CAUSE OF ACTION

Intentional Infliction of Emotional Distress (Against Riviere)

214. By recording Plaintiff in private moments, Defendant intentionally or recklessly inflicted severe emotional distress or was certain or substantially certain that such distress would result from his conduct.

ANSWER: The allegations in this paragraph are addressed solely to Rhett Riviere, and therefore no response by Airbnb is required. To the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied.

215. Plaintiff was in a special relationship with Defendant based on the rental agreement between the parties.

ANSWER: The allegations in this paragraph are addressed solely to Rhett Riviere, and therefore no response by Airbnb is required. To the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied.

216. Defendant's conduct was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious, and utterly intolerable in a civilized community.

ANSWER: The allegations in this paragraph are addressed solely to Rhett Riviere, and therefore no response by Airbnb is required. To the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied.

217. Defendant's actions caused Plaintiff severe emotional distress when he intentionally recorded the Plaintiff and invaded aspects of her life that were private and which Plaintiff would normally expect to be free from exposure to the Defendant.

ANSWER: The allegations in this paragraph are addressed solely to Rhett Riviere, and therefore no response by Airbnb is required. To the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied.

218. Plaintiff has suffered and continues to suffer from severe emotional distress, including, but not limited to, grief, anxiety, shock, humiliation, embarrassment, shame, and feelings of powerlessness.

ANSWER: The allegations in this paragraph are addressed solely to Rhett Riviere, and therefore no response by Airbnb is required. To the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied.

219. Plaintiff's emotional distress was so severe that no reasonable person could be expected to endure it.

ANSWER: The allegations in this paragraph are addressed solely to Rhett Riviere, and therefore no response by Airbnb is required. To the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied.

220. Plaintiff suffered presumed, actual, and punitive damages from Defendant's intentional infliction of emotional distress.

ANSWER: The allegations in this paragraph are addressed solely to Rhett Riviere, and therefore no response by Airbnb is required. To the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied.

EIGHTH CAUSE OF ACTION

Constructive Fraud / Misrepresentation (Against Riviere and Airbnb)

221. Plaintiff realleges the preceding paragraphs as though repeated verbatim herein.

ANSWER: Airbnb re-alleges and incorporates each and every answer of paragraphs 1 through 220 as if repeated verbatim herein.

222. Plaintiff was in a special relationship with Defendant based on the rental agreement between the parties.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, and to the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied. To the extent that the allegations in this paragraph are addressed to other named Defendants, Airbnb is not required to respond on their behalf and lacks sufficient knowledge

or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

223. Defendants did not disclose that there were cameras and / or recording devices located in the bedroom, which would later record the Plaintiff and her friend into aspects of Plaintiff's life that were private and which Plaintiff would normally expect to be free from exposure to the Defendant.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, and to the extent that the allegations in this paragraph are addressed to Airbnb, Airbnb admits that it did not know and had no reason to know of the existence of any video recording devices in the listing; that Airbnb had not been advised of Plaintiff's intent to stay at the Subject Property that her friend booked; and that Airbnb did not warn Plaintiff of what it did not know. Airbnb denies that it had any duty to warn plaintiff and further denies that the Subject Property was an "Airbnb property." Airbnb denies that it owned, controlled, managed, or had the right to access the Subject Property. Except as expressly admitted, Airbnb denies the allegations in this paragraph. To the extent that the allegations in this paragraph are addressed to other named Defendants, Airbnb is not required to respond on their behalf and lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

224. An objective, reasonable person would have viewed the presence of the cameras and / or recording devices and their active recording inside the listing as sufficiently important and significant that it would have played a role in the decision to enter into the contractual relationship.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, Airbnb denies the allegations in this paragraph.

225. One or more Defendants knowingly did not disclose any security cameras or recording devices in or around the listing occupied by the Plaintiff, despite his duty to do so.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, and to the extent that the allegations in this paragraph are addressed to Airbnb, Airbnb admits that it did not know and had no reason to know of the existence of any video recording devices in the listing; that Airbnb had not been advised of Plaintiff's intent to stay at the Subject Property that her friend booked; and that Airbnb did not warn Plaintiff of what it did not know. Airbnb denies that it had any duty to warn plaintiff and further denies that the Subject Property was an "Airbnb property." Airbnb denies that it owned, controlled, managed, or had the right to access the Subject Property. Airbnb admits that Katherine Thomas, as the host of the Subject Property, had a duty to disclose cameras in the listing pursuant to Airbnb's Terms of Service and Community Policy. Except as expressly admitted, Airbnb denies the allegations in this paragraph. To the extent that the allegations in this paragraph are addressed to other named Defendants, Airbnb is not required to respond on their behalf

and lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

226. Defendants intended to have Plaintiff stay in the bedroom and had reason to expect that she would have refrained from staying in the bedroom if she was made aware of the actively recording camera or other recording device that was located in there.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, and to the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied. To the extent that the allegations in this paragraph are addressed to other named Defendants, Airbnb is not required to respond on their behalf and lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

227. Plaintiff was not provided written notice of any type of security camera or other recording device in or around the listing.

ANSWER: Airbnb admits that it did not know and had no reason to know of the existence of any video recording devices in the listing; that Airbnb had not been advised of Plaintiff's intent to stay at the Subject Property that her friend booked; and that Airbnb did not warn Plaintiff of what it did not know. Airbnb denies that it had any duty to warn Plaintiff. Airbnb denies that it owned, controlled, managed, or had the right to access the Subject Property. Except as expressly admitted, Airbnb lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore

denies the same.

228. Plaintiff relied on the integrity and honesty of the Defendants to stay in the Airbnb property and had a right to rely on aspects of her life that were private to be free from exposure to the Defendant.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, and to the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied. To the extent that the allegations in this paragraph are addressed to other named Defendants, Airbnb is not required to respond on their behalf and lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

229. Defendants acted in reckless and conscious disregard of Plaintiff's rights.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, and to the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied. To the extent that the allegations in this paragraph are addressed to other named Defendants, Airbnb is not required to respond on their behalf and lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

230. As a direct and proximate result of Defendants' actions, Plaintiff is entitled to recovery for her damages to be proven at trial.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, and to the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied. To the extent that the allegations in this paragraph are addressed to other named Defendants, Airbnb is not required to respond on their behalf and lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

231. Defendants committed these acts in conscious disregard for Plaintiff's rights.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, and to the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied. To the extent that the allegations in this paragraph are addressed to other named Defendants, Airbnb is not required to respond on their behalf and lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

232. Plaintiff is entitled to an award of punitive damages.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, and to the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied. To the extent that the allegations in this paragraph are addressed to other named Defendants, Airbnb is not required to respond on their behalf and lacks sufficient knowledge

or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

NINTH CAUSE OF ACTION

Negligence *per se* (Against Riviere, Chase, Thomas, and Airbnb)

233. Plaintiff re-alleges the preceding paragraphs as though repeated verbatim herein.

ANSWER: Airbnb re-alleges and incorporates each and every answer of paragraphs 1 through 232 as if repeated verbatim herein.

234. Defendants leased, offered to lease or rent, solicited rentals and prospective tenants and/or collected rent from real property within the definition of a real estate broker as set forth in S.C. Code Ann. § 40-57-20.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, and to the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied. To the extent that the allegations in this paragraph are addressed to other named Defendants, Airbnb is not required to respond on their behalf and lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

235. Pursuant to S.C. Code Ann. § 40-57-20, real estate brokers must be licensed in the State of South Carolina.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, Airbnb denies that it engaged or engages in activities of a real estate broker and denies that it is

required to hold a broker's license pursuant to South Carolina Code § 40-57-20.

236. The purpose of this statute is to protect the public from incompetent and untrustworthy individuals engaging in enumerated activities within the real estate field.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, Airbnb denies the allegations in this paragraph.

237. Plaintiff falls within the class of people sought to be protected.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, Airbnb denies the allegations in this paragraph.

238. Despite Defendants engaging in activities of a real estate broker, on information and belief, none of the Defendants holds a broker's license as required by § 40-57-20.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, and to the extent that the allegations in this paragraph are addressed to Airbnb, Airbnb denies that it engaged or engages in activities of a real estate broker and denies that it is required to hold a broker's license pursuant to South Carolina Code § 40-57-20. To the extent that the allegations in this paragraph are addressed to other named Defendants, Airbnb is not required to respond on their behalf and lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

239. In failing to engage in little, if any, investigation of Hosts, Defendants including specifically Airbnb created and continues to create a foreseeable risk of harm to parties, such as the Plaintiff who rely upon Airbnb's assertion that it has created "a trusted community marketplace for people to list, discover, and book unique accommodations around the world."

ANSWER: Airbnb admits that, on or before May 17-18, 2019, one or more pages on its website contained the phrase "a trusted community marketplace for people to list, discover, and book unique accommodations around the world." The remaining allegations in this paragraph consist of argument and legal conclusions to which no response is required; to the extent a response is required, Airbnb denies the remaining allegations in this paragraph.

240. Upon information and belief, Defendants including specifically Airbnb failed to conduct a background investigation of Defendants Riviere and Thomas and did not engage in any reasonable evaluation of these Hosts or property managers prior to allowing the rental to be posted on its website.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, Airbnb denies the allegations in this paragraph.

241. On information and belief, Defendants including specifically Airbnb did not have reasonable policies or procedures in place to protect lessees.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, Airbnb

denies the allegations in this paragraph.

242. To the extent policies were in place, those policies were not enforced, ignored and/or violated.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, Airbnb denies the allegations in this paragraph.

243. As a result of Defendants failure to adhere to state licensing requirements, Plaintiff has suffered general damages, including but not limited to humiliation, shock, embarrassment, intimidation, distress, fear, stress and other damages to be proven at the time of trial.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, and to the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied. To the extent that the allegations in this paragraph are addressed to other named Defendants, Airbnb is not required to respond on their behalf and lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

244. As a direct and proximate result of Defendants' failure to adhere to state licensing requirements, Plaintiff has also suffered special damages to be proven at the time of trial.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, and to the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are

denied. To the extent that the allegations in this paragraph are addressed to other named Defendants, Airbnb is not required to respond on their behalf and lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

245. Defendants committed these acts in conscious disregard for Plaintiff's rights. Accordingly, Plaintiff is entitled to an award of punitive damages.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, and to the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied. To the extent that the allegations in this paragraph are addressed to other named Defendants, Airbnb is not required to respond on their behalf and lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

TENTH CAUSE OF ACTION

Violation of Unfair Trade Practices Act ("SCUTPA") (Against all Defendants)

246. Plaintiff re-alleges the preceding paragraphs as though repeated verbatim herein.

ANSWER: Airbnb re-alleges and incorporates each and every answer of paragraphs 1 through 245 as if repeated verbatim herein.

247. By the foregoing acts and omissions, the Defendants' conduct constitutes false, misleading and deceptive acts, practices, and/or omissions in violation of the South Carolina Unfair Trade Practice Act, S.C. Code Ann. § 39-5-10, *et seq.*

ANSWER: The allegations in this paragraph consist of argument and legal

conclusions to which no response is required. To the extent a response is required, and to the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied. Airbnb specifically denies that it violated the South Carolina Unfair Trade Practices Act. To the extent that the allegations in this paragraph are addressed to other named Defendants, Airbnb is not required to respond on their behalf and lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

248. Defendants engaged in unfair and deceptive acts and practices by misrepresenting that the Airbnb rental had certain characteristics or qualities.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, and to the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied. To the extent that the allegations in this paragraph are addressed to other named Defendants, Airbnb is not required to respond on their behalf and lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

249. Defendants misrepresented that no undisclosed cameras or recording devices would be in the Airbnb rental. Defendant Airbnb also misrepresented that certain procedure and practices were in place to ensure the privacy and safety of guests.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, and to the

extent that the allegations in this paragraph are addressed to Airbnb, Airbnb admits that, as specified in Airbnb's Terms of Service, Airbnb has no control over and does not guarantee "the existence, quality, safety, suitability, or legality of any Listings or Host Services." Except as expressly admitted, Airbnb denies the allegations in this paragraph. To the extent that the allegations in this paragraph are addressed to other named Defendants, Airbnb is not required to respond on their behalf and lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

250. By representing the safety and privacy of the Airbnb rental property, Defendants misrepresented their goods and services were of a particular standard or quality when they were not.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, and to the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied. To the extent that the allegations in this paragraph are addressed to other named Defendants, Airbnb is not required to respond on their behalf and lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

251. Defendants knew or should have known their conduct was a violation of § 39-5-20.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, and to the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are

denied. Airbnb specifically denies that it violated the South Carolina Unfair Trade Practices Act. To the extent that the allegations in this paragraph are addressed to other named Defendants, Airbnb is not required to respond on their behalf and lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

252. Because 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.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, and to the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied. To the extent that the allegations in this paragraph are addressed to other named Defendants, Airbnb is not required to respond on their behalf and lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

253. Plaintiff has suffered actual, ascertainable damages as a result of the Defendants' use of the unlawful trade practices.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, and to the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied. Airbnb specifically denies that it violated the South Carolina Unfair Trade Practices

Act. To the extent that the allegations in this paragraph are addressed to other named Defendants, Airbnb is not required to respond on their behalf and lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

254. Defendants, by their continued and willful failure to comply with S.C. Code § 40-57-10 *et seq.*, have violated South Carolina law, yet continue to represent themselves as operating in compliance with the motel and / or hotel operators they compete with, as well as the licensed property managers they compete with for rental and leasing customers.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, and to the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied. Airbnb specifically denies that it violated the South Carolina Unfair Trade Practices Act. To the extent that the allegations in this paragraph are addressed to other named Defendants, Airbnb is not required to respond on their behalf and lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

255. As a direct and proximate result of Defendants' deceptive trade practices, Plaintiff sustained damages that include but are not limited to (i) pain and mental anguish in the past and future; (ii) fear, humiliation, and embarrassment in the past and future; and (iii) reasonable and necessary medical bills incurred in the past and future.

ANSWER: The allegations in this paragraph consist of argument and legal

conclusions to which no response is required. To the extent a response is required, and to the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied. To the extent that the allegations in this paragraph are addressed to other named Defendants, Airbnb is not required to respond on their behalf and lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

256. Because Defendants' acts and conduct constitute unfair and deceptive acts or practices in violations of the South Carolina Unfair Trade Practices Act, Plaintiff is entitled to an award of damages, treble damages, attorneys' fees, and costs.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, and to the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied. Airbnb specifically denies that it violated the South Carolina Unfair Trade Practices Act. To the extent that the allegations in this paragraph are addressed to other named Defendants, Airbnb is not required to respond on their behalf and lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

257. Plaintiff also seeks an order of this Court enjoining Defendants from further activities in violation of the SCUTPA, in accordance with, *inter alia*, S.C. Code § 39-5-140, and calls upon the S.C. Attorney General to intervene and take action, as specifically provided for in S.C. Code § 39-5-50(a), which provides:

Whenever the Attorney General has reasonable cause to believe that any person is using, has used or is about to use any method, act or practice declared by Section 39-5-20 to be unlawful, and that proceedings would be in the public interest, he may bring an action in the name of the State against such person to restrain by temporary restraining order, temporary injunction or permanent injunction the use of such method, act or practice.

Id.

ANSWER: The allegations in this paragraph consist of argument and legal conclusions to which no response is required. To the extent a response is required, and to the extent that the allegations in this paragraph are addressed to Airbnb, all such allegations are denied. Airbnb specifically denies that it violated the South Carolina Unfair Trade Practices Act. To the extent that the allegations in this paragraph are addressed to other named Defendants, Airbnb is not required to respond on their behalf and lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for an order in her favor and against Defendants as follows:

- A. Award Plaintiff actual, compensatory, special, and / or consequential or liquidated damages in an amount to be determined at a trial of this matter;
- B. Award Plaintiff punitive and / or exemplary damages in an amount to be determined at a trial of this matter;
- C. Award treble damages;
- D. Award Plaintiff attorney's fees and costs;

- E. Award prejudgment and post-judgment interest as provided by law;
- F. Injunctive relief as set forth herein by the S.C. Attorney General's Office under S.C. Code Ann. § 39-5-50; and
- G. All such other relief in law or equity as this court deems just and proper.

ANSWER: To the extent that any response is required to the Amended Complaint's separately denominated Prayer for Relief, and to the extent that the Prayer for Relief is addressed to Airbnb, Airbnb denies each and every allegation in the Prayer for Relief. Airbnb specifically denies that Plaintiff has been or will be damaged in any sum, or at all, by reason of any act or omission on the part of Airbnb. Airbnb further denies that Plaintiff is entitled to any relief.

AFFIRMATIVE DEFENSES

Without assuming any burden of proof that it would not otherwise bear, Airbnb asserts the following affirmative defenses to Plaintiff's Amended Complaint, all of which are pleaded in the alternative, and none of which constitute an admission that Airbnb is in any way liable to Plaintiff, that Plaintiff has been or will be injured or damaged, or that Plaintiff is entitled to any relief whatsoever from Airbnb. Airbnb hereby reserves its right to amend or supplement these defenses as information becomes available.

FIRST AFFIRMATIVE DEFENSE

(No Duty)

Airbnb owed no duty to Plaintiff for any negligent acts or omissions alleged, including because the Terms of Service between the parties govern the application and resolution of such

alleged acts or omissions, which Airbnb denies having committed.

SECOND AFFIRMATIVE DEFENSE

(Failure to State a Claim)

The Amended Complaint and all of its claims are barred, in whole or in part, because they fail to state a claim against Airbnb upon which relief can be granted, and, accordingly, should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. Airbnb renews its affirmative defense that it owed no duty to Plaintiff and the real estate broker statute is inapplicable to Plaintiff's claims.

THIRD AFFIRMATIVE DEFENSE

(Comparative Fault)

Even if Airbnb is deemed negligent, to have breached any duties alleged in the Amended Complaint, or otherwise liable under any theory of liability or cause of action, all of which are denied, then to the extent Plaintiff may be found to have failed to exercise reasonable care to protect her own interests, and was comparatively negligent in causing her damages, and Defendant pleads such comparative negligence to bar, or reduce, any recovery by the Plaintiff in this action.

FOURTH AFFIRMATIVE DEFENSE

(Contributory Negligence)

Even if Airbnb is deemed negligent, to have breached any duties alleged in the Amended Complaint, or otherwise liable under any theory of liability or cause of action, all of which are denied, then to the extent Plaintiff may be found to have failed to exercise reasonable care to protect her own interests, and was contributorily negligent in causing her damages, and Defendant

pleads such contributory negligence to bar, or reduce, any recovery by the Plaintiff in this action.

FIFTH AFFIRMATIVE DEFENSE

(Assumption of Risk)

Even if Airbnb was negligent, breached any duties alleged in the Amended Complaint, or otherwise liable under any theory of liability or cause of action, all of which are denied, then to the extent the assumption of the risk doctrine may be found to apply to Plaintiff's causes of action and may bar any or all of her claims, Airbnb pleads assumption of the risk to bar, or reduce, any recovery by the Plaintiff in this action.

SIXTH AFFIRMATIVE DEFENSE

(No Proximate Causation)

The Plaintiff's alleged damages were proximately caused by the actions of other defendants or third parties over which Airbnb had no control; accordingly, such other causes were the intervening proximate cause or the superseding proximate cause of their alleged damages. Therefore, Airbnb should not be held responsible for any such damages.

SEVENTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

The Amended Complaint and all of its claims are barred, in whole or in part, to the extent that the Plaintiff failed to mitigate or minimize her own alleged damages.

EIGHTH AFFIRMATIVE DEFENSE

(Comparative Fault)

The Amended Complaint and all of its claims are barred, in whole or part, because any

damages Plaintiff may have suffered were caused in whole or in part by the negligence and/or other wrongful conduct of other defendants or third parties for whose conduct Airbnb is not responsible or liable.

NINTH AFFIRMATIVE DEFENSE

(Lack of Agency/Inapplicability of Respondeat Superior)

Katherine Thomas, Chase Enterprises LLC, and Rhett Riviere were not acting as agents or employees of Airbnb at any time. Consequently, Airbnb is not responsible for their conduct through the principles of agency, vicarious liability, respondeat superior, or otherwise. Airbnb pleads lack of agency, and inapplicability of respondeat superior as affirmative defenses and complete bars to recovery.

TENTH AFFIRMATIVE DEFENSE

(Unforeseeable, Intervening, and/or Superseding Conditions)

Plaintiff's alleged damages were solely the result of unforeseeable intervening or superseding events over which Airbnb had no control.

ELEVENTH AFFIRMATIVE DEFENSE

(No Joint Liability)

To the extent Plaintiff sustained any injuries or incurred any expenses as alleged in the Amended Complaint, responsibility for more than 50% of those injuries or expenses lie with Plaintiff and/or parties or entities other than Airbnb for whose actions and omissions Airbnb has no responsibility. Therefore, at most, Airbnb may only be severally liable for Plaintiff's injuries or expenses.

TWELFTH AFFIRMATIVE DEFENSE**(Good Faith)**

Plaintiff is not entitled to an award of punitive damages as there can be no showing by clear and convincing evidence that Plaintiff's alleged damages were the result of willful, wanton, or reckless conduct by Airbnb.

THIRTEENTH AFFIRMATIVE DEFENSE**(No Punitive Damages)**

Punitive damages as requested by Plaintiff, which Airbnb denies are recoverable at all, are not permitted by law to the extent Plaintiff's request violates the United States Constitution and all governing state law (including but not limited to *State Farm v. Campbell*, 538 U.S. 408 (2003) and its progeny) regarding the recoverability and amount of punitive damages.

FOURTEENTH AFFIRMATIVE DEFENSE**(Punitive Damage Cap and Bifurcation)**

Defendant requests trial bifurcation on the issues of actual damages and punitive damages, pursuant to S.C. Code Ann. § 15-32-520. Further, Defendant pleads all defenses, limitations on damages, and other privileges codified at S.C. Code Ann. § 15-32-520, § 15-32-530, and any other applicable statute.

FIFTEENTH AFFIRMATIVE DEFENSE**(Credit/Offset)**

In the unlikely event that Airbnb is found liable to Plaintiff, Airbnb is entitled to a credit or offset for any and all sums that Plaintiff has received, or may hereafter receive, by way of any

and all settlements arising from Plaintiff's claims and causes of action, including her settlement with Defendant Rhett Riviere.

SIXTEENTH AFFIRMATIVE DEFENSE

(Indemnity Offset)

Any verdict or judgment that might be recovered by Plaintiff must be reduced by those amounts that have already or will in the future, with reasonable certainty, indemnify Plaintiff in whole or in part for any past or future claimed economic loss from any collateral source.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Limitation of Remedies)

The Amended Complaint and all of its claims are barred and/or limited, in whole or in part, pursuant to applicable statutory and common law regarding limitations on awards, caps on recovery, and setoffs.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Communications Decency Act)

The Amended Complaint and all of its claims are barred, in whole or in part, and/or preempted by the Communications Decency Act. *See* 47 U.S.C. § 230 *et seq.*

NINETEENTH AFFIRMATIVE DEFENSE

(Subrogation of Rights/Limitation of Remedies)

The Amended Complaint and all of its claims are barred, in whole or in part, because Plaintiff, who did not reserve the Subject Property but was a guest of the booking guest, cannot claim greater rights or entitlements than would be available to the booking guest, whose rights

were subject to the limitations provided in Airbnb's Terms of Service to which the booking guest consented.

TWENTIETH AFFIRMATIVE DEFENSE

(Standing)

The allegations in the Amended Complaint against Airbnb and each and every purported cause of action contained therein against Airbnb are barred to the extent that the Plaintiff lacks standing to assert the claims.

TWENTY FIRST AFFIRMATIVE DEFENSE

(Waiver)

Plaintiff's claims are barred, in whole or in part, by the doctrine of waiver.

TWENTY SECOND AFFIRMATIVE DEFENSE

(Estoppel)

Plaintiff's claims are barred, in whole or in part, by the doctrine of estoppel.

TWENTY THIRD AFFIRMATIVE DEFENSE

(Failure to Plead Fraud with Specificity)

Plaintiff's claims sounding in fraud are barred to the extent that the Plaintiff has failed to plead her allegations of Fraud with particularity as to Airbnb.

TWENTY FOURTH AFFIRMATIVE DEFENSE

(Abuse of Process)

Plaintiff's claims are barred, in whole or in part, because Plaintiff has deliberately, intentionally and maliciously brought a frivolous action against Airbnb and used the legal process

for an improper purpose.

TWENTY FIFTH AFFIRMATIVE DEFENSE

(Additional Affirmative Defenses)

Airbnb reserves the right to allege any additional affirmative defenses, as the facts become known.

WHEREFORE, Airbnb, Inc. respectfully requests that judgment be rendered in favor of Airbnb and against Plaintiff on all causes of action alleged in the Amended Complaint, and such other and further relief as this Court deems appropriate.

CROSS-CLAIM

PRELIMINARY STATEMENT

1. Cross-Claim Defendant Katherine Thomas and Rhett Riviere entered into binding agreements with Airbnb on or about July 29, 2016 and January 23, 2018, respectively. In those agreements, as a condition of their being allowed to list their properties on Airbnb's online platform, Thomas and Riviere expressly promised to follow all of Airbnb's policies, which were incorporated by reference into the agreement. On information and belief, at all times relevant to this Cross-Complaint, Riviere and Thomas were involved in a romantic relationship.

2. Airbnb's policies, which Thomas and Riviere promised to follow, included several that outright prohibited them from using *any* surveillance device in or facing bedrooms or bathrooms in properties they listed via Airbnb's platform. Airbnb's policies further required Thomas and Riviere to disclose to prospective guests the existence of all surveillance devices anywhere in the properties, even ones that were inoperative or turned off.

3. Thomas's and Riviere's agreements with Airbnb separately required Thomas and Riviere to follow all laws, including having all required permits, licenses and registration. Between the two of them, they reaffirmed their consent to Airbnb's binding Terms of Service on seven separate occasions between July 2016 and March 2021.

4. Despite these clear legal obligations, Plaintiff Julianne Foster alleges that Riviere set up a secret video camera that secretly recorded her in the bedroom of the "Stirrup Cup Cottage" at 115 Third Avenue SW, Aiken, South Carolina—a property that, on information and belief, was owned by Riviere and "hosted" by Thomas—during her stay at the listing on the evening of May 17, 2019.

5. Riviere was charged with these alleged crimes on June 2, 2021, and has been criminally indicted for voyeurism. Of course, no charges have been brought against Airbnb, and no one has ever alleged that Airbnb was aware of the recording. Nor could they. Unlike Airbnb, Thomas and Riviere had full access to the Stirrup Cup Cottage and promised Airbnb to ensure that they were in compliance with all relevant laws and Airbnb's policies regarding surveillance devices. Airbnb expressly included in its Terms of Service that "Airbnb has no control over and does not guarantee . . . [the] safety, suitability, or legality of any Listing or Host Service."

6. Plaintiff Foster does not allege that Airbnb was actually aware of the recording—nor could she. She has nonetheless sued Airbnb seeking to hold it liable for Riviere's criminal conduct. But Airbnb contracted with Thomas and Riviere precisely to avoid this kind of situation. Their conduct violates the express terms of that contract. Their breach—and Riviere's inducement

of that breach—has left Airbnb in the impossible and unfair position of defending itself against claims regarding conduct it did not participate in and did not know about.

7. Airbnb has been dragged into a lawsuit initiated by plaintiff Julianne Foster to avenge crimes committed against her by Riviere and Thomas—crimes they promised Airbnb not to commit. Airbnb therefore brings this cross-claim to hold Thomas liable for the harm Airbnb has suffered as a result of her conduct.¹⁰

THE PARTIES

8. Cross-Claim Plaintiff Airbnb is a global company headquartered in San Francisco, California, that provides an online platform that connects individuals who wish to offer accommodations (“hosts”) with those seeking to book accommodations (“guests”). Airbnb does not own or have any property interest in the properties that hosts list on its website. It is organized under the laws of Delaware.

9. Cross-Claim Defendant Katherine Thomas registered as a user on Airbnb on July 29, 2016, and on January 30, 2019, listed on Airbnb’s platform the Stirrup Cup Cottage. On information and belief, she has been a citizen of the state of South Carolina at all times relevant to these cross-claims.

JURISDICTION AND VENUE

¹⁰ On April 5, 2023, the Court granted Airbnb’s motion for leave to file its proposed cross-claim against Defendant Katherine Thomas, but not against Rhett Riviere, who has been dismissed as a defendant from this lawsuit after settling his claims with Plaintiff. The Court directed and permitted Airbnb to instead file a third-party complaint against Mr. Riviere.

10. Jurisdiction is proper in the State of South Carolina, and venue is proper in this Court under S.C. Code Ann. § 15-7-30.

FACTUAL ALLEGATIONS

I. Airbnb's Platform

11. Airbnb provides an online platform that connects individuals who wish to offer accommodations ("hosts") with those seeking to book accommodations ("guests").

12. Airbnb does not own or have any property interest in the properties that hosts list on its website. It is purely an online platform that allows hosts and guests to connect with each other to transact, make payments, and communicate.

13. Thomas is one such host who listed properties on Airbnb's platform between 2016 and 2019. Each of the properties Thomas listed was, on information and belief, owned at least in part by Riviere, including the Stirrup Cup Cottage. On information and belief, Riviere indirectly owned the Stirrup Cup Cottage in full.

14. By contrast, Airbnb did not own or control Stirrup Cup Cottage. Airbnb did not even have the right to access the property.

II. Airbnb's Terms of Service

15. On or about May 18, 2019, Thomas and Riviere were bound by versions 10.1 and 8 of the Terms of Service, respectively. Unless otherwise specified, both versions are identical, and Airbnb refers to them as simply the "Terms of Service."

16. Thomas agreed to version 10.1 of the Terms of Service on or about April 2, 2019.

17. Riviere agreed to version 8 of the Terms of Service on or about October 8, 2018.

18. The Terms of Service included numerous terms that address the harm Foster alleges that she suffered.

19. For example, in Section 7.2.3 of the Terms of Service, Thomas represented and warranted to Airbnb that any listing she posts will “comply with all applicable laws (such as zoning laws) . . . and other rules and regulations (including having all required permits, licenses and registration).” In that same section, she agreed to be “responsible for [her] 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 [her] request or invitation.”

20. And Section 14 of the Terms of Service includes a promise that Thomas and Riviere “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; . . . engage in any violent, harmful, abusive or disruptive behavior; . . . or violate or infringe anyone else’s rights or otherwise cause harm to anyone.”

21. The term “Policies” in Section 14 of the Terms of Service is hyperlinked to Airbnb’s website. When clicked, users are taken to a page listing each of Airbnb’s policies.

22. One of the policies included in that list—Airbnb’s Security Cameras and Recording Devices Policy—outlines the permissible and prohibited uses of cameras and recording devices for properties listed on Airbnb’s platform.

23. Under the version of the policy effective from December 14, 2017 through May 20, 2019, Airbnb required hosts “to disclose all surveillance devices in their listings.” The policy required hosts with “any type of surveillance device in or around a listing, even if it’s not turned

on or hooked up,” to “indicate its presence in [the] House Rules listed on the booking” and to specifically “disclose if an active recording is taking place.”

24. Additionally, the policy outright “prohibit[s] any surveillance devices that are in or that observe the interior of certain private spaces (such as bedrooms and bathrooms) regardless of whether they’ve been disclosed.”

25. The term “Standards” in Section 14 of the Terms of Service is hyperlinked to Airbnb’s website. When clicked, users are taken to a page setting forth Airbnb’s Community Standards.

26. At the time Thomas agreed to version 10.1 of the Terms of Service and Riviere agreed to version 8 of the Terms of Service, Airbnb’s Community Standards stated: “You should not spy on other people; cameras are not allowed in your listing unless they are previously disclosed and visible, and they are never permitted in private spaces (such as bathrooms or sleeping areas).”

27. The Terms of Service repeatedly state that Airbnb does not control hosts’ compliance with the Terms of Services or how they run their property. Section 1.2 disclaims that Airbnb could “control [or] manage . . . any Listings or Host Services”—which include any “services” a host offers. Section 1.3 provides that “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] or third party.” And Section 1.4 states that “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,” and that Thomas and Riviere “have complete discretion whether to list Host Services.”

28. In Section 18 of the Terms of Service, Thomas and Riviere “agree to release, defend (at Airbnb’s option), indemnify, and hold Airbnb . . . 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 interactions 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.”

III. The Alleged Secret Recording

29. According to her Amended Complaint in this case, Plaintiff stayed at the Stirrup Cup Cottage with non-party Michelle Jain, who booked the property, the night of May 17, 2019.

30. Plaintiff alleges in this case that Thomas and Riviere secretly recorded her during her stay at the Stirrup Cup Cottage, in violation of civil and criminal law.

31. Airbnb was not aware of the recording or Riviere’s conduct. In fact, by repeatedly signing the Terms of Service, Thomas and Riviere falsely represented to Airbnb that they were in compliance with Airbnb’s policy which prohibited such recordings.

32. Airbnb did not, and could not, have known about this alleged criminal activity. Before Foster filed her lawsuit, Airbnb had never received a single report from anyone of secret video cameras in the bedroom at either the Stirrup Cup Cottage, or at any of Thomas and Riviere's other listings.

33. Airbnb conducted background checks of Thomas and Riviere and found no criminal records at all, and certainly not criminal records suggesting this type of behavior.

34. Thomas's and Riviere's alleged criminal actions harmed Plaintiff, but they also breached Airbnb's then-governing Terms of Service, to which they both had agreed.

35. Thomas was aware that hosts have an obligation to disclose any video cameras at properties they list on Airbnb's web platform. She has since admitted that there was an undisclosed video camera making surreptitious recordings at Stirrup Cup Cottage, and knew or should have known about that video camera in May 2019. On information and belief, Thomas was informed in or around September 2016 that Riviere was known by people in Aiken to be a peeping Tom.

36. Thomas was under obligation to confirm that there were no recording devices recording the bedroom at Stirrup Cup Cottage; there is no exception to Airbnb's Security Cameras and Recording Devices Policy or Community Standards, and Thomas expressly agreed in the Terms of Service that she was "responsible for the acts and omissions of any individuals who reside at or are otherwise present at the Accommodation at [her] request or invitation."

37. The surveillance device policy and Community Standards bar the *presence* of video cameras recording in a listing's bedroom, regardless of who installed it. Those policies also require the disclosure of *any* video camera—whether turned on or off. Thus, it makes no difference

whether Thomas or—as the Amended Complaint alleges—Riviere actually physically installed the camera. Rather, by agreeing to follow the policies, Thomas took on an obligation to disclose *all* cameras and affirmatively promised not to have *any* cameras located in or pointed at a bedroom. And in any event, Thomas agreed that she would be responsible for actions taken by any other third-party she invited into Stirrup Cup Cottage—i.e., Riviere.

38. Riviere, who is alleged to have installed the camera and is criminally charged with the surreptitious recording, also knowingly adopted and then violated the surveillance device policy and Community Standards. He also knew that these policies and standards were part of the Terms of Service that Thomas signed (because he also signed the Terms of Service), meaning that he knew that by installing the cameras, he was causing Thomas to breach her contract with Airbnb.

IV. The Alleged Real Estate Licensing Violations

39. Plaintiff also alleges that Thomas and Riviere rented out their property without complying with South Carolina licensing laws.

40. Thomas expressly and falsely represented to Airbnb that she complied with relevant laws when listing her properties.

41. By breaching the Terms of Service and causing Airbnb to be dragged into this lawsuit, Thomas and Riviere have harmed Airbnb and are liable for any damages Airbnb might ultimately be ordered to pay to Plaintiff, as well as its fees and costs.

CAUSES OF ACTION

FIRST CAUSE OF ACTION BREACH OF CONTRACT (DEFENDANT THOMAS)

42. Airbnb re-alleges and incorporates by reference the allegations contained in all preceding paragraphs.

43. Thomas agreed to version 10.1 of Airbnb's Terms of Service, which is a valid and binding contract.

44. Airbnb's Terms of Service incorporate by reference Airbnb's Security Cameras and Recording Devices Policy and Airbnb's Community Standards.

45. Airbnb has complied with its obligations under the Terms of Service.

46. On information and belief, Riviere placed surveillance devices as alleged in Plaintiff's Amended Complaint and otherwise secretly recorded Plaintiff. As a result, Thomas breached the Terms of Service, including Section 7.2.3, Section 14, and the incorporated Security Cameras and Recording Devices Policy and Community Standards.

47. Thomas rented out the Stirrup Cup Cottage without complying with relevant licensing laws; in doing so she has breached the Terms of Service, including Section 7.2.3.

48. As a direct and proximate result of Thomas's breach, Airbnb has been damaged in an amount to be proven at trial. This includes, but is not limited to, actual and special damages, including attorneys' fees.

**SECOND CAUSE OF ACTION
CONTRACTUAL INDEMNIFICATION
(DEFENDANT THOMAS)**

49. Airbnb re-alleges and incorporates by reference the allegations contained in all preceding paragraphs.

50. Thomas agreed to Airbnb's Terms of Service, which is a valid and binding contract.

51. Airbnb's Terms of Service incorporate by reference Airbnb's Security Cameras and Recording Devices Policy.

52. Airbnb has complied with its obligations under the Terms of Service.

53. In Section 18 of Airbnb's Terms of Service, Thomas promised to indemnify Airbnb and pay for any of Airbnb's attorneys' fees for any breach of the Terms of Service or other Policies; liability based on Thomas's interaction with any guest; or Thomas's breach of any laws, regulations or third party rights.

54. To the extent that Thomas had a video camera in the bedroom or otherwise secretly recorded Plaintiff, she breached her contract with Airbnb.

55. As a direct and proximate result of Thomas's conduct, Airbnb has suffered and will continue to suffer damages, including, but not limited to, incurring and continuing to incur attorney's fees, court costs, and other costs in connection with defending against Plaintiff's causes of action, and being liable for and paying any damages to Plaintiff.

56. Section 18 of Airbnb's Terms of Service requires Thomas to indemnify Airbnb from liability incurred as a result of her actions. Airbnb is entitled to complete contractual indemnification from Thomas for any judgments or damages, settlement, or other relief it is ordered to pay by the Court or resulting from Plaintiff's causes of action.

**THIRD CAUSE OF ACTION
EQUITABLE INDEMNIFICATION
(DEFENDANT THOMAS)**

57. Airbnb re-alleges and incorporates by reference the allegations contained in all preceding paragraphs.

58. As a result of Plaintiff's filing of her complaint, Airbnb has been placed in a situation where it is necessary to incur litigation expenses to protect its interest.

59. To the extent that Plaintiff's allegations can or will be proven true, Airbnb is held liable for damages, or Airbnb enters into a settlement agreement with Plaintiff, Airbnb will have suffered damages as a direct and proximate result of Thomas's wrongful conduct. Thomas was liable for Plaintiff's harm.

60. Airbnb had no knowledge of, and is not at fault for any of Plaintiff's damages. No negligence by Airbnb contributed to Plaintiff's injury.

61. Airbnb has suffered damages in the form of any losses incurred in defending against Plaintiff's lawsuit, including, but not limited to, attorneys fees and costs it incurred and continues to incur during this lawsuit, and being liable to pay any damages to Plaintiff, as a result of Plaintiff's claims against it which are solely the fault of Thomas, not of Airbnb.

DEMAND FOR TRIAL

62. Airbnb herein demands a jury trial as to all claims and issues thus triable herein.

PRAYER FOR RELIEF

WHEREFORE, Airbnb prays that this Court:

- (a) Dismiss all claims against Airbnb with prejudice;
- (b) Monetary damages in an amount to be determined at trial; plus pre and post judgment interest at the allowed statutory rates;
- (c) Award Airbnb damages, including compensatory, general, special, and actual damages, attorneys' fees, and the amount that Airbnb has and will spend on this case, including

any damages Airbnb ultimately pays to Plaintiff, as well as its costs and attorneys' fees in defending against Plaintiff's claims and in bringing these cross-claims; and

- (d) Judgment on all of Airbnb's claims; and
- (e) Provide such further relief as the Court may deem just and proper.

Dated this 20th day of April, 2023

Respectfully submitted,

/s/ Beattie B. Ashmore

Beattie B. Ashmore

SC Bar No. 10419

650 East Washington Street

Greenville, SC 29601

PH: (864) 467-1001

Fax: (864) 672-1406

E: beattie@beattieashmore.com

Attorney for Defendant Airbnb, Inc.

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.

AIRBNB, INC.,

Third-Party Plaintiff,

v.

RHETT RIVIERE,

Third-Party Defendant.

Case No. 2021-CP-02-00899

SUMMONS
(Jury Trial Requested)

TO THE THIRD-PARTY DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the third-party complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this third-party complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the third-party complaint.

Respectfully Submitted,

BEATTIE B. ASHMORE
ATTORNEY AT LAW

/s/ Beattie B. Ashmore
Beattie B. Ashmore
SC Bar No.: 10419
650 E. Washington Street
Greenville, South Carolina 29601
PH: (864) 467-1001
FX: (864) 672-1406
E: Beattie@BeattieAshmore.com

Attorney for Airbnb, Inc.

April 20, 2023
Greenville, SC

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

JULIANNE FOSTER)
)
Plaintiff,)

Case No. 2021-CP-02-00899

v.)

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

**AIRBNB, INC.’S THIRD-PARTY
COMPLAINT AGAINST RHETT
RIVIERE
(Jury Trial Requested)**

AIRBNB, INC.,)
)
Third-Party Plaintiff,)

v.)

RHETT RIVIERE,)
)
Third-Party Defendant.)

COMES NOW THE DEFENDANT / THIRD-PARTY PLAINTIFF, AIRBNB, INC.
("Airbnb" or "Third-Party Plaintiff"), by and through its undersigned counsel, and brings this
Third-Party Complaint against Third-Party Defendant Rhett Riviere, alleging as follows:

PRELIMINARY STATEMENT

1. Third-Party Defendant Rhett Riviere and Katherine Thomas entered into binding agreements with Airbnb on or about January 23, 2018 and July 29, 2016, respectively. In those agreements, as a condition of their being allowed to list their properties on Airbnb’s online

platform, Thomas and Riviere expressly promised to follow all of Airbnb's policies, which were incorporated by reference into the agreement. On information and belief, at all times relevant to this Third-Party Complaint, Riviere and Thomas were involved in a romantic relationship.

2. Airbnb's policies, which Thomas and Riviere promised to follow, included several that outright prohibited them from using *any* surveillance device in or facing bedrooms or bathrooms in properties they listed via Airbnb's platform. Airbnb's policies further required Thomas and Riviere to disclose to prospective guests the existence of all surveillance devices anywhere in the properties, even ones that were inoperative or turned off.

3. Thomas's and Riviere's agreements with Airbnb separately required Thomas and Riviere to follow all laws, including having all required permits, licenses and registration. Between the two of them, they reaffirmed their consent to Airbnb's binding Terms of Service on seven separate occasions between July 2016 and March 2021.

4. Despite these clear legal obligations, Plaintiff Julianne Foster alleges that Riviere set up a secret video camera that secretly recorded her in the bedroom of the "Stirrup Cup Cottage" at 115 Third Avenue SW, Aiken, South Carolina—a property that, on information and belief, was owned by Riviere and "hosted" by Thomas—during her stay at the listing on the evening of May 17, 2019.

5. Riviere was charged with these alleged crimes on June 2, 2021, and has been criminally indicted for voyeurism. Of course, no charges have been brought against Airbnb, and no one has ever alleged that Airbnb was aware of the recording. Nor could they. Unlike Airbnb, Thomas and Riviere had full access to the Stirrup Cup Cottage and promised Airbnb to ensure that

they were in compliance with all relevant laws and Airbnb's policies regarding surveillance devices. Airbnb expressly included in its Terms of Service that "Airbnb has no control over and does not guarantee . . . [the] safety, suitability, or legality of any Listing or Host Service."

6. Plaintiff Foster does not allege that Airbnb was actually aware of the recording—nor could she. She has nonetheless sued Airbnb seeking to hold it liable for Riviere's criminal conduct. But Airbnb contracted with Thomas and Riviere precisely to avoid this kind of situation. Their conduct violates the express terms of that contract. Their breach—and Riviere's inducement of that breach—has left Airbnb in the impossible and unfair position of defending itself against claims regarding conduct it did not participate in and did not know about.

7. Airbnb has been dragged into a lawsuit initiated by plaintiff Julianne Foster to avenge crimes committed against her by Riviere and Thomas—crimes they promised Airbnb not to commit. Airbnb therefore brings this third-party complaint to hold Riviere liable for the harm Airbnb has suffered as a result of his conduct.¹

THE PARTIES

8. Third-Party Plaintiff Airbnb is a global company headquartered in San Francisco, California, that provides an online platform that connects individuals who wish to offer accommodations ("hosts") with those seeking to book accommodations ("guests"). Airbnb does

¹ On April 5, 2023, the Court granted Airbnb's motion for leave to file its proposed cross-claim against Defendant Katherine Thomas, but not against Rhett Riviere, who has been dismissed as a defendant from this lawsuit after settling his claims with Plaintiff. The Court directed and permitted Airbnb to instead file a third-party complaint against Mr. Riviere.

not own or have any property interest in the properties that hosts list on its website. It is organized under the laws of Delaware.

9. On information and belief, Third-Party Defendant Rhett Riviere owns Stirrup Cup Cottage. He registered as a user on Airbnb on January 23, 2018, but has never listed or reserved a property through Airbnb's platform using that account. On information and belief, he has been a citizen of the state of South Carolina at all times relevant to these third-party claims.

JURISDICTION AND VENUE

10. Jurisdiction is proper in the State of South Carolina, and venue is proper in this Court under S.C. Code Ann. § 15-7-30.

FACTUAL ALLEGATIONS

I. Airbnb's Platform

11. Airbnb provides an online platform that connects individuals who wish to offer accommodations ("hosts") with those seeking to book accommodations ("guests").

12. Airbnb does not own or have any property interest in the properties that hosts list on its website. It is purely an online platform that allows hosts and guests to connect with each other to transact, make payments, and communicate.

13. Thomas is one such host who listed properties on Airbnb's platform between 2016 and 2019. Each of the properties Thomas listed was, on information and belief, owned at least in part by Riviere, including the Stirrup Cup Cottage. On information and belief, Riviere indirectly owned the Stirrup Cup Cottage in full.

14. By contrast, Airbnb did not own or control Stirrup Cup Cottage. Airbnb did not even have the right to access the property.

II. Airbnb's Terms of Service

15. On or about May 18, 2019, Thomas and Riviere were bound by versions 10.1 and 8 of the Terms of Service, respectively. Unless otherwise specified, both versions are identical, and Airbnb refers to them as simply the "Terms of Service."

16. Thomas agreed to version 10.1 of the Terms of Service on or about April 2, 2019.

17. Riviere agreed to version 8 of the Terms of Service on or about October 8, 2018.

18. The Terms of Service included numerous terms that address the harm Foster alleges that she suffered.

19. For example, in Section 7.2.3 of the Terms of Service, Thomas represented and warranted to Airbnb that any listing she posts will "comply with all applicable laws (such as zoning laws) . . . and other rules and regulations (including having all required permits, licenses and registration)." In that same section, she agreed to be "responsible for [her] 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 [her] request or invitation."

20. And Section 14 of the Terms of Service includes a promise that Thomas and Riviere "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; . . . engage in any violent, harmful, abusive or disruptive behavior; . . . or violate or infringe anyone else's rights or otherwise cause harm to anyone."

21. The term “Policies” in Section 14 of the Terms of Service is hyperlinked to Airbnb’s website. When clicked, users are taken to a page listing each of Airbnb’s policies.

22. One of the policies included in that list—Airbnb’s Security Cameras and Recording Devices Policy—outlines the permissible and prohibited uses of cameras and recording devices for properties listed on Airbnb’s platform.

23. Under the version of the policy effective from December 14, 2017 through May 20, 2019, Airbnb required hosts “to disclose all surveillance devices in their listings.” The policy required hosts with “any type of surveillance device in or around a listing, even if it’s not turned on or hooked up,” to “indicate its presence in [the] House Rules listed on the booking” and to specifically “disclose if an active recording is taking place.”

24. Additionally, the policy outright “prohibit[s] any surveillance devices that are in or that observe the interior of certain private spaces (such as bedrooms and bathrooms) regardless of whether they’ve been disclosed.”

25. The term “Standards” in Section 14 of the Terms of Service is hyperlinked to Airbnb’s website. When clicked, users are taken to a page setting forth Airbnb’s Community Standards.

26. At the time Thomas agreed to version 10.1 of the Terms of Service and Riviere agreed to version 8 of the Terms of Service, Airbnb’s Community Standards stated: “You should not spy on other people; cameras are not allowed in your listing unless they are previously disclosed and visible, and they are never permitted in private spaces (such as bathrooms or sleeping areas).”

27. The Terms of Service repeatedly state that Airbnb does not control hosts' compliance with the Terms of Services or how they run their property. Section 1.2 disclaims that Airbnb could "control [or] manage . . . any Listings or Host Services"—which include any "services" a host offers. Section 1.3 provides that "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] or third party." And Section 1.4 states that "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," and that Thomas and Riviere "have complete discretion whether to list Host Services."

28. In Section 18 of the Terms of Service, Thomas and Riviere "agree to release, defend (at Airbnb's option), indemnify, and hold Airbnb . . . 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 interactions 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."

III. The Alleged Secret Recording

29. According to her Amended Complaint in this case, Plaintiff stayed at the Stirrup Cup Cottage with non-party Michelle Jain, who booked the property, the night of May 17, 2019.

30. Plaintiff alleges in this case that Thomas and Riviere secretly recorded her during her stay at the Stirrup Cup Cottage, in violation of civil and criminal law.

31. Airbnb was not aware of the recording or Riviere's conduct. In fact, by repeatedly signing the Terms of Service, Thomas and Riviere falsely represented to Airbnb that they were in compliance with Airbnb's policy which prohibited such recordings.

32. Airbnb did not, and could not, have known about this alleged criminal activity. Before Foster filed her lawsuit, Airbnb had never received a single report from anyone of secret video cameras in the bedroom at either the Stirrup Cup Cottage, or at any of Thomas and Riviere's other listings.

33. Airbnb conducted background checks of Thomas and Riviere and found no criminal records at all, and certainly not criminal records suggesting this type of behavior.

34. Thomas's and Riviere's alleged criminal actions harmed Plaintiff, but they also breached Airbnb's then-governing Terms of Service, to which they both had agreed.

35. Thomas was aware that hosts have an obligation to disclose any video cameras at properties they list on Airbnb's web platform. She has since admitted that there was an undisclosed video camera making surreptitious recordings at Stirrup Cup Cottage, and knew or should have known about that video camera in May 2019. On information and belief, Thomas was informed in or around September 2016 that Riviere was known by people in Aiken to be a peeping Tom.

36. Thomas was under obligation to confirm that there were no recording devices recording the bedroom at Stirrup Cup Cottage; there is no exception to Airbnb's Security Cameras and Recording Devices Policy or Community Standards, and Thomas expressly agreed in the Terms of Service that she was "responsible for the acts and omissions of any individuals who reside at or are otherwise present at the Accommodation at [her] request or invitation."

37. The surveillance device policy and Community Standards bar the *presence* of video cameras recording in a listing's bedroom, regardless of who installed it. Those policies also require the disclosure of *any* video camera—whether turned on or off. Thus, it makes no difference whether Thomas or—as the Amended Complaint alleges—Riviere actually physically installed the camera. Rather, by agreeing to follow the policies, Thomas took on an obligation to disclose *all* cameras and affirmatively promised not to have *any* cameras located in or pointed at a bedroom. And in any event, Thomas agreed that she would be responsible for actions taken by any other third-party she invited into Stirrup Cup Cottage—i.e., Riviere.

38. Riviere, who is alleged to have installed the camera and is criminally charged with the surreptitious recording, also knowingly adopted and then violated the surveillance device policy and Community Standards. He also knew that these policies and standards were part of the Terms of Service that Thomas signed (because he also signed the Terms of Service), meaning that he knew that by installing the cameras, he was causing Thomas to breach her contract with Airbnb.

IV. The Alleged Real Estate Licensing Violations

39. Plaintiff also alleges that Thomas and Riviere rented out their property without complying with South Carolina licensing laws.

40. Thomas expressly and falsely represented to Airbnb that she complied with relevant laws when listing her properties.

41. By breaching the Terms of Service and causing Airbnb to be dragged into this lawsuit, Thomas and Riviere have harmed Airbnb and are liable for any damages Airbnb might ultimately be ordered to pay to Plaintiff, as well as its fees and costs.

CAUSES OF ACTION

FIRST CAUSE OF ACTION BREACH OF CONTRACT (DEFENDANT RIVIERE)

42. Airbnb re-alleges and incorporates by reference the allegations contained in all preceding paragraphs.

43. Riviere agreed to version 8 of Airbnb's Terms of Service, which is a valid and binding contract.

44. Airbnb's Terms of Service incorporate by reference Airbnb's Security Cameras and Recording Devices Policy and Airbnb's Community Standards.

45. Airbnb has complied with its obligations under the Terms of Service.

46. On information and belief, Riviere placed surveillance devices as alleged in Plaintiff's Amended Complaint and otherwise secretly recorded Plaintiff. In doing so, Riviere breached the Terms of Service, including Section 7.2.3, Section 14, and the incorporated Security Cameras and Recording Devices Policy and Community Standards.

47. Riviere rented out the Stirrup Cup Cottage without complying with relevant licensing laws; in doing so he has breached the Terms of Service, including Section 7.2.3.

48. As a direct and proximate result of Riviere's breach, Airbnb has been damaged in an amount to be proven at trial. This includes, but is not limited to, actual and special damages, including attorneys' fees.

**SECOND CAUSE OF ACTION
CONTRACTUAL INDEMNIFICATION
(DEFENDANT RIVIERE)**

49. Airbnb re-alleges and incorporates by reference the allegations contained in all preceding paragraphs.

50. Riviere agreed to Airbnb's Terms of Service, which is a valid and binding contract.

51. Airbnb's Terms of Service incorporate by reference Airbnb's Security Cameras and Recording Devices Policy.

52. Airbnb has complied with its obligations under the Terms of Service.

53. In Section 18 of Airbnb's Terms of Service, Riviere promised to indemnify Airbnb and pay for any of Airbnb's attorneys' fees for any breach of the Terms of Service or other Policies; liability based on Riviere's interaction with any guest; or Riviere's breach of any laws, regulations or third party rights.

54. To the extent that Riviere had a video camera in the bedroom or otherwise secretly recorded Plaintiff, he breached his contract with Airbnb.

55. As a direct and proximate result of Riviere's conduct, Airbnb has suffered and will continue to suffer damages, including, but not limited to, incurring and continuing to incur attorney's fees, court costs, and other costs in connection with defending against Plaintiff's causes of action, and being liable for and paying any damages to Plaintiff.

56. Section 18 of Airbnb's Terms of Service requires Riviere to indemnify Airbnb from liability incurred as a result of his actions. Airbnb is entitled to complete contractual indemnification from Riviere for any judgments or damages, settlement, or other relief it is ordered to pay by the Court or resulting from Plaintiff's causes of action.

**THIRD CAUSE OF ACTION
INTERFERENCE WITH A CONTRACTUAL RELATIONSHIP
(DEFENDANT RIVIERE)**

57. Airbnb re-alleges and incorporates by reference the allegations contained in all preceding paragraphs.

58. Thomas agreed to Airbnb's Terms of Service, which is a valid and binding contract.

59. Airbnb's Terms of Service incorporate by reference Airbnb's Security Cameras and Recording Devices Policy.

60. Riviere knew about Airbnb's and Thomas's contract and specifically knew that Thomas was prohibited from pointing a camera at or in the bedroom, and that she had to disclose all video cameras at the Stirrup Cup Cottage, regardless of whether the video camera was turned on or off.

61. Riviere intentionally procured the breach of Airbnb's and Thomas's contract by installing video surveillance equipment and surreptitiously recording Plaintiff in violation of the Terms of Service.

62. There is no justification for Riviere's alleged placement of undisclosed video cameras in private spaces.

63. As a direct and proximate result of Riviere's tortious interference with Thomas's contractual obligations, Airbnb has been damaged in the form of any losses incurred in defending against Plaintiff's suit, including, but not limited to, incurring and continuing to incur attorney's fees, court costs, and other costs in connection with defending against Plaintiff's causes of action, and being liable for and paying any damages to Plaintiff.

**FOURTH CAUSE OF ACTION
EQUITABLE INDEMNIFICATION
(DEFENDANT RIVIERE)**

64. Airbnb re-alleges and incorporates by reference the allegations contained in all preceding paragraphs.

65. As a result of Plaintiff's filing of her complaint, Airbnb has been placed in a situation where it is necessary to incur litigation expenses to protect its interest.

66. To the extent that Plaintiff's allegations can or will be proven true, Airbnb is held liable for damages, or Airbnb enters into a settlement agreement with Plaintiff, Airbnb will have suffered damages as a direct and proximate result of Riviere's wrongful conduct. Riviere was liable for Plaintiff's harm.

67. Airbnb had no knowledge of, and is not at fault for any of Plaintiff's damages. No negligence by Airbnb contributed to Plaintiff's injury.

68. Airbnb has suffered damages in the form of any losses incurred in defending against Plaintiff's lawsuit, including, but not limited to, attorneys fees and costs it incurred and continues to incur during this lawsuit, and being liable to pay any damages to Plaintiff, as a result of Plaintiff's claims against it which are solely the fault of Thomas and Riviere, not of Airbnb.

DEMAND FOR TRIAL

69. Airbnb herein demands a jury trial as to all claims and issues thus triable herein.

PRAYER FOR RELIEF

WHEREFORE, Airbnb prays that this Court:

- (a) Monetary damages in an amount to be determined at trial; plus pre and post judgment interest at the allowed statutory rates;
- (b) Award Airbnb damages, including compensatory, general, special, and actual damages, attorneys' fees, and the amount that Airbnb has and will spend on this case, including any damages Airbnb ultimately pays to Plaintiff, as well as its costs and attorneys' fees in defending against Plaintiff's claims and in bringing these third-party claims; and
- (c) Judgment on all of Airbnb's claims; and
- (d) Provide such further relief as the Court may deem just and proper.

Dated this 20th day of April, 2023

Respectfully submitted,

BEATTIE B. ASHMORE
ATTORNEY AT LAW

/s/ Beattie B. Ashmore
Beattie B. Ashmore
SC Bar No.: 10419
650 E. Washington Street
Greenville, South Carolina 29601
PH: (864) 467-1001
FX: (864) 672-1406
E: Beattie@BeattieAshmore.com

Attorney for Airbnb, Inc.

State of South Carolina)
) Court of General Sessions
County of Aiken) 2021CP0200889

Julianne Foster)
)
 vs.) Transcript of Record
)
Airbnb, Inc. et al.)

April 5, 2023
Aiken, South Carolina

B E F O R E:

The Honorable Jocelyn Newman, Judge.

A P P E A R A N C E S (All present by video or telephone):

Wesley Few, Esq.
Attorney for the Plaintiff

Deborah B. Barbier
Attorney for the Plaintiff

Beattie Ashmore, Esq.
Attorney for the Defendant

Damali Taylor, Esq.
Attorney for the Defendant

James Griffin, Esq.
Attorney for the Defendant

Dave DeMasters, Esq.
Attorney for the Defendant

Dena Farbman Page
Proofreader

1 THE COURT: All right. And this is 2021CP0200889,
2 Julianne Foster v. Rhett Riviere. There are a number of
3 motions, and I don't even know where to begin. I don't know
4 if one of you all will tell me what you think is best. Who's
5 ready to take the lead on this?

6 Mr. Ashmore, you look like you're excited to; you're
7 chomping at the bit.

8 MR. ASHMORE: Tickled pink to be here this morning, Your
9 Honor. Beattie Ashmore from Greenville, Judge. And somehow,
10 I find myself speaking first. And there are clearly a number
11 of motions on the docket today, Judge. And unfortunately,
12 they're all still -- we need your assistance on all of them,
13 Judge, so.

14 And Judge, I don't necessarily know where to begin
15 either, but it would make sense that if you were to hear our
16 motion to dismiss, if you were to grant that, that would moot
17 everything else. And if it pleases the Court, that's where
18 I'll begin. Thank you, Judge.

19 So again, Beattie Ashmore on behalf of Airbnb, Judge,
20 from Greenville. And we appreciate your time this morning.

21 We do have a number of motions pending on the docket. We
22 had them set about a month ago in front of Judge Keesley.
23 They were all carried over until today, and now they are on
24 your desk. And we appreciate your time. And it sounds like
25 you certainly have had a chance to dive into this case, and

1 that's very helpful. And so I'll try and keep it at a 30,000-
2 foot level. And so if I could start by sort of doing that,
3 setting the stage a little bit, just to make sure that we are
4 all on the same page here.

5 So the plaintiff, Julianne Foster, was in a tennis
6 tournament. She went to Aiken, and she stayed at home owned
7 by Rhett Riviere. Rhett Riviere had a, I'll call her a
8 girlfriend, Katherine Thomas. And Ms. Thomas was what we call
9 a host on the Airbnb platform. And I'm sure you're familiar
10 with Airbnb, Judge. So you got a host, you got a guest, and
11 Airbnb is just a webpage, and it puts the host in touch with
12 the guest.

13 And so there was this tennis tournament. And so what is
14 crucially important to understand right off the bat, Judge, is
15 that the guest that entered the Airbnb webpage, that platform,
16 was Michelle Jain, J-A-I-N. Michelle Jain and Julianne Foster
17 played on the same tennis team. They were friends.

18 And so Julianne Foster, the plaintiff, had no
19 relationship whatsoever with Airbnb, Judge. We took her
20 deposition, and she admitted to that very fact.

21 What happened is they were staying there at the house
22 owned by Mr. Riviere, but again, the host was Katherine
23 Thomas. Mr. Riviere was -- according to SLED, he had hidden
24 cameras and he was filming people at this house and a number
25 of other locations. He's a multimillionaire in Aiken. He's

1 got a boat. They got the film off the boat there. I think
2 there's some 23,000 videos dating back to the year 2000 that
3 exist.

4 I know Mr. Griffin is on the line, and Mr. Griffin
5 represents Mr. Riviere in this case and in the criminal
6 proceedings. He's been arrested twice so far. So Mr. Riviere
7 has got that set of problems.

8 But he was allegedly, and it looks pretty certain, he was
9 filming people without their knowledge. He had hidden cameras
10 in this particular house that we're talking about.

11 So it's important, again, to note, Judge, that as they go
12 to this tennis tournament, it was Michelle Jain that actually
13 dealt with Airbnb. When Julianne Foster was contacted by
14 SLED, she actually thought they rented the house through Vrbo,
15 a competitor of Airbnb. And so for them to allege that she
16 somehow relied on any representations of Airbnb, Judge, it's
17 totally without merit. And so given that, Your Honor, that
18 sort of the high-level factual situation that we're dealing
19 with.

20 And Judge, I don't want to take up too much of your time
21 this morning, but they started with an 88-page complaint, and
22 they amended. They now have eight causes of action, and I
23 think it's 254 paragraphs. I might have said pages, but 88
24 paragraphs to 254 paragraphs, eight causes of action.

25 I'm not sure if Mr. Few is talking. I see his mouth

1 moving.

2 MR. FEW: I'm so sorry. I was talking to my staff
3 people, and I muted myself. Sorry, Beattie.

4 MR. ASHMORE: If you can keep your mute on all day, Mr.
5 Few, we would appreciate that.

6 So Judge, if I may, just, and stop me if I'm taking up
7 too much of your time, but I'd like to get through these
8 causes of action, Judge.

9 The first one, Judge, is the negligence cause of action.
10 We think that particular cause of action certainly should be
11 dismissed because they have got to show that we owed a duty of
12 care to the plaintiff. Judge, again, she had no relationship
13 whatsoever with Airbnb. And since they filed their first
14 complaint, there have been a number of decisions across the
15 country that have found this very cause of action to be
16 without merit. There is no duty of care on behalf of Airbnb
17 owed to the plaintiff, Julianne Foster.

18 And contained within our memos, Judge, we cite these
19 cases from Arkansas, California, a couple of federal cases.
20 There's a case out of Louisiana. And they all essentially are
21 dismissing the negligence claim against Airbnb because they
22 found no duty to the host or guest because the relationship
23 does not involve the direct control and corresponding
24 responsibility to the plaintiff.

25 And Judge, the next -- are you speaking to me, Judge?

1 THE COURT: I was not. I was actually speaking to my
2 father, who was bothering me while I'm trying to listen to
3 these motions and wants me to let Mr. Harte know that -- and
4 I'm so sorry to interrupt you, but, you know, since you
5 asked -- wants me to let Mr. Harte know that whatever motion
6 for reconsideration he filed in some action in Aiken that Dad
7 needs to hear, he supposed to give him a hearing, and Mr.
8 Harte's has been asking for a hearing that he will hear you
9 Thursday, next Thursday, a week from tomorrow, Thursday at
10 noon. So clear your schedule. That's what he just told me to
11 tell Mr. Harte. That's what I was -- so I believe Mr. Harte
12 heard me, and I'm sorry to interrupt you, Mr. Ashmore, but --

13 MR. ASHMORE: That's quite all right, Judge.

14 THE COURT: -- we've been moved to another part of the
15 office so that I would not be interrupted because Dad was
16 arrogance and stuff, but it didn't work, so --

17 MR. ASHMORE: On behalf of all of us on the Webex this
18 morning, please tell your father what a fine job he did, and
19 how proud we are of him in a fairly high-profile case recently
20 that he presided over. I don't know if you're familiar with
21 it, but --

22 THE COURT: I heard something about it. Are you sure
23 it's on behalf of everyone? Not to, you know, names or
24 anything. But did you get Mr. Griffin's --

25 MR. ASHMORE: Mr. Griffin and I go way back, Judge.

1 Quite a catch --

2 THE COURT: Right.

3 MR. ASHMORE: -- but he did an outstanding job, and we
4 all salute him.

5 MR. GRIFFIN: I do join in to that one, Mr. Ashmore.

6 THE COURT: Yes, sir.

7 MR. ASHMORE: For the record.

8 MR. GRIFFIN: For the record, yeah, just let it be known.

9 THE COURT: Yes sir, absolutely. All right.

10 Mr. Ashmore, go ahead.

11 MR. ASHMORE: Your Honor, back to the basics here.

12 Another cause of action, Judge, they assert employment based
13 and vicarious liability claims, negligent hiring retention and
14 supervision claims. Judge, they're claiming that Riviere and
15 Thomas are Airbnb employees. Judge, that's ludicrous; that's
16 preposterous. That is not factually correct. They are not
17 employees of Airbnb. And so I don't have much more to say
18 about those or that particular cause of action.

19 The premises liability claim, again, Judge, we don't own
20 the property. We are just -- we are a webpage. There's a
21 host and a guest. Mr. Riviere, yeah, that's his property.
22 Any premises liability claim would rest with him, certainly
23 not with Airbnb.

24 Again, the misrepresentation, the plaintiff's
25 constructive role in South Carolina Unfair Trade Practice Act

1 claims, they failed because they can't point to any
2 affirmative representation that we made that we didn't honor.
3 We made no representations to her whatsoever. Again, she
4 thought her friend represented -- or rented this through Vrbo.

5 And I will point out Michelle Jain rightfully sued Mr.
6 Riviere and settled that case. Notably, she was represented
7 by the Strom firm, who knows a good plaintiff's case, and they
8 didn't name Airbnb, and I think that's essential.

9 Another essential fact, Judge, is they've settled with
10 Mr. Riviere, all right. They brought -- he's a
11 multimillionaire. They've settled with him. He's facing
12 criminal charges. And here's Airbnb; what have we done? What
13 have we done? Nothing, Judge. We are a billion-dollar
14 company.

15 And so they've settled with the multimillionaire. They
16 get a free swing at us, Judge, and that's where we are here
17 today. And Judge, I'm asking you to end this.

18 They've got claims based on the real estate licensing
19 statute, Judge. What is that? That's for individuals, Judge.
20 They even admit that. It doesn't apply to corporations. The
21 real estate licensing statute does not apply to Airbnb.

22 And for all of these reasons that I've outlined, the same
23 holds true for punitive damages, Judge. There is no willful,
24 wanton, or reckless disregard of the plaintiff's rights here,
25 Judge. I don't want to belabor that point.

1 We've certainly thoroughly grieved all this. I've got
2 supporting case law to support all of these arguments. Unless
3 you'd like to hear anything further from me on this particular
4 motion, Judge, I think I've covered, again, the 30,000-foot
5 level.

6 THE COURT: Okay. No, I think I'm good. Let me hear
7 from plaintiff's counsel.

8 MS. BARBIER: Good morning, Your Honor.

9 THE COURT: Good morning.

10 MS. BARBIER: I'll be speaking on behalf of of Ms. Foster
11 with respect to the motion to dismiss. Your Honor, the only
12 thing that I think I can agree with wholeheartedly with my
13 friend, Mr. Ashmore, is that your Dad did a great job in the
14 Murdaugh trial, and we are very proud of him. So I'll start
15 with that.

16 But Your Honor, I also appreciate the fact that you had
17 the opportunity to review all of our pleadings and motions
18 before today. I know that was a lot to read. And first, I
19 apologize for that. And I'll explain, I think, through the
20 course of the other arguments in this case why we felt it was
21 necessary to file the motions that we filed.

22 But Your Honor, I think the motion to dismiss is a fairly
23 simple one for Your Honor to decide because in December 2021,
24 Judge Benjamin looked at these same exact issues, almost.

25 Airbnb filed a motion to dismiss the first complaint,

1 which was far less detailed than the current complaint, the
2 first amended complaint, and she issued an order and denied
3 that motion to dismiss. And we have -- I believe Your Honor
4 has a copy of that order. If not, I'll be happy to provide
5 it.

6 But she considered many -- all of the same arguments that
7 Mr. Ashmore just made. And after considering those arguments,
8 issued a well-reasoned order applying South Carolina law. And
9 I think what (indiscernible) that is blatantly obvious from
10 Airbnb's motion is that they cite law from lots of different
11 jurisdictions.

12 And they generally, I think, Your Honor, want you to do
13 what Mr. Harte wanted you to do, which is grant summary
14 judgment. They want you to consider things outside of the
15 pleadings, which is not the standard in a motion to dismiss at
16 this stage. The standard, as you know, is to review the
17 sufficiency of the allegations in the complaint and whether or
18 not we have correctly alleged the causes of action that we've
19 alleged and stated, you know, a factual -- a sufficient
20 factual basis for that. And Your Honor, I think without
21 question we have.

22 We have -- Your Honor, I could go through each of the
23 causes of action. But I can summarize for you instead by
24 saying that the -- you know, essentially Airbnb's argument is
25 that they had no duty or no responsibility to Ms. Foster. And

1 it's interesting argument coming from company, a company that
2 made 1.89 billion dollars in 2022. And they made that with
3 the -- using the marketing to the general public that they
4 are -- that safety is their number one priority and that their
5 guests and their hosts are a trusted community.

6 And that's their -- that's what they tell people who are
7 staying in Airbnbs, and that's what Ms. Foster and her friends
8 that stayed there for the tennis tournament were under the
9 impression of, that it was a safe place and that people who
10 were being hosts on Airbnbs were properly vetted and properly,
11 you know -- their backgrounds were properly reviewed before
12 they would be allowed to be hosts.

13 And we believe that Airbnb has utterly failed in the duty
14 they undertook to protect the plaintiff, and that is, Your
15 Honor, one of the specific findings in Judge Benjamin's order
16 is that in under South Carolina law that although there is no
17 general duty, there are four exceptions to that. And she
18 found that two of those exceptions applied.

19 First, that if there is an undertaking of that duty, and
20 second, if there's a special relationship. And plaintiff, as
21 Your Honor knows, was a guest in an Airbnb rental. And our
22 position is that they undertook a duty to keep her safe and
23 her friend safe while she was staying there.

24 Because of the inactions of Airbnb, Ms. Foster has videos
25 out there on the World Wide Web of her undressing and nude.

1 And she has suffered a lot of damages from that.

2 Your Honor, we also have sufficiently alleged the
3 relationship between Airbnb and Mr. Riviere and Ms. Thomas.
4 We have alleged, you know, the facts that Mr. Riviere is the
5 owner of the property. Anybody who did any due diligence
6 would know that Ms. Thomas didn't even have the legal right to
7 have people enter that property. She didn't own it. She's
8 simply the person who signed up.

9 But there are references throughout the commentary and
10 the reviews on Airbnb about Mr. Riviere. Airbnb was perfectly
11 aware that he was co-managing the rental of this property.

12 We've also alleged, Your Honor, that the criminal
13 misconduct that occurred in the Airbnb rental was clearly
14 foreseeable to everyone, but especially Airbnb. Airbnb has
15 been on notice that people have been placing hidden cameras in
16 their rental properties since at least 2013, and we'll get to
17 that, Your Honor, in more detail in one of our motions to
18 compel.

19 But there have been in excess, according to Airbnb, and
20 we think this number is extremely understated, but according
21 to even Airbnb, there have been at least 35,000 complaints
22 about surveillance devices in their properties. And so, you
23 know, that's a recent bit of discovery.

24 But there are clearly allegations in the complaint. We
25 cite to a number of different examples all over the country of

1 people who were surreptitiously video recorded in Airbnbs, in
2 bedrooms and bathrooms and places that people are entitled to
3 privacy. And so and based on those instances, Your Honor, we
4 have alleged that a -- sufficiently pled a claim for gross
5 negligence as well.

6 With respect to the vicarious liability and the
7 employment-based claims, Your Honor, we have cited to South
8 Carolina law, which supports the pleading of these causes of
9 action, Watkins v. Hall and Armstrong v. Food Lion, and
10 they're all in our brief. I'm not going to, you know, take
11 you through our brief, but we relied on South Carolina law as
12 opposed to Airbnb, who cited a lot of law from a lot of
13 different jurisdictions.

14 With respect to the premises liability claim, Your Honor,
15 we have sufficiently alleged that Airbnb had sufficient
16 control over this property. In contrast to what Mr. Ashmore
17 said, Airbnb is not just an electronic platform that puts a
18 host in touch with a guest. Airbnb controls the entire
19 transaction. They control the payment. They control the
20 terms. They don't even tell a guest who they're renting from
21 until after the transaction is placed, and then after that,
22 they control refunds. They can control all of the terms of
23 the rental Airbnb is in control of. And we have sufficiently
24 alleged all of that.

25 We've also sufficiently alleged a claim for constructive

1 fraud in violations of the South Carolina Unfair Trade
2 Practices Act.

3 And I think it's important to note, Your Honor, with
4 respect to the South Carolina Unfair Trade Practices Act,
5 that's an ongoing fraud that we've alleged, and we've actually
6 in our complaint asked the Attorney General to look at this
7 issue because we believe it affects, you know, millions of
8 South Carolina consumers. Airbnb is a very -- has a very
9 prominent role in this state in terms of the number of Airbnb
10 rental units that exist. And so we believe it represents a
11 consumer fraud to South Carolinians and a danger that needs to
12 be investigated.

13 With respect to South Carolina's real estate laws, we do
14 not concede that it doesn't apply to Airbnb. It absolutely
15 applies to them. And the people that are using Airbnb are
16 also subject to it. They are absolutely circumventing this
17 law. They are acting as real estate brokers and property
18 managers, and they are not complying with one, one provision
19 of those real estate laws.

20 And this is not something new to Airbnb. Jurisdictions
21 and cities and municipalities all over the country are making
22 the same claims against Airbnb. So there's no reason for them
23 to feign surprise here.

24 They are attempting to be unregulated in this state and
25 every other state and every other country that they operate

1 in, and I believe those days are going to come to an end. But
2 the way that these things come to an end is through
3 litigation, as we know that.

4 And we've also pled sufficient facts to support a claim
5 for punitive damages. I understand that Airbnb believes that
6 they have no duties, no obligations, and no responsibilities
7 to Ms. Foster. But we believe that a jury is going to
8 disagree, and we think that Judge Benjamin was absolutely
9 correct in denying the first motion to dismiss. And we would
10 ask that Your Honor to do the same.

11 I'll be happy to answer any questions, if you have any.

12 THE COURT: I don't of you.

13 Back to Mr. Ashmore, and I probably should have asked
14 this at the outset, but sometimes my brain vacillates between
15 dismissal and summary judgment without realizing that I've
16 done that.

17 What say you with respect to a motion to dismiss based
18 solely on the allegations in the face of the complaint, and
19 whether there's any theory under which claims could prevail
20 without the Court considering, you know, depositions,
21 affidavits, et cetera, et cetera?

22 MR. ASHMORE: Well, I understand certainly the standard
23 involved, Your Honor. But you know, again, for them to, for
24 instance, say that -- that Riviere and Thomas are employees of
25 Airbnb, they've got to -- they've got to come forward with

1 some -- some evidence, and that evidence simply doesn't exist.
2 A number of these causes of action, Judge --

3 THE COURT: But do they have to come forward with some
4 evidence at this stage? Obviously, counsel has, you know, a
5 responsibility. This sort of goes back to the last motions
6 that I heard. Yeah, there are ethical responsibilities, Rule
7 11, all those things. But do they actually have to have
8 evidence at this -- outside of that personal responsibility?

9 MR. ASHMORE: Well, it's like the duty, Your Honor. And
10 again, the five cases, what's important, as Ms. Barbier
11 discussed Judge Benjamin's order, the five cases that we cite
12 are -- have been handed down since her order. And there
13 are -- Judge, those are cases where motions to dismiss are
14 granted because there's no duty owed by Airbnb to the
15 plaintiff. There is not, Judge. We don't owe this plaintiff
16 a duty.

17 And she testified, Judge, that she had no relationship
18 whatsoever with Airbnb. They've got to be able to come
19 forward and, again, remembering that it was Michelle Jain that
20 interacted with Airbnb and not this plaintiff. Judge, I think
21 that kills their case.

22 She could not have relied on any statements or
23 representations from Airbnb because she didn't know who they
24 were. Until her deposition, she still didn't know who they
25 were. And she admitted that at her deposition, Your Honor.

1 And so again, you know, there's just not enough there at
2 this -- in their pleas. And for those --

3 THE COURT: But do I not have to presume that everything
4 she says in the complaint is true?

5 MR. ASHMORE: Well, Your Honor, let me say this. Even
6 assuming that, Judge, there's no duty that we owe this
7 plaintiff. I mean, that's clear. And our memo is full of
8 arguments and cases that establish that very point.

9 THE COURT: But no South Carolina cases, which I think is
10 important.

11 MR. ASHMORE: Well, Your Honor, you know, no South
12 Carolina case, Judge. But I, you know, look, this is -- there
13 are federal cases. There are cases from across the country
14 that have, again, held that Airbnb owes no duty to a plaintiff
15 under this exact set of circumstances. I think that's
16 compelling.

17 THE COURT: (Indiscernible) South Carolina weren't
18 consistently a minority jurisdiction, that would be a much
19 more compelling argument. But we take a minority position on
20 so many things. I don't know. I don't know if maybe that's
21 neither here nor there.

22 I just think that if I start digging into which part of
23 these allegations are true and which part is not true, that
24 goes beyond a motion to dismiss, and Wes' brother is going to
25 say, hey, you shouldn't have done that. That's my feeling,

1 and I mean, and that's really sort of black letter standard
2 motions to dismiss in South Carolina, at least.

3 And I'm not prepared today to find that there is
4 absolutely no duty based on decisions from other jurisdictions
5 that may be eventually where we get to, but I'm not prepared
6 to make that finding today, certainly not on a motion to
7 dismiss.

8 My approach is to assume the truth of the allegations in
9 the complaint and determine whether there's any theory under
10 which the plaintiff could prevail. And with those exceptions,
11 and without clear South Carolina law, I think there may be a
12 theory, and I've got to deny the motion to dismiss the
13 complaint. You may get it on summary judgment. I don't know.

14 MR. ASHMORE: Thank you, Judge. Understood.

15 THE COURT: Yeah, not as a dismissal.

16 So then, let's move on to -- well, maybe I'll ask Mr.
17 Ashmore if you want to talk about amending your answer next.
18 Is that --

19 MR. ASHMORE: Sure, Judge. I don't think there have been
20 any objections to that, Your Honor, and I just ask you to
21 grant that motion.

22 THE COURT: Is there any objection to Airbnb's motion to
23 amend its answer, insert a crossclaim?

24 MR. GRIFFIN: Your Honor, this is Jim Griffin. We don't
25 have an objection to his amendment provided -- you know,

1 pretty sure no one would disagree that we aren't prejudiced,
2 moved to dismiss, saying that it's served upon us. We don't
3 think it's a mandatory crossclaim.

4 Airbnb objected to dismissing Mr. Riviere from the
5 plaintiff's complaint, and that's because of this motion to
6 amend. We have settled with the plaintiff. We filed a
7 stipulation of dismissal from the plaintiff's complaint, and
8 they've objected.

9 So procedurally, I'm not sure if it's in the right
10 posture. I think we should be dismissed from the plaintiff's
11 complaint, and then Airbnb should then file a third-party
12 action against Mr. Riviere alleging the things that they're
13 alleging. But that's -- that's sort of a procedural issue.
14 But does that make sense?

15 MR. ASHMORE: Judge, it --

16 THE COURT: It does. I'm wondering why that wouldn't
17 happen.

18 Mr. Ashmore.

19 MR. ASHMORE: Well, Judge, what happened is they settled
20 with Mr. Riviere, and which is fine. But we didn't sign off
21 on that settlement because we didn't know about it. And so
22 there are only two instances we make that settlement could be
23 upheld, and that is if all parties sign off on it or by order
24 of the court. And they obtained neither one of those.

25 So if you grant our motion to amend and name Mr. Riviere

1 and Ms. Thomas, then that moots that objection to their
2 settlement.

3 THE COURT: Right. I guess I'm trying to determine the
4 tactical advantage or procedural advantage that's gained by
5 not allowing the dismissal. The only party with an existing
6 claim against Mr. Riviere has resolved that claim prior to
7 today, and I've still not ruled on this motion. So all
8 existing claims, this has been resolved, so it seems like Mr.
9 Riviere should, in fact, be dismissed from the case, and this
10 would have to then be a third-party action to bring him back
11 in.

12 MR. GRIFFIN: Well, they -- that's our position, Your
13 Honor. That's our position.

14 MR. ASHMORE: Yeah. Well, Judge, they again, they need
15 an order from the court to do that, to approve that
16 settlement. That's what the rule says, Judge, either all
17 parties sign off on it or there's an order from the court.
18 Neither one of those elements have been met.

19 MR. GRIFFIN: So Your Honor --

20 THE COURT: (Indiscernible) needs to be reworded because
21 it should be all parties with an interest in it.

22 MR. GRIFFIN: Right. Right. Your Honor, so we would
23 request that -- and we did file a stipulation of dismissal.
24 They didn't sign off on it. We didn't think they needed to
25 sign off on it. We would request the Court to dismiss Mr.

1 Riviere based on the settlement from the plaintiff's
2 complaint. And then they can file a third party
3 indemnification claim. We don't think it has any merit
4 because there is no -- Mr. Riviere never signed any agreement
5 with Airbnb. But be that as it may, we'll litigate that down
6 the road. But procedurally, that's how we think it should
7 proceed.

8 THE COURT: I agree, actually, with Mr. Griffin. So Mr.
9 Riviere should be dismissed pursuant to that settlement,
10 stipulation of dismissal. Then I'm going to --

11 MR. DEMASTERS: Your Honor --

12 THE COURT: Yes. Who's talking?

13 MR. DEMASTERS: Yes, good morning. I apologize. I
14 wanted to jump in. I'm here on behalf of defendant Catherine
15 Thomas, Your Honor. And just for the record, I wanted to
16 object to the amendment to allow counterclaims against Ms.
17 Thomas. But we understand, you know, liberal amendments to
18 pleadings, no -- I don't think Ms. Thomas will suffer any
19 prejudice. But just for the record, we do want to object to
20 it. And then we would request that the amendment occur, you
21 know, sometime after the ruling on the motion to dismiss.

22 THE COURT: Okay.

23 MR. DEMASTERS: Or at least the filing of the written --
24 it's our understanding, Your Honor is going to deny Airbnb's
25 motion.

1 THE COURT: Well, I forgot that Ms. Thomas was a part of
2 it, honestly. So I was going --

3 MR. DEMASTERS: I (indiscernible) too, Your Honor.

4 THE COURT: I was denying it as to Mr. Riviere because
5 now that he's dismissed, there is no -- I mean, it's really
6 sort of moot, I guess, now that I'm determining that Mr.
7 Riviere needs to be dismissed. So there is no crossclaim to
8 assert. It would have to now be a third-party complaint.
9 What specific objection is there as to Ms. Thomas? What legal
10 objection, I'm sorry?

11 MR. DEMASTERS: You know, we just object. But we think
12 that the allegation against Ms. Thomas, you know, are -- you
13 know, we think they should be denied. It's just an objection
14 for the record, Your Honor. I don't want to agree to
15 (indiscernible).

16 THE COURT: Understood. Okay.

17 MR. ASHMORE: So just to complicate matters, Judge --

18 THE COURT: Yes.

19 MR. ASHMORE: -- that means -- that means I'll have a
20 cross -- she hadn't settled, right?

21 THE COURT: Right.

22 MR. ASHMORE: So that means Airbnb as a crossclaim
23 against her, correct?

24 THE COURT: Yes, sir.

25 MR. ASHMORE: That's your ruling, Your Honor, yes.

1 THE COURT: Yes, sir. Yes, sir. And we'll have to file
2 a third-party complaint to get Mr. Riviere back into the case.

3 MR. ASHMORE: Understood, Your Honor.

4 THE COURT: So the motion is denied as to Mr. Riviere
5 because it's moot, and granted as to Ms. Thomas. Make sense?

6 MR. ASHMORE: Thank you, Your Honor.

7 THE COURT: I know that procedurally kind of maybe
8 complicates things on your end, Mr. Ashmore. But I think that
9 that's technically the correct way to do this.

10 MR. ASHMORE: Thank you, Your Honor.

11 MR. DEMASTERS: Thank you, Your Honor.

12 THE COURT: All right. Now, next motion. These are
13 discovery. Well, they're also -- actually, it does not matter
14 which order the rest of these go in.

15 MR. ASHMORE: Your Honor, if it helps the Court, we do
16 believe or I believe that motions number 3 and 6 are fairly
17 closely related. And I was going to argue those. They don't
18 have to go now. They probably should come last. But I would
19 think that we would argue those together. They're both
20 motions to compel with respect to request for production. But
21 it's probably better for the Court to get as much information
22 as they can on these other motions to quash that would inform
23 them, would inform Your Honor about the status of discovery in
24 the case. That's my --

25 THE COURT: Okay.

1 MR. ASHMORE: -- opinion that I'd offer.

2 THE COURT: We'll do it that way.

3 MR. ASHMORE: But I just wanted to let you know --

4 MS. BARBIER: Judge, too, I don't want to interrupt, but
5 I'm just a little confused. Ms. Foster has -- I mean, Ms.
6 Thomas has had different counsel, and I'm happy to see Mr.
7 McMasters (sic), but I just don't know who he is, and I didn't
8 know that he was in this case or he filed a notice of
9 appearance or anything.

10 MR. DEMASTERS: I apologize. I should have said it. I'm
11 here for Damon Wlodarczyk. I work at his firm.

12 MS. BARBIER: Oh, okay.

13 MR. DEMASTERS: And he had a conflict with the hearing
14 this morning. So that's why I'm here. I apologize.

15 MS. BARBIER: Well, happy to have you. I just didn't
16 know who you --

17 MR. DEMASTERS: Oh, this probably is my only appearance.

18 THE COURT: And I'm sorry. I just knew that. So you
19 know, that probably should have been put --

20 MR. DEMASTERS: I apologize.

21 THE COURT: -- on the record, but I'm just familiar with
22 Mr. DeMasters and Mr. Wlodarczyk, so.

23 UNIDENTIFIED SPEAKER: I googled him. That's how I knew
24 who he was.

25 THE COURT: Easy enough.

1 Mr. Ashmore, let's go back to you on these motions to
2 quash, I guess.

3 MR. ASHMORE: Protective orders, yes, Judge. And we can
4 loosely talk about two at once. So Rich Baer, B-A-E-R, and
5 Tara Bunch, those are two Airbnb employees, and we're moving
6 for a protective order on those, Judge.

7 So I'll start with Rich Baer, Judge. He's the number one
8 lawyer at Airbnb. He's the top of the pyramid, Judge. He is
9 overseeing this case. He's overseeing every single case. And
10 there's nothing they can ask him, Judge, that would not
11 involve the attorney-client privilege. I mean, he's making
12 strategic legal decisions regarding every lawsuit that Airbnb
13 has, Judge. He's very smart, very busy. But he's the top of
14 the pyramid, judge.

15 And we've cited case after case that -- I mean, it's
16 inappropriate to depose any of our lawyers, but particularly
17 the head lawyer of Airbnb, Judge. And I guess they just
18 googled to find out who's the head lawyer at Airbnb, and they
19 just thought they would take it from there, Judge. But this
20 is as inappropriate as can be, Judge, and we strongly object,
21 Judge, to any notion that our head -- head of our legal
22 department can be deposed.

23 THE COURT: All right. Who's handling this? Mr. Few,
24 Ms. Barbier?

25 MS. BARBIER: I'll respond to that, Your Honor. First of

1 all, Your Honor, we are not seeking to ask him any questions
2 about this litigation in terms of legal strategy,
3 communications he's had about this litigation. That is not at
4 all what we want to ask him about.

5 We went to ask him about compliance issues. We want to
6 ask him about Airbnb's policies and procedures. We want to
7 ask him about things that relate to their compliance in other
8 jurisdictions with real estate laws, their policies and
9 procedures on hidden cameras, and steps that they take once
10 they receive these complaints.

11 I'm not at all convinced, Your Honor, that Mr. Baer is
12 practicing law in California. And as their chief counsel,
13 which is what he's represented to the bars of two states that
14 he's doing -- he's not licensed in California. He's not
15 registered as their general counsel. And if he is engaged in
16 the practice of law there, he's engaged in the unauthorized
17 practice of law.

18 You can't have it both ways. You can't say that you are
19 their chief legal officer and that you're giving them legal
20 advice and that your office is in San Francisco, but then not
21 be licensed to practice law there and not be registered as
22 their general counsel there. That just doesn't make any
23 sense.

24 And so where he is licensed to practice law, which is New
25 York and Colorado, he has told them that his office is in San

1 Francisco, and that's where he's practicing. So I'm not --
2 and, you know, his title is not general counsel. His title is
3 chief legal officer. And as Your Honor knows, there are many
4 officers within corporations that act as both.

5 And so what I would say is I would only be deposing him
6 in his capacity as a -- not about what legal advice he's
7 giving Airbnb, okay. I will be deposing him as a corporate
8 officer who also makes decisions and guides policy and has
9 factual information about cases that are very similar to the
10 case at hand.

11 And as Your Honor knows, discovery is not limited to
12 people who have actual facts about the plaintiff in that
13 particular suit. I'm not suggesting that he's intimately
14 familiar with the facts of Julianne Foster and what happened
15 at her Airbnb. And that would be a complete misread of Rule
16 26.

17 Rule 26 allows us, as the scope of discovery, to discover
18 things that are related to issues in the case. It's a very
19 broad standard, as Your Honor knows. And we are entitled to
20 take depositions of people who have, you know, general
21 knowledge about the issues that are listed in our complaint.

22 We would imagine that he would also be acting in a
23 compliance capacity, be acting in a -- know, have information
24 about Airbnb's compliance with real estate laws, and that is a
25 very crucial aspect of our case. It is a cause of action that

1 has been in the case since the beginning that was not
2 dismissed, specifically not dismissed by Judge Benjamin, and
3 she allowed us to go forward on it.

4 And essentially, what Airbnb is doing, Your Honor, is
5 they are not allowing us to take any discovery in this case.
6 We have disposed a 30(b)(6) witness, and that happened after
7 nine months of litigation on that issue. There were 24
8 topics. They objected to every single topic. There was a
9 hearing on that. Their motion for protective order on that
10 deposition was denied as to every topic. They then moved to
11 reconsider. That motion to reconsider was denied.

12 One of the topics is the organizational structure of
13 Airbnb. They have yet to provide us with an organizational
14 chart. The 30(b)(6) witness named certain people that were
15 involved in the organizational structure of Airbnb, and that
16 is how we came to find some of the names of the people that we
17 are seeking to depose.

18 But they have objected to every single request for
19 production, every single interrogatory. They objected to us
20 taking every deposition we've asked them to take. We've given
21 them a list of about 15 people, objected to every single one,
22 and they said they don't have any knowledge about the case.

23 We are not limited to people who -- you know, there may
24 be somebody who spoke to Michelle Jain on the customer service
25 line at Airbnb. But we're not limited to depose somebody who

1 spoke with Michelle Jain. We are allowed to take discovery of
2 their employees, and on the general practices and policies and
3 the issues that are outlined in our complaint. An Airbnb has
4 just fought us at every turn about that, and this is just one
5 more example.

6 THE COURT: Let me ask. Why isn't -- why was this not
7 noticed as a 30(b)(6) as to these topics, and let them tell
8 you who has knowledge regarding those specific topics if
9 that's what you're looking for?

10 MS. BARBIER: Right. That's a good question, Your Honor.
11 And the answer is we did notice a 30(b)(6) deposition on all
12 of these topics. And that is going to be heard in a later
13 motion today because after nine months of litigating the
14 30(b)(6) issue, they produced a witness who had essentially no
15 knowledge on the topics that were listed. Her responses were
16 evasive. They were nonresponsive. She refused to answer
17 questions. She had not educated herself on the topics.

18 It was absolutely astounding, so much so that during
19 the -- after the first hour of the deposition, it became
20 apparent she just wasn't going to answer the questions, which
21 was, in my opinion, unbelievable in light of the fact that we
22 had spent so much time litigating these topics, and the judge
23 had expressly said, you have to answer the questions on these
24 topics.

25 They produced a witness who then claims to have no

1 information about these topics or wants to limit her testimony
2 to her personal knowledge, which is not the purpose of a
3 30(b)(6). So we tried to -- you know, to depose a 30(b)(6)
4 witness on these topics. That has been -- they just have
5 blatantly refused to answer the questions on these topics.

6 And so now we have started narrowing down to okay, well,
7 who would deal with that at Airbnb. And the only way that we
8 can -- we have been able to discern who might have knowledge
9 of these topics is by the few names that were mentioned at the
10 30(b)(6) deposition by the witness, and then going on public
11 websites that have, you know, certain officers listed. And
12 that's how -- to this juncture, and we've had specific
13 interrogatories, Your Honor, about who has knowledge of these
14 issues. And they have refused to answer those questions.

15 And so, you know, if they didn't want to produce Mr. Baer
16 on this topic, they had plenty of time to say, you know, if
17 you want to ask us about real estate licensing compliance,
18 this is the person that you need to depose. They haven't done
19 that. If you want to ask us about compliance with other, you
20 know, different, you know, real estate and premise liability
21 laws in other jurisdiction, this is the person to depose.
22 They haven't done that. Their response has been to object and
23 to stonewall at every turn.

24 And you know, Your Honor, I think this issue with respect
25 to Mr. Baer and his whether or not he's even practicing law at

1 Airbnb is a very legitimate question. I mean, if he is
2 practicing law, why in California, why isn't he registered
3 there, and why isn't he license there? They haven't responded
4 to that in their pleadings.

5 I find that highly unusual that somebody who would be at
6 that level of a corporation of that size would not have dotted
7 his i's and crossed his t's with respect to making sure that
8 he's properly licensed in the jurisdiction in which he's
9 practicing. But they haven't responded to that. They've
10 simply said, of course he's licensed.

11 Well, that's not how it works. I mean, I can't put on my
12 website that I have an office in California and hold myself
13 out to the general public as a, you know, general counsel of a
14 California corporation and not be licensed there. I mean,
15 that's the unauthorized practice of law. And so until -- I
16 don't accept that he even has any privilege with Airbnb or any
17 right to an attorney-client privilege with them until they put
18 forth some evidence that he is validly licensed in the State
19 of California.

20 THE COURT: They may be trying to avoid giving evidence
21 towards his prosecution for the unauthorized practice. I have
22 no idea. I mean --

23 MS. BARBIER: That very well may be, Your Honor. And you
24 know, that would be in keeping with how (indiscernible) this
25 company has been. This is their second set of lawyers, Your

1 Honor. This is their second set.

2 THE COURT: And I don't know that. It was a joke, and a
3 half serious joke, but a joke. I know nothing about Mr. Baer.
4 I'm not suggesting that he's committing any crime, but to the
5 extent that it's alleged that he has, and that Airbnb won't
6 give up the deets on him breaking the law, you know, I would
7 kind of understand that.

8 MS. BARBIER: Yes.

9 THE COURT: Let's talk about, then, Mr. Ashmore, the
10 30(b)(6) notice. I don't know that I've seen the 30(b)(6)
11 notice. Was -- I know there was a 30(b)(6) deposition, but
12 were there multiple designees for different topics? Let's
13 talk about that.

14 MR. ASHMORE: Your Honor, we produced one witness. She
15 sat on two separate occasions for about 16 hours, Judge. It's
16 a 600-page transcript.

17 They had a motion for sanctions drafted, I think, before
18 we began the 30(b)(6). They're just unhappy with her answers.
19 I disagree with virtually everything that Ms. Barbier said.
20 This is a big, sophisticated company, and we are doing our
21 best to and have fully complied with discovery.

22 And so an hour into that deposition, they were unhappy
23 with the answers that she was giving. They got Judge Keesley
24 on the line, and he said what in the other judge said, y'all
25 do your best and get through the day and answer the questions,

1 and that's what we did, Judge.

2 At not a single point did we direct her to not answer a
3 question. She outlined names of employees, departments that
4 handle particular areas, and there were 24 extraordinarily
5 broad topics. And she was prepared and did answer those
6 fully, Judge.

7 I know that she was prepared. I participated in some of
8 those prep sessions, and she did her best. She frankly,
9 Judge, she was threatened 12 times with sanctions during the
10 course of her deposition, which sometimes causes a deponent to
11 sort of fall within a shell.

12 So other than that, Your Honor, you know, she did her
13 best under very trying circumstances.

14 And Judge, I don't know if I'm supposed to talk about
15 this California bar thing or not. I don't think any of us on
16 this line know anything about the California bar. And so
17 they've done some googling, apparently, but Mr. Baer has filed
18 a declaration and he's a licensed attorney. He's a chief
19 legal officer. And again, he's overseeing this and every
20 other lawsuit that Airbnb has. And I can't imagine that he
21 would be allowed to be deposed.

22 Judge, I do have a district of South Carolina case on
23 that. It's Judge Anderson's case, Pure Fishing, that says you
24 can only depose attorneys in limited circumstances. No other
25 means exist to obtain the info, the information is irrelevant

1 and non-privileged, and the information is crucial to the
2 preparation of the case. They can get information from other
3 sources, but Mr. Baer, Your Honor, is simply off limits.

4 THE COURT: Well, and I asked about multiple designees
5 and why wasn't it a 30(b)(6), et cetera, et cetera because I
6 mean, I want to help plaintiffs get the information, and from
7 the appropriate person. So yeah, maybe they can get it from
8 someone else, but how do they know who that someone else is?
9 Why weren't there, you know, if there are 24 broad topics and
10 the deponent could only speak to X number of them or only
11 based on personal experience, I mean, there can be more than
12 one 30(b)(6) designee.

13 So if what we're talking about is legal compliance, I
14 mean, there's got to be a compliance officer somewhere in this
15 very large company, right. So if what they want to know is
16 about compliance, why hasn't a compliance officer or whatever
17 that title is within that company been designated as a
18 30(b)(6) deponent so that they don't have to bother Mr. Baer?

19 MR. ASHMORE: Understood, Your Honor. And at my
20 invitation, we recently received more interrogatories from the
21 plaintiffs in order to get them -- we've asked for a more
22 targeted -- you know, exactly what do you want from us. And
23 we're trying to get there, Judge, and we've gotten some
24 interrogatories from them a week or ten days ago. And we're
25 getting there, Judge. We will get them -- get these

1 individuals. We'll get them these answers to these
2 interrogatories, and we'll get them the deponents now that we
3 have a better understanding of exactly what it is that they
4 want, Judge. And we've asked them for that.

5 For instance, on Mr. Baer, you know, what do you want
6 from Mr. Baer. And I know, as Ms. Barbier responded just now,
7 her response back then was we want to talk to him about
8 nonprivileged information. Well, what is that? And he can't
9 talk about it. He doesn't have any nonprivileged information,
10 Judge.

11 And so we're getting there. We'll get down -- we'll get
12 them information; we'll get them names of deponents if they
13 would just tell us with a little more specificity what exactly
14 it is they're looking for. You know, Mr. Baer didn't join
15 Airbnb until almost a year after this particular incident even
16 happened. So he would have had no knowledge of policies and
17 procedures that are relevant in this case.

18 MS. TAYLOR: Your Honor, may I be heard on this topic
19 briefly? Damali Taylor, also on behalf of Airbnb.

20 I appreciate your patience, Your Honor, and I appreciate
21 you letting me speak. So just a couple of things. Just so
22 the record is clear here, the 30(b)(6) witness did sit for two
23 days. And she was there for 16 hours, she flew to Aiken and
24 we were there until seven in the evening, and then we offered
25 a second full day.

1 She answered every single question they asked of her,
2 including questions about the real estate license statute.
3 They didn't like her answer, but she answered them. She let
4 them know there is no person knowledgeable about this statute
5 because this is not a statute that applies to Airbnb. There's
6 no one in the company poring over the statute because on the
7 plain face of the statute itself, as they responded to in
8 their interrogatories, it doesn't apply to corporations. They
9 didn't like that answer, but she gave an answer. There was no
10 point within any of those 16 hours that that witness did not
11 answer the question that was asked of her.

12 And so they did have 24 very broad topics. We have been
13 trying to meet and confer with them on each of those topics
14 for many months now, trying to get some specificity as to what
15 they're asking for. We finally just, you know, a few weeks
16 ago got them to agree to meet and confer with us to try to
17 whittle down and try to focus us on what exactly they're
18 looking for.

19 They've issued interrogatories. We are in the process of
20 finding witnesses to respond to those interrogatories. But
21 they have taken deposition, including the deposition of the
22 30(b)(6) witness and another witness.

23 There is no reason that I can imagine that they would
24 need to go to the chief legal officer of this company, who is,
25 you know, the chief legal officer of the company as their

1 opening salvo in a deposition about a real estate license that
2 does not apply to Airbnb.

3 And so, you know, this whole business about whether or
4 not he's properly licensed and an attorney, that's a red
5 herring, and we addressed that in our brief, Your Honor. We
6 talked about the standard that actually applies here under
7 South Carolina law and California law. I'm a California
8 attorney and a New York attorney, and that's just -- I mean,
9 I've never heard anything like that. And so I can respond to
10 it if Your Honor would like, but it is a red herring.

11 And the standard here is whether or not there is an
12 attorney-client privilege relationship, right. Whether or not
13 Mr. Baer is an attorney for the Corporation or that the
14 Corporation sees Mr. Baer as its attorney -- there is no
15 question that is the case. Anything else, I don't know why
16 plaintiffs are attacking this poor man, saying that he's not
17 licensed, he's not an attorney; that is just false.

18 But we really -- more than any other kind of issue, we
19 really object to deposing general counsel. That would set a
20 dangerous precedent in all sorts of cases. And so we ask that
21 Your Honor grant our motion in that regard.

22 THE COURT: Well, and I'm asking all of these questions
23 because, as I said, I want plaintiffs to be able to get the
24 information. I'd even be willing to or would consider denying
25 the motion to quash, but Ms. Barbier, what I don't want to do

1 is -- first off, I don't want to set some, you know, dangerous
2 precedents, a slippery slope, et cetera, et cetera. But also,
3 I don't want to allow the deposition only for Mr. Baer to
4 respond by asserting a privilege to each and every question.
5 That's just a waste of everybody's time.

6 If you're going to ask him things that are not subject to
7 that privilege, maybe he has the answers, maybe not. Maybe he
8 sees them all as privileged. And then you're back in court
9 with a motion for a protective order, motion to compel, you
10 know, et cetera, et cetera. But if there is a compliance
11 officer, for example, let's identify that person and just go
12 straight to that person rather than wasting the time with Mr.
13 Baer. And I don't know what he'd say or not say, but counsel
14 seems to suggest that he probably not answer any of your
15 questions, which may be fine, but it might be spinning
16 everyone's wheels and wasting time and money.

17 MS. BARBIER: I agree, and we don't want to do that. I
18 mean, we have already spun a lot of wheels and wasted a lot of
19 time because the interrogatories we sent them ten days ago or
20 so at the request of Airbnb were absolutely unnecessary.
21 We've already asked them for these witnesses two years ago. I
22 mean, this case has been going on now, as Your Honor knows, a
23 long time. And we have asked all the basic interrogatories.

24 They know exactly what we're looking for. They can read.
25 They're very smart people. And so there was no need for those

1 interrogatories, but out of -- in the spirit of trying to
2 cooperate and trying to come to some consensus, we agreed to
3 send them some additional interrogatories.

4 But I have absolutely zero confidence, particularly since
5 Ms. Taylor just said that there is nobody at Airbnb who has
6 not -- that's what the 30(b)(6) designee said. She said there
7 is nobody with any knowledge of any compliance with real
8 estate laws in South Carolina. I don't believe that, Your
9 Honor. There are jurisdictions all over this country where
10 they are being accused of a very similar allegations. And I
11 find it very difficult to believe that they don't have -- we
12 don't know who a compliance officer is. They have never
13 identified one. They have yet to produce one email between
14 anybody at Airbnb. There is no internal email communications
15 that have been produced.

16 There's not one email. There's not one text message.
17 They have given us 1345 pages of documents, which is minuscule
18 as we know in the -- in the stream of these things. This is a
19 billion-dollar corporation that operates globally, and 500 or
20 so of those pages is a publicly filed SEC document, which
21 means they've really produced about six or 700 documents.

22 And those are some that are screenshots from their
23 website, which are also publicly available, and there's a
24 couple of other, you know, policy manuals and whatnot. But
25 Your Honor, they have produced -- if they had produced

1 documents, obviously, we could review the documents and get
2 names from email addresses and names from documents that were
3 relevant to the issues and depose those people.

4 But they have -- even when our last motion to compel was
5 granted, and it was granted -- I think it was Judge Dennis
6 that granted it, if I -- there's been so many judges involved
7 in this case I can't recall.

8 But a year ago, and I have the transcript right in front
9 of me, May 31st of 2022, Judge Dennis said,

10 "You've made a motion, and I said it's very simple.
11 If you find something that after they've given you an
12 affidavit that says this is" -- he's talking about the
13 discovery of documents.

14 "If we find out they haven't produced something that
15 we've asked for, then we're talking about some serious
16 sanctions, and I don't think the lawyers want to be going
17 to the Office of Disciplinary Counsel, nor do I think the
18 companies want to be penalized" -- the companies, talking
19 about Airbnb -- "but the bottom line is that's going to
20 happen, folks, so let's quit playing games, and let's do
21 something."

22 And that is May 31st of 2022. And you know, Judge
23 Dennis, very much to his credit, saw exactly what was
24 happening, and he saw that there were games being played, and
25 he said stop playing games. And what happened after that was

1 that Airbnb removed their lawyers. Okay? They hired a
2 different set of lawyers.

3 And anytime -- and based on the track record here,
4 they're asked to comply with discovery or produce discovery or
5 produce a witness. You know, they go back to MO, which is
6 okay, you've ordered me to answer these topics, I'm just going
7 to produce a witness who says, I don't know or I'm not sure
8 about that. I didn't ask anybody.

9 Yes, you can say that for 16 hours. If you read the
10 transcripts of those two days of depositions -- and one was in
11 October and the other one was in January -- and the reason
12 they were spread out is because we wanted to give Airbnb the
13 benefit of the doubt.

14 We said, okay, your witness was clearly not prepared.
15 She's clearly unwilling to answer these questions, even though
16 she's been ordered to, both before the deposition and during
17 the deposition. She's been ordered to do it, but we're going
18 to give you one more chance. So we're going to give you a
19 couple months to prepare her and to let her know she's got to
20 answer these questions.

21 We came back in January. We got the same business: I
22 don't know, I didn't ask anybody, I can tell you what
23 happened. Then I worked in that department, I talked to one
24 person. I mean, the same kind of stuff, Your Honor. You can
25 actually -- and now I know for certain, you can spend 16 hours

1 saying I don't know or I'm not sure or I didn't ask somebody,
2 as unbelievable as that sounds.

3 And you know, Your Honor, it's difficult on a 30(b)(6) --
4 on our motion for sanctions, you know, it does require
5 somebody to read the transcript, and I know that's a lot to
6 ask, but it -- we have put excerpts in our motion for
7 sanctions for some of her answers, which are characteristic of
8 all of her answers, but she was one designee.

9 She did not have knowledge on all the topics, not even
10 close. She was -- I don't know how old she was, but it
11 appeared to me that she was very inexperienced. She had never
12 testified on these topics before.

13 I'm not sure that Airbnb had ever given a 30(b)(6) on
14 these topics, which based on our dealings with them doesn't
15 surprise me. This is the first time they've ever been forced
16 to do it. But her answers was -- you know, it was
17 just -- they were just evasive and nonresponsive. And we're
18 getting absolutely nowhere in discovery, and that is -- you
19 know, this is two years into it, and it is very frustrating.

20 And so I apologize that Your Honor has all these motions
21 in front of you, but there's really -- we have done everything
22 that we can do to try to, you know, work with their counsel to
23 get the answers we're looking for, and we're not having any
24 luck.

25 MS. TAYLOR: You know, on that point, the first time

1 plaintiffs have ever met -- sat and met and conferred with
2 us -- and we've asked for it for a very long time -- on
3 witnesses, on these topics was, I want to say, about two weeks
4 ago because I was about to go on vacation. And it was right
5 before, and we had a call with them, just to try to figure out
6 what it is that they want so that we could go back and find
7 the correct witnesses. We have been trying to do that
8 forever.

9 They finally did it about a week and a half ago. They
10 gave us interrogatories with more specificity, with the
11 specificity that we've been asking for. Just yesterday we
12 told them, we're looking -- we're trying to find the right
13 witnesses. We will get back to you with those witnesses so
14 that we can arrange these depositions.

15 And so you know, respectfully, I just disagree with the
16 characterization that's been made to the Court. We have email
17 after email of us asking them, hey, can we set up a call to
18 talk about this? And them saying no. And finally they have,
19 and we appreciate that. This is how most litigation occurs.
20 You talk about what you actually want, and then the company or
21 the defendant, you go back and you try to find the right
22 witnesses.

23 We are finally in that process after a very long time of
24 them saying, you know what you did, you know what we want.
25 Right? So we're finally in the process of actually having

1 those conversations, and the company, as we speak, is trying
2 to find the right witnesses.

3 The idea that your opening salvo is to ask to depose the
4 chief legal officer or the CEO or the founder of the company.
5 I mean, that's what they've done here. That's just not -- I
6 have never seen that, and that's not the way these things
7 should be done.

8 And so we're in the process now. We're locating the
9 witnesses that they've asked for now that we have clarity on
10 what they want. and we will provide them with names, and we've
11 told them that.

12 MS. BARBIER: Your Honor, I know Ms. Taylor hasn't been
13 involved in this case the entire time that it's been
14 impending. We've been consulting with Airbnb's lawyers for
15 two years, and so I understand that she thinks that two weeks
16 ago was the first time we consulted, but she hasn't been in
17 this from the beginning, and we have, and this is -- it is not
18 difficult to identify witnesses.

19 It is not difficult to tell us who the compliance officer
20 is of a company. It is not difficult to tell us who has
21 knowledge of these topics. It is very simple, and this is not
22 a game.

23 You know, our client has been injured, and she's entitled
24 to discovery on these issues. and so I don't -- if Your Honor
25 is inclined to not allow us to depose Mr. Baer, I would ask

1 that you take it under advisement, and I would ask that you
2 give them a deadline of five days or something that the Court
3 believes is reasonable.

4 I don't think it should take five days. I think they
5 should already have the answer for us at -- should have had it
6 for us years ago. But the topics and the things that we
7 wanted to depose Mr. Baer on, who can address them other than
8 a legal officer.

9 We'd like the name of that person, and then we would
10 consider withdrawing our motion to depose Mr. Baer if they
11 provided it. But thus far, they haven't done that, and I
12 don't know that they can give you a good reason. There is no
13 good reason. It's very -- it's not complicated, and both
14 of -- all of the lawyers on the other side of this are very
15 smart people. So I don't know what their explanation is for
16 the delay.

17 THE COURT: I want to stick with the Baer/ And let me
18 hear about Ms. Bunch, Mr. Ashmore.

19 MR. ASHMORE: Well, Your Honor, same thing. She's in the
20 same category. She's head of global operations, Judge. That
21 title alone, why do they -- I mean. what relevance does global
22 operations have to this case. And she's got 3500 employees
23 beneath her, extraordinarily busy.

24 And again, Judge, she's at the top of the pyramid, and
25 you know, we, again, it sounds like we're finally after two

1 years starting to target exactly what it is. You know when,
2 you know -- when Ms. Barbier says, you know, we want a witness
3 to address this particular topic, we just need to know exactly
4 what it is that they're looking for, Judge, and I think that
5 this last round of interrogatories will help us in that
6 regard.

7 And picking up on Ms. Barbier's suggestion, Your Honor,
8 maybe that's not such a bad idea to consider carrying over
9 Bunch and Baer. And I yield to my leader, Ms. Taylor, on
10 this, and I failed to recognize her, Your Honor. Damali
11 Taylor is an outstanding lawyer with O'Melveny & Myers, and
12 she knows more about the California bar than the rest of us, I
13 can tell you that, because she lives out there, and she's a
14 friend of mine, Judge.

15 But maybe carry that over -- if Ms. Barbier mentioned
16 five days, we're a big company, Judge, we need more than five
17 days to do much of anything, but if we could carry these two
18 over for X until your next term of court or whenever and just
19 fashion some kind of schedule here such that hopefully we can
20 make some progress.

21 THE COURT: That's really what I want to do as to the
22 motion -- both motions to quash and, really, sort of the
23 motion for sanctions. I don't know that I want to keep them
24 necessarily, and I don't -- but I also don't know that I want
25 to rule on them, which sounds crazy.

1 What I want is -- or what should happen, I think, is to
2 have a specific 30(b)(6) list of topics with some specificity
3 that helps Airbnb -- and I don't know whether that's been done
4 already or not. But Airbnb needs to go through those 30(b)(6)
5 topics and say this person can testify about this, this person
6 can testify about that.

7 Like I said, you can have multiple 30(b)(6) designees.
8 Not one person has to know everything about everything, but
9 those depositions have to be taken, and whether that's two
10 different people, three different people, however many people,
11 you got to get the right people to offer testimony as to all
12 of the topics.

13 And I know I've done this before. I know it happens,
14 practically speaking, where you get a list of ten topics and
15 you have a witness who can testify about eight of them, and
16 then you just kind of pretend the other two weren't there and
17 don't know if the opposing party will even follow up on those
18 other two topics. You just kind of get the majority of them
19 addressed, but that's not the appropriate way to do it. The
20 appropriate way to is to find someone to testify about all of
21 them, and it does not have to be the same person.

22 So I kind of want to send you all back to the drawing
23 board with a 30(b)(6) deposition notice, and so -- and maybe
24 Tara Bunch is an appropriate designee for some of those
25 topics, maybe Rich Baer is an appropriate designee for some of

1 those topics, but I think Airbnb needs to tell you that if
2 they designate Rich Baer as 30(b)(6) designee for compliance,
3 maybe.

4 But I mean, my clerk has just done a quick Google search,
5 and it's not difficult to find out who the senior compliance
6 officer from -- for Airbnb is, at least according to LinkedIn.
7 I don't know if she's lied on LinkedIn or not, but Jessica
8 Tseng, T-S-E-N-G. That's what LinkedIn says. I don't know.

9 I mean, these aren't difficult things to figure out,
10 right? If what you want to know is compliance, let's talk
11 about compliance. I'm just trying to figure out procedurally
12 the most appropriate thing to do with the motions because I
13 want to give you all a deadline to get those designations, but
14 also we need to get through the depositions to make sure that
15 those people actually give testimony and don't just say, I
16 don't know, I don't know, I don't know. Right?

17 MS. BARBIER: Judge?

18 THE COURT: Yes.

19 MS. BARBIER: May I make a distinction between Mr. Baer
20 and Ms. Bunch? You know, I understand their arguments about
21 attorney-client privilege, and you know, the -- and Your
22 Honor's point about how frustrating it would be to actually
23 take his deposition and then just object every question. And
24 so I understand that, but -- so let's put Mr. Baer over there
25 in that category.

1 But Ms. Bunch -- I mean, their argument with respect to
2 Ms. Bunch is, she's really busy, she's really busy making
3 \$1.89 billion last year. I'm sorry. You know, they're doing
4 business at this stage, and they've availed themselves to the
5 jurisdiction of this Court, and they have an obligation to
6 participate in discovery.

7 And we're all really busy. I know Your Honor's busy, and
8 I'm busy, and all these lawyers on this call are busy, and we
9 all represent clients who have busy schedules. That's not a
10 reason to not take a Webex, you know, or a Zoom deposition.

11 Ms. Bunch can sit for deposition, and head of global
12 operations is a very important aspect of our case because if
13 you read our amended complaint, one of the things that we
14 allege is that their operations in and of themselves -- I
15 mean, they're operating a business, which is inherently
16 unsafe, in our opinion, and inherently unsafe that resulted in
17 damage to our client, and she's in charge of that.

18 So we have some very specific questions for her, not just
19 as a 30(b)(6) designee, but for her in her capacity as head of
20 global operations. So we want to take Ms. Bunch's deposition
21 regardless of whether or not they designate her as 30(b)(6)
22 designee, and we have the right to do that.

23 I think Your Honor's idea about having them go back and
24 redesignate, you know, designees for each topic is a great one
25 because what they produced to us was a -- and I don't mean

1 this in any demeaning or condescending way, but was a lower-
2 level employee who had no knowledge of these topics and who
3 thought -- and they thought -- they could get away with just
4 presenting her and her saying, oh, well, you know, I don't
5 know, and I didn't ask anybody, and you know, I'm not -- you
6 know, I'm not sure or I don't -- you know, I don't have any
7 knowledge of that.

8 I mean, that's not what the purpose of a 30(b)(6) is.
9 They have to produce people who have knowledge of those
10 topics, and those 24 topics, Your Honor, have been the subject
11 of much debate and litigation.

12 And in fact, Judge Keesley, when he ruled on our
13 motion -- their motion for protective order required us to go
14 back and make a few of the topics more specific, and we did
15 that. And once we did that, he denied their motion for
16 protective order, and he issued an order requiring them to
17 testify as to the 24 topics as they were amended.

18 So the 24 topics have been out there and have been
19 litigated and have been debated ad nauseam. We don't need to
20 come up with another list of topics. What we need are people
21 within their organization who are capable and willing and
22 prepared to testify about them, and that's what we would ask.

23 So we -- if Your Honor would take Mr. Baer's, you know,
24 motion under advisement until they name somebody else who
25 could testify as to those issues and then allow us to depose

1 Ms. Bunch and allow us then to take a -- retake the 30(b)(6)
2 on the topics with people who are well-educated on them, that
3 would be what the plaintiffs would respectfully submit would
4 be the appropriate remedy here.

5 MS. TAYLOR: May I make a suggestion, Your Honor? So
6 just as to Ms. Bunch, the idea that we're -- we don't want her
7 to be opposed because she's too busy, that's not the case.
8 Ms. Bunch joined the company a year after this incident. She
9 has no involvement, no knowledge. She submitted declarations
10 to that effect.

11 We did have two days of 30(b)(6) testimony, and despite
12 the representations, I would not ask the Court to read 600
13 pages of deposition testimony, but if you would like to know,
14 I would invite you to do so because the witness has been at
15 the company for a decade. She is more knowledgeable than most
16 people about the operations and the works of the company. And
17 she almost never said, I don't know.

18 Again, the fact that plaintiffs didn't like her answer
19 does not mean that she did not answer. That was not, you
20 know, two days of I-don't-know testimony. It was two days of
21 testimony that maybe wasn't what they were looking for because
22 they didn't get the specific answers that they wanted, but she
23 provided answers to every topic. She never refused to answer.
24 She was never instructed not to answer, and this was not an
25 I-don't-know deposition.

1 We finally, after much asking, last Sunday, we got them
2 to issue new interrogatories with specificity as to the topics
3 and the witnesses that they want. We finally got it. We got
4 it last Sunday, and we are working on it as we speak. The
5 company is literally trying to find the right people.

6 You can imagine Airbnb is a very big company. They are
7 trying to find the right people as we speak now that we have
8 the information that we need to provide to them to submit for
9 deposition, and we expect that that will happen soon.

10 And so we finally have the direction that we have been
11 asking for, certainly since I've been on this case, and yes,
12 there was another attorney before Mr. Ashmore. But you know,
13 we have the records that plaintiff doesn't.

14 And I've seen emails asking to meet and confer. And I
15 know that I've made requests to meet and confer, and Mr.
16 Ashmore made requests to meet and confer. And we've finally
17 done it. We think we're in a good place. We're headed to the
18 right place, and we will provide them with witnesses that they
19 need.

20 MR. FEW: Your Honor, this is Wes. I think it's an
21 important data point for the Court to consider that we took a
22 second deposition of an Airbnb employee, a young lady named
23 Vicki Ballagh. She's a UVA grad, about 30 years old, and her
24 title was director of global crisis management. And she
25 testified -- they told us that she didn't know anything. We

1 got her name either from the 30(b) -- I think we got her name
2 from the 30(b)(6) witness.

3 She prepped for her deposition for 15 hours, given that
4 she knew nothing about the case. Her testimony -- and I would
5 challenge any plaintiff's lawyer in the country to read that
6 transcript and tell me one useful piece of information that we
7 learned about the company from her deposition.

8 At the conclusion of her deposition, she reluctantly
9 admitted that everything that she does is directed by legal.
10 Never gave me the name of who the person is. Maybe she did.
11 If she did, it's in the record.

12 The deposition was unbelievably frustrating, as I've
13 already mentioned. But that's what we're getting, and that's
14 why we've done what we've done. The 30(b)(6) did not work
15 before, and so if we're going to circle back and address the
16 30(b)(6), I would ask that Your Honor keep jurisdiction over
17 the matter so that we don't have to inform another person of
18 what's been going on, but I have reservations about whether or
19 not we're not going to get more of the same because if the
20 30(b)(6) rules had been complied with, we would have gotten
21 the information or some more of the information that we were
22 seeking.

23 I'm taking notes here, and one of the things that jumped
24 out at me is that there were 24 incredibly broad topics, but
25 yet one person sat for every single one of them. That just

1 speaks volumes, Your Honor. And that's exactly what I dealt
2 with this Vicki Ballagh.

3 At one point in time, I had to ask her if she had a white
4 board sitting across from her because she kept giving me this
5 answer that she manages the cross-functional coordination of
6 investigations of matters that are escalated to her, and
7 everything is done by legal.

8 And she -- then she testified, Your Honor, that
9 everything she does is marked privileged and confidential. I
10 mean, this is very troubling, and we get nothing from them.
11 So apparently, Airbnb, from my estimation at this point,
12 creates a black hole of privileged documents and then says you
13 can't have any of that, and you've just heard that with
14 respect to Mr. Baer. And then it's the same story with
15 respect to the other lady, Bunch.

16 So respectfully, Your Honor, Ms. Barbier and I are trying
17 to do things as surgically as we possibly can. We just need
18 answers, and we haven't been getting them.

19 And one other point that I think bears consideration for
20 the Court, when we argued the motion to compel before Judge
21 Dennis in person on May the 31st of 2022, I pointed out to
22 Judge Dennis that Airbnb at that time had not identified a
23 single witness.

24 The lawyer that they had representing them stood up and
25 he said, oh, yes, we have. And I said, well, let's take a

1 look at your interrogatory responses and see. And he said,
2 right here, we've identified the plaintiff and the defendants.
3 That was over one year into the case. They had yet to give us
4 the name of one single person at Airbnb that knew anything
5 about this case.

6 That's where we were then, and we haven't made a whole
7 lot of progress since despite three days of depositions, two
8 by Ms. Barbier on the 30(b)(6), and one by myself of Vicki
9 Ballagh, who for UVA grad making over quarter of a million
10 dollars a year, she really didn't seem to know what her job
11 was. So that's what we're dealing with.

12 THE COURT: Shots fired. All right. Look, this is what
13 we're going to do. With some now having had some additional
14 instruction and guidance from the Court, we're going to circle
15 back to that 30(b)(6) with additional designees. So -- but
16 the motion to quash the deposition notice to Rich Baer is
17 granted. I'm not going to get into his licensure issue, but
18 if he is the chief legal officer, yeah, chances are he doesn't
19 have much to tell you. I think that information, it sounds
20 like, can be gotten from another source, which is where we're
21 going to get it from with different 30(b)(6) designees.

22 And so 30(b)(6) shall continue at, you know, whatever
23 dates and times to address all 26 topics, however many
24 designees that takes. The motion for protective order, motion
25 to quash as to Tara Bunch is denied. She may be very busy,

1 but she doesn't have the same privilege issue.

2 The deposition can take place virtually, and maybe she
3 says, I don't know, I don't know, I don't know, or I defer to
4 Jane Doe or John Roe or whoever, but she may have some
5 pertinent information.

6 The motion for sanctions as to Airbnb, with respect to
7 the 30(b)(6) designation, is denied at this time with leave to
8 refile it. I think what you're really getting at -- or I
9 think -- yeah, it seems that you just need the information and
10 you're mad that you don't have the information because they
11 only had the one 30(b)(6) designee. They can fix that. I'm
12 ordering them to fix that with additional 30(b)(6) designees.

13 And so I'm not prepared to find today that that one
14 designee's deposition was a waste of time, that you got
15 nothing from it. I just need -- think it needs to be
16 supplemented with other 30(b)(6) designees now if you. Now,
17 if you depose all the designees and still get nothing from any
18 of them, then maybe you come back on a motion for sanctions,
19 which is why I'm allowing leave to refile that motion.

20 That takes care of the deposition == well, not completely
21 because there's some confidentiality, motions to seal, et
22 cetera, et cetera. Let's talk about those now. There's --

23 MR. FEW: Your Honor, I think one of the motions == and
24 the other counsel can correct me if I'm wrong, but one of the
25 motions was heard by Judge Keesley on an emergency basis, and

1 I -- that may be the one that you were just referring to.

2 THE COURT: I don't know. Help me.

3 MR. ASHMORE: There was a motion for sanctions I filed,
4 Your Honor, that was taken under advisement by Judge Keesley.
5 And that one --

6 MS. TAYLOR: Your Honor, that's Judge -- that's number
7 nine on our list. That motion was heard on an emergency
8 basis, and Judge Keesley hasn't ruled on it.

9 THE COURT: Okay. Got you, but there's still -- there is
10 still Airbnb's motion to seal excerpts. So it's the 30(b)(6)
11 deposition transcript that was filed on February 24th?

12 MR. ASHMORE: That's correct, Your Honor.

13 MS. TAYLOR: Yeah, I think it -- is it -- there
14 might -- there's two motions to seal, and I think they both
15 relate to the 30(b)(6). I'm not sure. Okay. Yeah. I know
16 they want everything under seal, so I just can't keep it
17 under -- I can't keep it straight.

18 MR. ASHMORE: And Judge, so these were filed out of an
19 abundance of caution. Judge Keesley issued an order saying
20 that everything from the 30(b)(6) was not to be -- it was --
21 anything we deemed confidential couldn't be released without
22 further order of the Court.

23 We made those confidential designations, so we're simply
24 asking for that, for that ruling. If they object to
25 the -- which they do. They think nothing in the 600 pages --

1 that nowhere in the 600-page deposition is there confidential
2 information.

3 So one of these days, we'll have to argue over that,
4 Judge, but for now, we're simply asking that we get a ruling.
5 Again, I think it's out of an abundance of caution that that
6 needs to be deemed confidential for now.

7 THE COURT: Is there any objection to the motion?

8 MS. BARBIER: There is -- there is, Your Honor.
9 Basically, Your Honor, what Airbnb is seeking to do is they
10 have -- they stamp everything confidential, and they designate
11 everything confidential, and what it will require us to
12 do -- let me tell you why we object.

13 First of all, logistically, as Your Honor knows, it's a
14 nightmare to file motions with everything under seal because
15 then everything's under seal. The motion has to be under
16 seal, the exhibits have to be under seal, and we're talking
17 about a case, Your Honor, that is -- involves -- you know,
18 we've alleged violations of the South Carolina Unfair Trade
19 Practices Act. We've alleged constructive fraud.

20 There's a very important public safety issue here, and
21 you know, they want to conduct this litigation under seal, and
22 the court system is first and foremost supposed to be
23 transparent and open to the public. And the public has every
24 right to know the, you know, statements and the issues that
25 are being litigated here.

1 There's nothing confidential about the 30(b)(6)
2 deposition. There -- you know, basically we got little to no
3 information, so I can't imagine why they've designated some of
4 the things they have.

5 I mean, you know, I'll give you an example, Your Honor.
6 They have actually marked -- they have designated things like
7 my question to the 30(b)(6) designee as confidential. Now,
8 how is my -- that's on page 91, line 7 through 13. How would
9 my question be confidential? I mean, it doesn't make any
10 sense.

11 I also asked them questions about articles that appeared
12 on the internet. They want to designate that as confidential.
13 You know, I've asked them questions about public statements
14 that their CEO has made about safety and about guest safety
15 and safety being the number one priority and how everybody's a
16 trusted community at Airbnb, and all these things he gets out
17 there on Twitter and on the Today Show and says, I've asked
18 him about his representations to the public, and they want to
19 designate that as confidential.

20 I mean, it's absurd. These things aren't confidential.
21 You know, if there was a personal identifier of somebody in a
22 document that is attached to a deposition, I have no problem
23 with that being redacted, but there are no personal
24 identifiers that I'm aware of, and I just think that they're
25 abusing the confidentiality order in this case.

1 That's not what confidentiality orders are for. It is
2 not so that we can litigate under seal and hide these issues
3 from the public because they're embarrassing to Airbnb or
4 because it might hurt their public relations. That's just not
5 the purpose of a confidentiality order, and it's an abuse of
6 the process.

7 And so I think, Your Honor, you know, as soon as you do
8 that and as soon as we have -- you know, this case gets ready
9 for trial, I mean, I'm sure they'll be -- it'll be of interest
10 to the press because Mr. Riviere's prosecution already has
11 been of interest to the press, and I think you know will get a
12 lot of questions about why everything's under seal.

13 And I don't think there's any purpose for it. I think
14 it's simply because Airbnb is trying to bury these issues like
15 they buried all of them with respect to hidden cameras, and
16 it's inappropriate. So we object.

17 MR. ASHMORE: Just briefly, Your Honor. So the way it
18 works is we designate items as confidential, and then they
19 object, and then we dump in the judge's lap if we can't
20 resolve it. So that's -- this is a bit premature, Judge.
21 Again, this is a belt-and-suspenders approach that the orders,
22 I think, cover us with here's why we're doing this, Judge.

23 I filed for the first time in my 35 years a motion for
24 sanctions because, as we speak, there is confidential,
25 proprietary information on the public system in Aiken County

1 that they filed in spite of the very clear order from Judge
2 Keesley.

3 He didn't deny that motion, Judge. It's under
4 advisement. So we've had problems in this case with our
5 confidential information being posted, and again, as we speak,
6 it's posted. They filed confidential -- they filed items that
7 we designated as confidential on the on the public filing
8 system in Aiken, and it's still there.

9 That motion's under advisement. That's why we're so
10 sensitive about this particular issue, Judge, and that's why,
11 again, out of an abundance of caution we're filing these
12 particular motions.

13 MS. TAYLOR: And Your Honor, if I may be heard just
14 briefly. The idea that we designated everything confidential
15 is just wrong. There is not a single public statement,
16 contrary to what you just heard, that we have designated
17 confidential. We were extremely limited in what we designated
18 confidential. We're talking about private business data,
19 trade secret. For example, vendor information, the specific
20 trade secret processes our vendors use to conduct background
21 checks. That's the sort of thing that we designated
22 confidential, Your Honor. It was very limited.

23 So I know that a representation was just made to you that
24 we just stamped the whole thing. That is just completely
25 false, and so we were very careful. And Mr. Ashmore's right,

1 we've been burned on this because before the period even
2 lapsed under Judge Keesley's order about, you know, the
3 confidentiality designation, they posted in the public docket
4 confidential information about customer complaints and
5 customer service tickets. Things that were clearly
6 confidential business information, they put out there before
7 the full protective order period had even lapsed.

8 And so we're not just doing this out of an abundance of
9 caution, we're doing it because the information is
10 confidential and because they've done this before.

11 MS. BARBIER: Your Honor, if I could clarify, the first
12 round of the 30(b)(6) deposition, the defendant submitted
13 designations that they wanted -- they were seeking to have
14 confidential. We objected to those designations, and the
15 order says that until those are ruled upon, they have to be
16 treated as confidential.

17 The second round of the 30(b)(6) deposition, they had
18 seven days to object -- to designate their confidential
19 designations. They didn't produce any objections within seven
20 days. Instead we got -- about six days later, we got in the
21 mail -- six days after the deadline had passed, we got in the
22 mail a list of designations of things they wanted to, you
23 know, designate as confidential.

24 We had already filed a motion related to the 30(b)(6) and
25 had excerpts from that deposition in it and attached to the

1 deposition for that purpose. We can't honor designations we
2 didn't receive, and that was -- well, that's the motion that's
3 in front of Judge Keesley. If you want to use the order that
4 is in place, the confidentiality, you have to adhere to the
5 deadlines, and they didn't do that.

6 And so the first set of designations, we agreed were made
7 timely, and we have sealed any portions of those deposition
8 excerpts. The second set of designations were not made
9 timely, and that is why those are on the public record.

10 And Mr. -- I'm sorry, Judge Keesley heard that motion,
11 and even though it was deemed an emergency, he still hasn't
12 ruled on it, and so -- and he knows it's on the public docket,
13 so I'm not sure that he agreed it was an emergency. But
14 that's the situation with respect to those designations, Your
15 Honor.

16 And I can give you specific examples of things that they
17 designated as confidential. I have a list, and we have all
18 said, Your Honor --

19 THE COURT: I don't even think that's necessary.

20 MS. BARBIER: Okay.

21 THE COURT: Let me back up and make sure that I'm looking
22 at the right motion. I thought that I was, but there is a
23 motion that was filed February 24th, and there was one filed
24 February 28th. What I understood is that the February 28th
25 motion is the one that Judge Keesley heard and took under

1 advisement. Yes?

2 Someone help me.

3 MR. ASHMORE: What's the caption of that one, please,
4 Your Honor?

5 THE COURT: Defendant Airbnb's motion to confirm
6 confidentiality designations of portions of its Rule 30(b)(6)
7 deposition transcripts.

8 MR. ASHMORE: That is before you, Your Honor. That is
9 not the one --

10 THE COURT: Absolutely.

11 MR. ASHMORE: -- that was Judge Keesley's ruling on.

12 THE COURT: Okay. So I've got them mixed up. So Judge
13 Keesley heard the February 24th motion?

14 MR. ASHMORE: Motion for sanctions, for disclosure of
15 confidential information.

16 THE COURT: Okay, he did not hear the February 24th
17 motion to seal excerpts of the 30(b)(6) deposition transcript?

18 MR. ASHMORE: Correct, Your Honor.

19 THE COURT: So both of those are before me and -- okay.
20 All right. Just making sure. Well -- and so I'll also say, I
21 don't know that I need examples because there were
22 designations here, right? What I need is the deposition
23 transcript for me to look at And decide whether they should be
24 deemed confidential. Yes?

25 MR. ASHMORE: Your Honor, if I may --

1 MS. TAYLOR: If you can see this, Your Honor.

2 MR. ASHMORE: So I -- are we -- are you taking up the
3 matter of whether or not they're objecting to each and every
4 one of our confidential designations? I just -- I don't -- I
5 think that's a hearing for a later date. I don't think we're
6 there quite yet. Are they objecting to every single one of
7 our designations, Your Honor? Because I believe that they
8 are.

9 MS. BARBIER: Your Honor, we have sent them
10 correspondence, and we have objected to their designations,
11 and I don't think it's for a later date. I think it's for
12 Your Honor's consideration.

13 We're happy to send you both transcripts, and Your Honor,
14 if you look at the excerpts that they have -- we have
15 out -- let me say this to Your Honor. We have invited them to
16 tell us and justify each designation as the order requires
17 them to do, and the only thing they have said is that it's all
18 proprietary. And when you read the excerpts, you will be
19 asking yourself the same questions that we asked, which is how
20 in the world is my question to them proprietary?

21 How in the world is something -- their vendor that does
22 their background checks is online, easily found by Google, and
23 they've designated that as confidential. They have -- I asked
24 them a question about what happens to negative reviews
25 that -- you know how when you go on an Airbnb, you can review

1 the property afterwards?

2 And what we have found through discovery from other
3 sources is that if there's a negative review on a property,
4 those are sometimes removed so that the public can't read what
5 may negatively have happened to somebody at that property.

6 We asked them about that. That comes from an article on
7 the internet, and they have -- designation number 1, page 31,
8 line 10 through 18, and their response to my question about
9 what happens to them, they've designated as confidential.

10 I'm sure they don't want people to know why they
11 review -- why they remove negative reviews, but that's not
12 confidential. That's just hiding information from the public,
13 and this is what they want to continue to do. So yes, we
14 object to their designations, and we will be glad to send Your
15 Honor the transcripts.

16 THE COURT: Do you object --

17 MR. ASHMORE: Your Honor, if I may --

18 THE COURT: Hold on. Do you object to all of them, Ms.
19 Barbier --

20 MS. BARBIER: Yes.

21 THE COURT: -- or are (indiscernible) that you agree to?

22 MS. BARBIER: Wes, you can jump in here if I'm missing
23 something. I think -- we agree that if there's a personal
24 identifier of somebody, of something that would identify a
25 particular person not involved in this lawsuit, and that means

1 by their date of birth or social security number or
2 their -- you know, something like that, that we would agree to
3 that, but I didn't see any of that.

4 THE COURT: Well, okay. But they've given page and line
5 numbers, and what I want to know is which of those pages and
6 line numbers are actually disputed?

7 MR. FEW: Your Honor, we've disputed all of them, and
8 we've complied, as Ms. Barbier said, with the first set of
9 designations. She's been handling that when the issue came up
10 that we were alleged to have violated the order. I prepared a
11 spreadsheet and sent it to opposing counsel that recapitulated
12 all of their designations and asked them to tell us why those
13 are confidential.

14 So they, I think, had 15 days to respond, but I think the
15 burden would be in their court to come back to us. I'm not
16 saying we couldn't be persuaded that something was
17 confidential because we don't always understand the context of
18 anything, but we absolutely dispute that any of this
19 information would be useful to anybody as being confidential,
20 a competitor or otherwise, because it just doesn't tell
21 anything.

22 So the answer is yes, we do dispute, and if they had
23 something in context, if they wanted to say, hey, you know you
24 need to reconsider this, we could do that, but -- and I think
25 because Debbie's been handling this is the first half of the

1 30(b) (6) at issue here today or just the second?

2 MS. BARBIER: It's both.

3 MR. FEW: Okay.

4 MR. ASHMORE: Your Honor, that was going to be my
5 suggestion. Before we dump this in your lap, would you give
6 us 15 days to talk amongst ourselves, see what we can resolve.
7 They might agree to some, they -- we might fight over others,
8 but before we dump this in your lap, would you give us a
9 chance to -- for us to take a second look at it and for them
10 to take a second look at it. Give us 15 days, and then we
11 come back to you if we need your assistance.

12 MS. BARBIER: Yes, Your Honor --

13 MS. TAYLOR: Your Honor, if I may, just for context, we
14 did exactly what Judge Keesley's order required of us. And so
15 Your Honor knows, Judge Keesley anticipated and expected that
16 there would be confidential and proprietary and trade secret
17 data in the 30(b) (6) depo, and there was.

18 So for example, Airbnb's internal risk assessment
19 processes, the specific searches the vendors use that they
20 consider their trade secrets. Judge Keesley anticipated all
21 of this. The order says, and I quote, "that these kinds of
22 information, the confidential data, shall not be disseminated
23 absent further order from the Court."

24 So the default is that this is confidential, and so we
25 complied with that order. We -- all of the information that

1 we have designated confidential is, in fact, confidential.

2 And the fact that they are going scorched earth and objecting
3 to every single one of the few designations that we have made,
4 this was a very long deposition, a very long transcript, we
5 made very few designations.

6 And so we've complied with the order. I would have hoped
7 that they would have been more measured in their objections,
8 but they have not. We can do what Mr. Ashmore suggested and
9 try to work it out with them.

10 THE COURT: All right. I'll give you 15 days to resolve
11 it. I need to hear from you all in 15 days as to what has
12 been resolved and what is still contested. To the extent that
13 anything is still contested, I'll need copies of the
14 transcript so that the Court can make the determination.

15 MR. ASHMORE: Thank you, Your Honor.

16 THE COURT: Okay. That takes care of those. We still
17 have motions to compel regarding requests for production, an
18 amended request for productions, a motion to file exhibits
19 under seal. Let's take ten minutes before we get to those.
20 Yeah, we'll take just a ten-minute break.

21 MR. ASHMORE: All right, Judge.

22 MS. BARBIER: Thank you.

23 (Recess.)

24 MR. ASHMORE: You muted?

25 MR. FEW: I think she is.

1 MR. ASHMORE: Yeah. You muted, Judge.

2 THE COURT: Yes, I was talking to my clerk.

3 MR. ASHMORE: Oh, so sorry.

4 THE COURT: But I'm ready to get back to it if you all
5 are.

6 MR. ASHMORE: Mr. Griffin has had enough fun, Judge, and
7 he is longer with us.

8 THE COURT: Understand. Look, I'm ready to wrap it up,
9 too. I didn't think I'd still be here after noon, so we're
10 going to power through these, and I'm going to get on with the
11 rest of my day.

12 Motion to -- there are two motions to compel filed by
13 plaintiff to compel Airbnb to respond to some requests for
14 production filed on January 18 and February 2. Have those
15 been resolved in any way, shape or form?

16 MR. FEW: No, Your Honor.

17 THE COURT: Okay. Ms. Barbier, let me hear you -- or Mr.
18 Few. Sorry.

19 MR. FEW: I think I'm actually -- drew the ping-pong ball
20 out of the list for this. Your Honor, thank you so much for
21 your time and your consideration, and also your preparation
22 for today is greatly appreciated. And had you not done that,
23 then we probably would have been here until 2 or 3 p.m., and
24 also for allowing me to kind of push these motions to the back
25 because what we're dealing with here are two different motions

1 to compel for requests for production. And I'll take them in
2 order.

3 The first of which we filed on the latter served request
4 for production, numbers 45 and 48. I think all of this is of
5 record, Your Honor, but there was actually -- something came
6 up about something being -- and then we took it off of the
7 index, and then I don't -- I didn't see it yesterday, but I
8 don't know that it really matters.

9 For purposes of our motion, we took -- if you look at our
10 request for production, Your Honor, we've already gone over
11 the standards for -- and we have a pretty good brief that we
12 filed with the motion on the 18th, but we have -- the first
13 three are very similar, Your Honor. They're asking for the
14 contact information of the guest by reservation ID. So when
15 we get these spreadsheets of data that were produced to us,
16 each guest and each host, I believe, is assigned a unique
17 numerical number.

18 And for Katherine Thomas, Your Honor, who was the -- held
19 herself out to be the spouse but was never legally married to
20 Rhett Riviere, and she was the one that registered as a host,
21 as you have been told earlier in the hearing today. Her
22 unique number as a host was 86755971.

23 And so really borne out of frustration, we prepared these
24 requests to find out the identities of the other persons that
25 had rented from Airbnb because we couldn't get that

1 information. So we said, in effect, okay, on the limited
2 number of documents that you have given us, we need to know
3 the person that's associated with -- sorry, with the
4 reservation ID number listed in Exhibit A.

5 And what Exhibit A is is simply the list of the -- that
6 was produced by Airbnb that showed the three or four dozen
7 probably rentals of their unit, and some of them were
8 cancelled, so those wouldn't be there. Number 46 says we need
9 to the contact information for each and every guest associated
10 with a confirmation code.

11 At the time I don't think we really knew what those
12 things meant. We now know a little bit more about that, I
13 think, because Ms. Barbier has handled the 30(b)(6)
14 deposition. I was actually in a trial in Kingstree when the
15 second part of the trial -- of the 30(b)(6) was commenced, and
16 so I wasn't present for that.

17 And so 46 -- 45, 46, and 47 are asking for that
18 information, based on their own data. So they're very limited
19 and targeted requests for production. And what we got in
20 response is just a blanket objection, is the way I would
21 characterize it, and no documents produced at all.

22 With respect to number 48, it is a little bit different.
23 It asked them what documents do you have that you can produce
24 about people that were convicted of any of these crimes that
25 are set forth in your policy?

1 And essentially, what we're asking for there, Your Honor,
2 is you claim that you have this policy of monitoring your
3 hosts and running background checks and doing things to filter
4 out people that ought not be on the platform, and so we're
5 trying to figure out what are they doing to -- and what have
6 they actually done, if anything, to enforce that policy.

7 And Your Honor, that again is asking for conviction. So
8 that would be something that's of public record and is also
9 limited in scope.

10 With respect to the second request, the second motion
11 that we filed, Your Honor, I would probably reserve some time
12 to speak to that, but in effect, what it is comprised of is
13 the 30(b)(6) topics that were already approved by Judge
14 Keesley. We took those and converted them into a virtually,
15 substantially identical request for production so that we
16 would have the documents that related to the 30(b)(6) topics
17 so that we could get somewhere. And if we had had those, and
18 that's why we would need them for this reset 30(b)(6)
19 deposition, that's what we're asking for in the motion to
20 compel that was filed on February the 10th, Your Honor.

21 And so in effect, that -- and I'm happy to answer any
22 more questions, but these requests, the first set is
23 specifically tailored as follow-up to stuff that we got in
24 discovery to get more information about a definitely defined
25 set of parameters. And then the second set is really just

1 tracts, you know, the 30(b)(6) topics that we had filed, that
2 we had already been approved twice by Judge Keesley.

3 So that would be my summary of where we are on those two
4 motions to compel, and we would just ask the Court give us
5 time to -- give them time to comply with those 30(b)(6);
6 withdraw those objections.

7 They've not agreed to narrow the scope. They've
8 not -- their position has been, well, we're just not going to
9 give you anything on this, and so -- and I think, frankly, at
10 this point, it's -- you know, that's the position that they
11 stood on coming up to this hearing, and that's why we think
12 we're entitled to get all these documents.

13 THE COURT: If you could, Mr. Few, as to request 45
14 through 48, go ahead and address the privacy argument as to
15 the nonparty civil litigation. I know I'm going to hear that,
16 so if you could just go ahead and speak on that on the front
17 end.

18 MR. FEW: Well, Your Honor, the -- I think Ms. Barbier
19 addressed this issue earlier, the fact that somebody -- you
20 know, we have a confidentiality order in place, and what we
21 would propose and what I would be planning on doing when -- if
22 I were on the other side of a case like this, and I'm
23 frequently on the other sides of cases like this where I'm
24 having to produce confidential information -- is you just use
25 the confidentiality order, and you mark things as

1 confidential.

2 And if anything is -- requires any further protection,
3 then we have a standard provision in there that says that you
4 have to file an additional motion for protection for that
5 stuff, and you would designate it as attorney's eyes only.

6 And you know, normally, that relates to things such as
7 trademarks -- I mean, trade secrets and things that are really
8 and truly highly confidential. But we're entitled to know and
9 these people are entitled to know that they may have been
10 recorded.

11 And we have videos that we have obtained through SLED's
12 search that we don't think that these folks have been notified
13 about, and it may be those people on the videos. When you see
14 somebody on a video, you don't know who they are unless you
15 have some other indicator of their identity.

16 And so while there may be 21 or 23,000 image files or
17 video files within what SLED seized from Mr. Riviere's
18 devices, going through there and saying this is that person is
19 just not something that anyone is able to do.

20 And so you know, we -- also, Your Honor, this is relevant
21 because there's a dispute about where the box was kept. Mr.
22 Riviere has maintained that -- and we have settled with him,
23 but we still have our claims pending against Katherine Thomas
24 about what was the condition of the room.

25 On one story, we were told that the Bluetooth speaker was

1 supposed to be in the kitchen. Well, in the depositions last
2 week of Josee (phonetic) Riviere, she testified that even
3 though they were divorced for many years, that she went to
4 this particular property on 115 Third Avenue, and that she
5 must have told us 18 times in that deposition that there was a
6 camera in the bedroom, but it was pointed down the hallway.
7 She kept saying down the hallway. It was pointed down the
8 hallway.

9 And so you know, these -- we need to know -- we're
10 entitled to find out what the premises looked like when these
11 people were there and also to know if they were recorded. And
12 so -- but once again -- so there's always protections in place
13 that can be used, the first of which is a confidentiality
14 order.

15 And also, Your Honor, something that comes up in this
16 case and in other cases that I don't agree with is, there's
17 this notion that we have to redact everything. Well, no, you
18 don't. If you mark it confidential, you don't need to redact
19 it. And redacting is, I would agree, a lot of work. But if
20 you've marked a document confidential or if it actually
21 warrants greater protection than that, then you don't need to
22 redact -- you don't need to redact it.

23 Now, if some of this information were to include
24 someone's social security number, that probably should be
25 redacted and could be redacted. But their address and things

1 of that nature and who they are and their identities and the
2 fact that they may have rented this property immediately
3 before or immediately after our clients were there -- or our
4 client was there is stuff that we're entitled to find out
5 about.

6 And Mr. Ashmore misspoke slightly earlier when he said
7 that Michelle Jain was represented by the Strom Firm. She was
8 actually represented by a lawyer here in Greenville, and
9 whether or not he sued Airbnb really doesn't matter.

10 But the Strom firm had clients that were young girls that
11 were recorded in yet another property that was in Mr.
12 Riviere's portfolio that was part of Airbnb's portfolio of
13 four properties that he had with them. However, those two
14 girls that the Strom Firm represented did not arrange the
15 rental through Airbnb, and that is why Mario Pacella at the
16 Strom Firm did not sue Airbnb.

17 So, Your Honor, those privacy matters can be addressed,
18 and we maintain that they should have already been addressed,
19 and they could have been addressed, but what we're dealing
20 with is just an unwillingness to give us any information under
21 any of limited scope or agreed-upon scope at all, and that's
22 what you can see throughout the entirety of all of these
23 requests for production, the first four that are set forth in
24 the first motion, and then the second set, which are, again,
25 substantially identical to the 30(b)(6) topics.

1 An example there, and I don't want to -- we've been here
2 a long time -- is an organizational chart. We've asked for an
3 organizational chart in our request for production, and we've
4 gotten, no, you can't have it.

5 THE COURT: I don't want to guess too much, but I'm going
6 to guess, though, that Airbnb -- that one of the concerns is
7 not just the privacy of the other customers and keeping their
8 information confidential from the public, but the concern is
9 probably what that leads to.

10 So they could mark it confidential and give you names and
11 addresses, but the only reason you want names and addresses is
12 to reach out to those people as potential -- either potential
13 witnesses or potential plaintiffs.

14 So are you trying to get more clients? Are you trying to
15 get witnesses? Are you trying to help SLED because
16 that's -- the SLED part is not really your responsibility to
17 notify potential crime victims that they've been victims of
18 crimes.

19 MR. FEW: Well, Your Honor, with respect, Ms. Barbier has
20 done the lion's share of SLED's work in this case, if the
21 record needs to be clear on it, but the fact that our right to
22 identify witnesses may have other side benefits to it does
23 that mean that we're not entitled to it, Your Honor.

24 And we have videos of a gentleman -- and really, the
25 placement of this thing is critical to us knowing it. And one

1 of the things that we have asked and that is that -- what
2 Katherine Thomas's knowledge was. And we're also seeking
3 discovery on whether or not and why Airbnb never done -- they
4 don't do any property inspections, and some of these things
5 were alluded to earlier, but as far as the undertaking
6 goes -- and this is to the scope, Your Honor.

7 This is why we're entitled to see these things because
8 your CEO cannot go out on the squawk box and the MSNBC and the
9 CNN when you have some type of a tragedy and assure the
10 customers and the hosts and the venture capital money and the
11 potential IPO people that you're going to be dealing with that
12 your corporation is built upon trust and then make all these
13 way-out outlandish promises.

14 And then when we come along in a discovery lawsuit, in
15 little ol' South Carolina, where they have like tens of
16 thousands of hosts. I think Debbie discovered one time that
17 we're one of the ninth most profitable states for Airbnb
18 because we have been considered Airbnb friendly, and because
19 they have completely ignored 40-57-20, which says if you
20 anticipate getting a fee for renting a property, you got to be
21 licensed, but this is the things that the guy has said.

22 Maybe we've been too gradual. We should take more
23 responsibility. We've had a hands-off model. We must do
24 better. We will. This is unacceptable. We will verify 100
25 percent of listings on the site.

1 You might imagine I asked questions about those types of
2 things of the Vicki Ballagh witness that I referred to
3 earlier, and she was unable to tell me anything that she was
4 personally aware of that the company has done to follow
5 through on these promises that their CEO is making to the
6 public. And so Your Honor, that's why we need to get this
7 information.

8 If, in fact, there are legitimate redaction and privacy
9 things that need to be addressed, that can be done. As has
10 been said before, there's some really clever people on here
11 with probably over a hundred years of experience altogether,
12 and we can work with them on that, but that is not a grounds
13 to tell us, as we've been told all along, stop, you can't go
14 there.

15 So any of those privacy concerns can be addressed, and
16 also, Your Honor, the Stored Communications Act claim is
17 something that I'm at a complete loss for, but I do want to
18 address it because the other side is probably going to mention
19 it.

20 THE COURT: Okay, let me -- let me hit you with a timeout
21 before we get to that. I just need to take a quick break.

22 MR. FEW: Okay.

23 THE COURT: I'll come right back to y'all. Hold tight.

24 (Recess.)

25 THE COURT: Sorry, folks. I had a surprise guest that

1 wanted to say hey, and she was about to leave because she was
2 tired of waiting. Anyway --

3 Okay. I'm sorry, there's a lot going on in here with my
4 dad, his clerk, my clerk, visitors, whatever. Yes.

5 MR. FEW: Well, I don't know if that -- this was as
6 famous as the last person, but that gave me a moment to flip
7 over because I think -- I don't want to just gloss over our
8 request for production number 16 to 44, but I don't want to go
9 through every one of them either.

10 But Your Honor, if you look at number 34. We ask for
11 reports or complaints made to Airbnb of guests being secretly
12 videotaped while staying in an Airbnb during the time period
13 from December 1, 2013, to the present. And we've got nothing.

14 And when we had a conversation with myself and opposing
15 counsel about a month ago when they -- we agreed to postpone
16 some depositions because of vacation schedules, I gave them an
17 example of how in the world -- and by way of example, when
18 Vicki Ballagh remembered -- she's been working there for
19 years. She remembered one time in global crisis management
20 role that she addressed a video recording, but she could only
21 remember that it was probably in 2018 when she first went to
22 work there, and it was in Florida, and she didn't know -- she
23 didn't know anything else. Couldn't remember the county,
24 couldn't remember the circumstances, couldn't remember who she
25 talked to about it.

1 So you see -- and we think that may have been when a
2 lawsuit was filed in Manatee County, which is specifically
3 laid out in paragraph 82 of our amended complaint. So
4 paragraphs 80, 81, and 82, we refer to things that we're aware
5 of that show that they were on notice that these things
6 happen, but yet we can't get any documents from them to
7 acknowledge that there was any response within the company.
8 And Your Honor, we have to be able to show what they knew,
9 what they knew the risks were, and what did they do about it.

10 And I've analogized this to the defective automobiles and
11 all the fights that the plaintiff lawyers went through in
12 those cases to get access to the design documents. Did you
13 know that this vehicle was going to blow up when this
14 happened?

15 So they've known as, as Debbie has said, since 2013 or
16 '15 that these things can happen, as if a company like this
17 would not know that already, just sitting around thinking,
18 what can we do? Because we do go and tell the whole world
19 that you're safe here. And so what can we do to make sure
20 that the guests are, in fact, safe there?

21 And my supposition and my belief at this point is is they
22 do absolutely nothing. They make more money by having people
23 sign up as easily as possible. In order to sign up -- I've
24 used this as an analogy when I'm explaining this to people.

25 If a young man had next-door neighbors that were college

1 professors and they were to go on sabbatical to New Zealand
2 for the summer and he was cutting their grass and had keys to
3 the garage apartment in the house, he could sign up as a host,
4 give a birth date, give an email. He could go create a Gmail
5 or a Hotmail or whatever.

6 That's pretty much all that would be required for him to
7 be registered as a host. See, we were misunderstanding that
8 you to actually apply to be a host, but apparently, all you do
9 is register.

10 And so they claim to do these background checks and
11 things, but they don't. They don't even confirm, Your Honor.
12 if that young boy -- just like they didn't in this case with
13 Katherine Thomas.

14 They never reached out to Katherine Thomas and said, hey,
15 you're renting out four different properties on our platform.
16 Do you own these properties? The answer would have been no.
17 Are you a licensed real estate broker in South Carolina? Are
18 you a licensed property manager? No. Do you work for a
19 company that is a licensed property manager in South Carolina?
20 No. Do you have a contract with the owner of these properties
21 that we could put on file to show that we, in fact, have a
22 legitimate, informed basis for taking random people off of the
23 internet and sending them to these properties in Aiken County?
24 No. They don't even ask.

25 And so their CEO is on record saying we're verifying all

1 these listings, but yet the Vicki Ballagh girl that I deposed
2 a month or so ago can't even tell me, and she's an Airbnb
3 user. She works there. She doesn't even know what, if
4 anything, they do to be consistent with the promises that they
5 make to the public of keeping things safe.

6 And that's why, you know -- I think I'm belaboring the
7 point, Your Honor. These topics, these 30(b)(6) topics have
8 already been approved. And we want to have a productive
9 30(b)(6) deposition or a more productive 30(b)(6) deposition.

10 And I'm sure we won't like some of the answers that we
11 get, but we'll actually be getting real answers that are
12 consistent with a mud tire grabbing traction in the mud to get
13 the truck unstuck so that we can go somewhere. And thus far
14 we haven't been able to do that, but that's why we need all of
15 this information. And again, their response has been just
16 blanket objections. You're not entitled to anything.

17 And what is the concern and a possibility is that within
18 the company, they elevate these things to global crisis
19 management. She said she gets like a hundred things a week,
20 but yet everything's directed by legal. I couldn't wrap my
21 head around that, Your Honor. And if she gets a hundred
22 things a week and they have 35,000 complaints or tickets about
23 recording, that's a big gap.

24 And so we just got to get the documents, Your Honor, so
25 that we can find out what's really going on, who knows what,

1 who do we need to call as a witness. And then what further
2 discovery do we need to take on the steps of once you knew
3 this was a risk, what, if anything, business-wise did you do
4 about it? Because we know what you said you were doing about
5 it, but did you even do any of that? And as near as we can
6 tell, the answer again is no.

7 MS. TAYLOR: Your Honor, may I be heard on this?

8 THE COURT: Thank you.

9 MS. TAYLOR: That was a lot, so I'll deal with one motion
10 at a time. So let's deal with the requests 45 to 48. And
11 just by way of table setting here, just so the Court knows,
12 what they're asking for, it's two categories of information.

13 First, personally identifying information about every
14 individual who has ever listed property on Airbnb's platform
15 from December 2013 through the present, who has ever been
16 convicted of any of 82 different crimes: Bail jumping,
17 blackmail, and if you, you know, did something in Guadalajara
18 that has nothing to do with hidden cameras, right? That's the
19 first category of information.

20 The second category of information they're asking for is
21 contact information for all other unrelated guests who stayed
22 at any one of the properties for Defendant Katherine Thomas,
23 listed on Airbnb's platform over multiple years. So I'll deal
24 with the second category first, but the law is the same as the
25 book.

1 And the law in South Carolina, the Supreme Court of South
2 Carolina has said in the *Homan* case, that contacting
3 nonparties is an invasion of privacy. The privacy law is very
4 clear, and I didn't hear counsel specifically address that
5 because it's not helpful for them.

6 So on the second category, just so the Court knows, they
7 have the names of everyone associated with the reservation
8 code. They already have the names. What they want is contact
9 information. They want to do exactly what *Homan* said you
10 can't do, which is reach out and fish for clients and dig
11 around and contact people who have nothing to do with this
12 case.

13 On the second category, they've gone even broader. They
14 want criminal history information about all sorts of crimes
15 having nothing to do with this case, never could have anything
16 to with this case, and they want to reach out to those people,
17 too, or use those people as, you know, part of this proceeding
18 somehow when there's no basis, no showing of relevance.

19 Now, that's concerning for a couple of reasons. One,
20 because it violates the law. It violates clear privacy law
21 under South Carolina -- under the South Carolina Supreme
22 Court.

23 And it's also concerning because Mr. Few just said, you
24 know, all we have to do here is designate it confidential,
25 which is interesting because thus far in this litigation, they

1 have taken the position that not a single scintilla of
2 information at all is confidential despite Judge Keesley's
3 express order to the contrary.

4 So that gives us no comfort. The idea that we could just
5 designate things confidential, and I'm concerned that they're
6 inviting the Court to violate clear South Carolina law. So
7 that's our position on that motion with respect to 45 to 48.

8 Mr. Few just went on and on and on and has been for a
9 while about the Vicki Ballagh deposition. And I feel
10 compelled to address it just because he keeps bringing it up.

11 So Your Honor, we told counsel very clearly, hey, GCM,
12 the global crisis management team, has only ever dealt with
13 one hidden camera matter. This is -- you're barking up the
14 wrong tree.

15 And this is why we've been trying to meet and compel
16 here -- I mean, and confer here because they keep noticing
17 people that are just wrong. And we're like, talk to us, talk
18 to us, let's figure out what you need. They insisted on
19 deposing her, and lo and behold, there was only one hidden
20 camera matter that GCM had ever been involved with.

21 Again, they don't like the answers that they get, but the
22 idea that Airbnb is not being responsive and not engaging is
23 just not true. They have been noticing the wrong people and
24 refusing to meet and confer with us. We've finally gotten
25 traction on that, and I think we'll get to a good place. But

1 it just concerns me that that representation keeps swirling
2 around for this Court because that's not precisely the way
3 things went.

4 And so I'll stop talking on that motion, and if the Court
5 has any questions, we can answer them.

6 THE COURT: Now, let's go on to the other one, the 16
7 through 44.

8 MS. TAYLOR: Yes. And I think that was part of what Mr.
9 Few addressed. He was -- I don't want to invite him to talk
10 again, so I think he's already spoken to that.

11 THE COURT: He has.

12 MS. TAYLOR: On 16 through 44, one of the key issues
13 there is what they refer to as 35,000 tickets. Right? And so
14 we are -- we've addressed in our motion why that is an
15 incredibly burdensome and kind of problematic ask on their
16 behalf. And I won't address the confidentiality thing again.
17 Just designating things as confidential does not give us the
18 comfort that we would need in this case.

19 For the 35,000 tickets, the 30(b)(6) opponent was very
20 clear, and again, whether or not they like it, hidden camera
21 cases is not -- it's not like there's a button that can be
22 pressed where cases are designated hidden camera, right?

23 So what we've done is we have gone and figured out that
24 there are 35,000 customer service tickets -- and that's a term
25 of art here -- associated with a broad -- broadly with

1 surveillance devices. And that means everything that could
2 record audio or video at all, any sound, any video recording.
3 So your Ring doorbell, your baby monitors, your everything.

4 So everything falls within this broad 35,000-ticket
5 category. Within -- including incredibly personal
6 information, as you can imagine, when you're talking about
7 things that can record video or sound; having nothing to do
8 with hidden cameras. And so within each ticket, you can have
9 a number of communications between a user and customer
10 service. So that is an incredibly onerous undertaking for
11 Airbnb to perform.

12 So what we did and the compromise position that we have
13 laid out in our briefing is we have figured out which of those
14 35,000 tickets correspond to hosts who have been removed from
15 the platform. And so we did that because the likelihood of
16 being removed from the platform is probably because you
17 violated an Airbnb policy, for example, having a hidden
18 camera.

19 So we tried to get to the heart of what it is that
20 they're looking for in a way that's actually reasonable and
21 feasible for the company to do that wouldn't take many, many,
22 many months and lots of man hours.

23 And so we've designated that number, and we've offered to
24 them, hey, we will look through this subset of tickets to see
25 which of them involve hidden cameras. We will make the

1 appropriate redaction so that we're not giving you third party
2 private contact information, and we will produce that to you.
3 They're saying no.

4 I believe it's a reasonable position. It's the only
5 position that will get them the information in any kind of
6 reasonable time period that does not require us to turn over
7 lots of private confidential information about people having
8 nothing to do with this case.

9 We hope that the Court agrees with that position, but
10 that's our position with respect to the 35,000 tickets that I
11 think is the most important category under that motion.

12 MR. FEW: Your Honor, if I may, we do not agree that 16
13 to 44 conflates to or equivocates with the 35,000 tickets. We
14 had a conference with them yesterday. And they proceeded to
15 tell us how burdensome it was going to be to go through the
16 35,000 tickets, and we were hearing a lot of, well, this is
17 what I understand.

18 And so frankly, I was of the belief that they don't
19 really know what it would involve because they have not taken
20 a handful of them themselves to actually determine what the
21 procedure and the method would be for doing it.

22 And we said would you please give us an example of, you
23 know, 10 or 12 of these things so that we can understand what
24 you're talking about because we want to understand what you're
25 talking about, and they were unable to do that. And then the

1 call just devolved into we're not going to talk anymore.

2 And so Your Honor, they just need to answer each one of
3 these requests. I mean, there's no way that every one of 16
4 through 44 is legitimately a 100 percent objectionable. And
5 if they wanted to talk about some and narrow the scope, we can
6 do that. We'd be more than happy to do that.

7 But it's really, frankly, Your Honor, it's too late for
8 that because they have not sought to do that. They've
9 answered the discovery, they've called our bluff, and they've
10 not reached out to us to say, hey, let's work through these
11 things because we can give you this.

12 And as Debbie told them yesterday, we'll take the burden
13 of going through the 35,000, you know, just, you know, that
14 eliminates the burden. They've already pulled the 35,000
15 aside. We'll do the work, but we have to have something to
16 work from. At this point, we have virtually nothing to work
17 from.

18 And so, Your Honor, just take issue completely with the
19 categorization that we're only talking about 35,000 tickets
20 because we're not. We're talking about simple things, like
21 things that are in our complaint, like you have documents and
22 things that are not privileged that relate to the filing of
23 these other lawsuits. What did you do about them?

24 I mean, we don't have to -- we're not asking to get into
25 the general counsel's office and read privileged memos, but

1 they have unprivileged documents about these things.

2 The lawsuits that they were served with, they could give
3 us the pleadings, but they just don't want to do it. And
4 if -- and you know trust. Trust is the word, right? Well,
5 they don't trust us, and we don't trust them.

6 So what we need is the documents. We will do the work to
7 figure out which of the documents are relevant. We do not
8 agree that Airbnb, in-house lawyers, O'Melveny & Myers
9 lawyers, whoever else, gets to make the decisions about what
10 is and is not relevant at least in terms -- because they may
11 not think something's relevant, but we do.

12 I mean there, there obviously has to be a defined scope,
13 but that's what we're seeking. We've already gone through
14 what's relevant with Judge Keesley. And so in order to have a
15 productive 30(b)(6) deposition, which would address the
16 concern that I stated earlier that I was not -- didn't think
17 that to be a promising.

18 But if we get a real response to these requests, then we
19 can have questions to ask those witnesses about what, in fact,
20 the company has done on these subjects. And there's a lot
21 more to these subjects than 35,000 tickets that the 30(b)(6)
22 witness testified about.

23 And Debbie could probably explain what the 35,000 tickets
24 are. At this point, I think all that that I know is that
25 there's a category of 35,000 of something that they have set

1 aside that may be relevant, but if that's all we get, if we
2 have to do the work, we're willing to do the work.

3 MR. ASHMORE: Judge, that --

4 MS. BARBIER: Your Honor, just briefly, Your Honor. I
5 just want to supplement what Mr. Few said because I did take
6 the Rule 30(b)(6) deposition. And the way that this issue
7 arose is one of the topics in the 30(b)(6) deposition is, you
8 know, other complaints of hidden cameras in Airbnb properties.

9 When we got to that topic, it's topic 18, the witness
10 said that she couldn't tell me how many complaints there were.
11 She hadn't reviewed any other complaints and that she could
12 tell me what she personally knew about, when she worked in the
13 safety department, and it was less than ten. Okay.

14 And so I said to her, you know, do you mean to tell me,
15 are you testifying under oath that Airbnb, an electronic
16 platform and a company that builds its name on being, you
17 know, web-based and sophisticated and electronic, cannot
18 (audio interference

19 amongst your complaints or your customer service tickets
20 to determine when hidden cameras were involved in a complaint.
21 And she would -- she refused. She dodged my question. That
22 was the question that spurred Judge Keesley's involvement.
23 Okay.

24 Judge Keesley got on the phone and said that's a proper
25 question, you need to answer it. After he ordered her to

1 answer it, she still didn't answer it.

2 She came back in January, and she said she had met with
3 an IT person and within an hour was able to determine that
4 there were approximately 35,000 complaints that were related
5 to surveillance devices, but she said that could be a Ring
6 doorbell. And I said, well, it could also be a hidden camera
7 in someone's shower, couldn't it? And she agreed, yes, that
8 could be that, too.

9 Now, 35,000 pages of documents -- I mean, Your Honor, as
10 you know and as we all know who are involved in litigation
11 with big companies, that is nothing. I can review 35,000
12 documents or pages or whatever it is in a couple of days. I
13 had to do -- I had to review 100,000 not long ago in a
14 privileged matter, and it was -- you know, it wasn't fun, but
15 I did it.

16 Airbnb's law firm has 700 lawyers. Okay. And they have
17 thousands of employees. And so I think that 35,000 documents
18 is nothing. It's nothing to me, then it must be nothing to
19 them. And we're happy to go through those customer services
20 tickets to determine whether or not they're relevant to our
21 case. But just to say that a multi-billion dollar company, to
22 say it's just too burdensome and that their 700-member law
23 firm can't do it is -- frankly, it's absurd. And it's just
24 another example of the stonewall tactics we've gotten.

25 You know, we're -- I'd hate to disagree with Ms. Taylor

1 because I know she's doing her job, but I don't think we're
2 making progress. I think that Airbnb's counsel wants you to
3 believe we're making progress. If we were making progress,
4 Your Honor, I promise you, we would not have wasted your
5 morning. We just wouldn't have. I -- we -- I wouldn't do
6 that to you. We're desperate because we have no documents and
7 we have no answers, and we have no -- you know, we can't even
8 get names of witnesses. So that's where we are with that. I
9 just wanted to speak to the burden. Thank you.

10 MR. ASHMORE: Just briefly, Your Honor. The -- so every
11 time we have a communication, it's a ticket. Okay. Like --
12 they like to call them complaints; those are tickets. I had a
13 nice time at Airbnb, that's a ticket. Had a terrible time
14 Airbnb, that's a ticket. Okay. So there are millions of
15 tickets out there.

16 What we were able to do within those tickets are
17 determine that there are 35,000 tickets related to
18 surveillance devices. That could be a hidden camera. Could
19 also be a Ring doorbell, a baby monitor, a left iPad, a left
20 cell phone, a left video camera, for instance. Now, there --
21 we -- so within that bucket of 35,000, we've determined that
22 3,000 people have been kicked off the Airbnb platform. And as
23 Ms. Taylor points out, that is more than likely because of a
24 violation of our terms in service, which could include hidden
25 cameras.

1 We just don't have a separate button to hit to say, hey,
2 these are all the hidden camera cases. We've got -- that
3 doesn't exist. Okay. We don't keep up with it that way. And
4 so, Your Honor, that being said, we're, again, more than happy
5 to provide that, within the 35,000, those 3,000 that had been
6 kicked off. As to the others, Judge, there are going to be
7 people that contacted Airbnb and essentially say, hey, you
8 know, I'm having an affair and I recorded my significant other
9 or my girlfriend or my boyfriend, and I forgot the camera, or
10 it's on my cell phone. And I -- who knows what privacy
11 concerns we would be invading with regard to those other
12 people.

13 And Judge, there's state and federal statutes that comply
14 here. And again, we've had really bad luck on confidentiality
15 orders in this case, Judge. And so, for those reasons, you
16 know, we think it's more than reasonable to -- for us to
17 produce the number of individuals that have been kicked off
18 under the surveillance device bucket.

19 MS. TAYLOR: If I may be heard, just briefly. I want to
20 correct just one more thing. So I've sat here for a long
21 time, just like you have, Your Honor, very patiently. I
22 appreciate that. But it sticks in my car a little bit because
23 lots of representations have been made to this Court about
24 what other judges have said, and I've been present for some of
25 this stuff. And so I want to correct a couple of things.

1 Mr. -- Ms. Barbier just referred to Judge Keesley, you know,
2 directing the witness that she needed to answer that and all
3 of that.

4 So opposing counsel, Ms. Barbier, called Judge Keesley, I
5 believe, within 45 minutes of the 30(b)(6) deposition. I
6 mean, I think she had the number on speed dial. Like, I mean,
7 they were threatening sanctions 20 minutes in. It was that
8 kind of thing, right. So she didn't even let the witness
9 answer before she started threatening her with sanctions. And
10 when we explained to Judge Keesley how the mechanism works,
11 right, like we just -- there is no capability to just say,
12 hid -- you know, hidden camera and have something spit out.
13 That's just not how the records are maintained within the
14 company. It just isn't.

15 Judge Keesley said, well, if you can't do it, you can't
16 do it. So -- all right -- which is -- I mean, that's the way
17 it is. The way records are maintained are the way they are
18 maintained. And so what we have here is the umbrella of
19 surveillance device policy, which includes a whole bunch of
20 stuff. And the idea that we're talking about 35,000 pages is
21 just not accurate. We're talking about 35,000 tickets. And
22 within a ticket could be two messages; it could be 20
23 messages, right. We're talking about -- right. We're talking
24 about voluminous information that is not easily exportable
25 from Airbnb. There's no way to just export this and put it

1 in, you know, in an easy format. So you have to go through
2 and review each ticket one-by-one-by-one because the way their
3 systems are maintained, it's not easy to just transfer it to a
4 file that's searchable. So you got to look through it.

5 And so -- you know, we are a 700 -- I don't know if we're
6 a 700-member law firm. I -- you know, I believe Ms. Barbier.
7 I have not checked, myself. But the idea of what's
8 burdensome, the fact that a law firm may have 700 people does
9 not make that request any less burdensome when a lot of what
10 you're going to be finding has nothing to do with the facts of
11 this case, with the allegations in this case. What we have
12 tried to do is a compromise position that's designed to get at
13 what plaintiffs want here, which is hidden camera --
14 complaints about hidden cameras. I assume that they don't
15 want complaints about Ring doorbells. I know they want to
16 make us work, but that's not really what this litigation is
17 about or what they're asking for.

18 And so we think our compromise position is reasonable.
19 Of course, redactions need to be made because we're talking
20 about third parties having nothing to do with this case. And
21 we're prepared -- we are going through those now. And we're
22 prepared to produce those. We'll do whatever the Court asks,
23 but we have done -- what we have done is designed to get at
24 what they want.

25 There are other requests in -- there are other issues in

1 16 through 44. I did not go through each of them because our
2 motion (indiscernible) -- I know that the Court is sick of
3 hearing from us. I can if you would like. We've teed up in
4 our briefing exactly what we have provided and what we have
5 not provided. We disagree with their position on all of this.
6 If the Court wants me to argue, I am prepared to go through
7 each one of them.

8 THE COURT: Well, no. And what I keep thinking is -- I
9 mean, I know that there's this compromise that's been offered.
10 But it hasn't been produced. So that leaves us right back at
11 the beginning. I know that there's been some initial
12 discussion about, I don't know, some specificity or some
13 compromise and all of that. And I'm wondering if -- y'all
14 tell me -- if this same 15 days that I'm giving you for
15 whatever the other motion was several hours ago will be
16 beneficial here too so it can whittle down what I actually
17 need to address without today going through one-by-one 16
18 through 44.

19 Because what I'm not going to do, as I sit here right
20 now, is really -- because there are so many of them, I'm just
21 not going to get into very much detail. I would rule based on
22 what's written there, you know, what the request is, and
23 whether it appears appropriate to me. 35,000 tickets does not
24 sound overly broad and unduly burdensome to me, considering
25 where we are in this corporate structure that things are

1 electronic. Maybe if we were talking about 35,000 separate
2 files in somebody's warehouse with paper documents in them,
3 that might be a different story. But this tech company that
4 has computerized records -- you know, if I can find stuff on a
5 Google search with different search terms or on Westlaw or
6 wherever with various search terms, I don't doubt that Airbnb
7 could do something similar. And of course, I don't know the
8 platform that's being used. I don't know that. And I don't
9 know what it would take to do that. But you either have to do
10 that or got to produce all of them, or something. I don't
11 know.

12 And so the compromise may be sufficient. I don't know.
13 But the compromise would need to be produced, and there has to be
14 a determination of its sufficiency. And I'm happy to allow
15 that to happen over the next 15 days so that maybe some
16 progress can be made. But I don't know if that'll be helpful.

17 MS. TAYLOR: Your Honor --

18 MS. BARBIER: Judge, let me tell you why the compromise
19 would -- doesn't -- is meaningless. They don't kick everybody
20 off the platform who's been caught using a hidden camera.
21 Okay. So why would I agree to accept the tickets only for
22 people they've kicked off the platform? I mean, they -- we
23 have already -- we already know that they have found that
24 people who have hidden cameras and they didn't kick them off
25 the platform. That would be -- I mean, they have people

1 all -- their criminal background policy check allows people
2 who have felonies and beyond to be hosts. And this is one of
3 the things that they don't want out there. So some of their
4 policies are so, you know, shocking that there's -- the
5 compromise won't work at all. I mean, that's just people
6 being kicked off.

7 THE COURT: Well -- and it may not, but the compromise is
8 a start. And the truth of the matter is, I'm going down this
9 road because even if, you know, the compromise gives you 10
10 percent of the information, the other 90 percent is
11 objectionable, the rules require you to produce that portion
12 which is not objectionable. So if the compromise is the part
13 that's not objectionable, you're required, under the rules, to
14 produce that anyway. I deal with what you don't agree with.

15 So I'm not saying that the compromise will resolve the
16 issue in its entirety, but it's a start. And it's -- what
17 they're offering is required to be produced no matter what.

18 MS. TAYLOR: Your Honor, may I speak to that? Yes, it
19 would be helpful to -- I -- 15 days is not enough time. For
20 better or worse, it's a proprietary platform, so it's not
21 keyword searchable. I wish it were. It would make my life a
22 whole lot easier.

23 I think 15 days is not enough. 30 days we could get that
24 done. We are beginning that -- we are -- sorry. We're
25 conducting that search at the -- that review as we speak. We

1 just need a little bit more time to do it.

2 MR. FEW: Your Honor --

3 THE COURT: Go ahead, Mr. Few.

4 MR. FEW: -- what I heard you saying is you wanted to put
5 us in the position that we should have been with them giving
6 us what they admit that they should have given us, which they
7 have not done. And this is not a question of what you can't
8 do; this is a question of what you won't do. And so, Your
9 Honor, with that in mind, I would just respectfully request
10 that the Court grant the motion -- the request for production.
11 This does not require witnesses. They can have 30 days to
12 give us the documents, but all of these topics are relevant.
13 They've already been signed off on by the judge, by Judge
14 Keesley, in hotly contested -- I don't know that I'll ever
15 spend -- or anybody'll spend that much time arguing over a
16 30(b)(6) deposition we started trying to take over a year ago
17 with the first set of lawyers. And so I just think that that
18 is the only way to address it because, as Your Honor has said,
19 and as we know, they're only going to give us what they want
20 to give us anyway. And then if we find it to be insufficient,
21 then we come back to the Court. But given the position that
22 they've taken, we should not have to -- they don't get an
23 opportunity to come in now and say, well, how about we
24 compromise and do what we agree to do.

25 No, Airbnb and its lawyers do not define the scope of

1 discovery unless it's by consent. The Court does. And they
2 made us file these motions -- these motions have been pending
3 for a long time on known topics, and the topics are narrowly
4 tailored. They just need to give us the production, all of
5 it, because we will definitely be back here again if we get
6 their compromise.

7 Now, I wish I had their compromise prior to this hearing
8 because then I would be able to talk to Your Honor about, look
9 at this document; it shows that they had these others but --
10 so I just think that that's the only fair result, Your Honor,
11 particularly on these requests for production, is that they be
12 ordered to give us a complete response to all of the things
13 and not push us to use all this court time and then come along
14 and say, well, now we've figured out what -- and you just
15 heard, they haven't even done it.

16 MS. TAYLOR: That's not true.

17 MR. FEW: They have not even done it.

18 MS. TAYLOR: Well, Judge, that's not true. If I may?
19 Part of the problem here is that plaintiffs have refused to
20 meet and confer with us for months. So the idea that this --
21 that the court intervention was the only recourse is just no
22 true. They are not just learning about the compromise
23 position. And so unfortunately, it would take months for us
24 to go through all 35,000 tickets. That's part of the reason
25 why we suggested this compromise. We can get the compromise

1 done within 30 days, but it's -- it is an onerous process, and
2 that's frustrating for me too. But it is what it is, as they
3 say -- as the kids say.

4 And so the idea that we have been stalling and the court
5 intervention is the only recourse here is just not true. We
6 have tried to meet and confer with plaintiffs for so very long
7 now, with them refusing.

8 MS. BARBIER: Judge, I have a question for the Court. I
9 know I'm not going to speak directly to Airbnb's counsel. But
10 if they don't have the ability to electronically search for
11 things, how in the world do they have the ability to identify
12 documents that were -- where someone involving these customer
13 service tickets were kicked out or taken off the platform?

14 I mean, all --

15 THE COURT: It appears inconsistent to me too.

16 MS. BARBIER: It's very inconsistent.

17 THE COURT: Um-hum.

18 MS. BARBIER: And if it's going to take them months to go
19 through 35,000 customer service tickets, Mr. Few and I, Mr.
20 Beasley (phonetic), are very capable of doing it, probably,
21 within a week. And we're happy to do that.

22 THE COURT: Well, (indiscernible) 30 days. If I order 30
23 days, the condense the many months down to 30 days somehow
24 too. I mean, will it take months or will it take 30 days?
25 I'm not sure.

1 MS. TAYLOR: So 30 days for the subset. So I'm sorry,
2 Your Honor, if I was not clear. So the compromise position,
3 that will take 30 days. You can order us to do it sooner, and
4 we will do our -- we will do our very, very best. But for the
5 full 35,000 tickets, that would take months.

6 MS. BARBIER: But Judge, how are they already divided if
7 they haven't reviewed them?

8 MS. TAYLOR: Because it is easy to search -- it is easy
9 to see which of those hosts are no longer hosts on the
10 platform. We don't have to search the individual substance of
11 the communications to see which hosts are no longer on the
12 platform.

13 THE COURT: But you also know which (indiscernible) --

14 MR. FEW: That's one --

15 THE COURT: -- surveillance of any sort.

16 MR. FEW: That's one -- I'm --

17 THE COURT: You've narrowed down the 35 -- yeah,
18 surveillance. So you searched something.

19 MS. TAYLOR: All -- the way these things are -- they're
20 called tags. The way these things are tagged when they come
21 in, they're tagged by surveillance devices. So when a
22 customer service ticket is made, it's given a tag. And the
23 broader tag is for surveillance devices. It doesn't go more
24 specific beyond that.

25 And so we have the broad surveillance device tagging. We

1 can get that without doing searches of the content. The
2 question is, now, searching within that broader category to
3 see what the actual complaint was about.

4 MS. BARBIER: So they've had two years to produce this
5 information. And I think they shouldn't need another 30 days.

6 THE COURT: Well -- and so that's sort of the problem. I
7 don't know about two years because I -- you know, I don't
8 know -- that's the initiation of the lawsuit. But these
9 requests for production, 16 through 44, were served in June of
10 last year, and you had a duty -- June 7th -- so by July 7th,
11 you should have produced -- whatever you're saying you'll
12 produce now should have been produced then because you have a
13 duty to produce that which is not objectionable. And then you
14 bring to the Court the disputed portion.

15 So since you should have done that by July 7th -- they
16 were served on June 7th -- what's today? April. I mean, it's
17 already been ten months for you to do something which you
18 required to do in 30 days. And now you want another 30 days;
19 that's 11 months. And that's, you know, 11 times longer than
20 you're supposed to have to begin with. And that's just for a
21 portion of it. So what am I to do with that?

22 MS. TAYLOR: Again, I think our compromise position is
23 reasonable, and we will get through those tickets as quickly
24 as you order us to.

25 THE COURT: Well, why wasn't that produced by July 7th?

1 That portion of information which you're now saying you can
2 be -- you can produce in 30 days. They should have had that
3 by July 7th of last year.

4 MS. TAYLOR: So just to be clear, I -- we -- this is not
5 an admission that these are responsive materials. We're
6 talking about a search -- like, a search that we conducted
7 following the deposition after learning what it is that they
8 wanted because they made these broad requests. They refused
9 to meet and confer about it. At the deposition of the
10 30(b)(6) witness, they clarified a little bit more because
11 they were asking her all these questions. And we endeavor to
12 then, with more specificity, try to determine what we could
13 find. Their request was incredibly broad.

14 THE COURT: Okay. Did you file a motion for a protective
15 order in that 30-day timeframe to project -- protect you from
16 the requirements to respond to those discovery requests?

17 MS. TAYLOR: And Your Honor, again -- just again, for the
18 record. Plaintiff here admitted that she never contacted
19 customer service. So I mean, we had valid objections to these
20 requests.

21 THE COURT: What I want is an answer to my question.

22 MS. TAYLOR: I --

23 THE COURT: Was there a motion for a protective order
24 filed, as required by the rules?

25 MS. TAYLOR: We objected, Your Honor, and there was

1 motion practice over these requests.

2 THE COURT: Was there a motion for protective order by
3 (indiscernible) --

4 MS. TAYLOR: I don't believe --

5 THE COURT: Is this how Airbnb answers questions?
6 Because I would understand the frustration in the deposition.

7 MS. TAYLOR: I apologize. I'm trying to check while
8 we're asking, which is why. I don't believe we filed a motion
9 for protective order; we just objected. I'm trying to talk to
10 my associates as we speak just to make sure. But we just
11 objected; we did not file a motion for protective order. I
12 apologize, Your Honor.

13 THE COURT: Got you. I mean, I'm inclined to just grant
14 both of these motions. And let me just say, to the extent
15 that there's some lack of trust of plaintiffs' counsel, that
16 they'll exceed the scope of the confidentiality order, that's
17 another matter for another time. I don't think that that
18 relieves you of your duty under the rules to produce certain
19 information because you're scared about what you're going to
20 do with it. They're under an order to -- you know, to handle
21 that information in a very specific way. To the extent that
22 they exceed the scope of that order, you know, there are
23 motions for sanctions, the Court has contempt power, et
24 cetera, et cetera.

25 I'm not going to presume on the front end that they will

1 violate a court order and therefore they don't get the
2 information. That would make the order really a nullity
3 because why is it even in place if we can't rely on counsel to
4 adhere to their duties. Let us -- you know, maybe it won't be
5 a surprise to you, but let them surprise me with the violation
6 of the order -- or whatever judge there is.

7 Really, I'm inclined to grant both motions. And I will
8 give you 60 days to fully respond to the request for
9 production delineated in both motions, which then gets you
10 right at about a year that you had to compile the information.
11 I mean, you had to have compiled it somehow in some way to
12 even know that it's objectionable, or you'd have to have seen
13 it, reviewed it. It should be ripe for production.
14 Otherwise, you're just making a blanket objection without
15 knowing the substance of what you're dealing with, because
16 this isn't how this is supposed to work.

17 Frankly, this case should have been on a trial roster
18 more than a year ago, probably. And we're still talking about
19 discovery and 60 more days to produce some discovery
20 information. And I think that's not what is contemplated by
21 the rules, certainly not the rule that requires -- that allows
22 cases to be placed upon a trial roster one year from the date
23 of filing. We don't anticipate that two years later we're
24 still involved in discovery disputes.

25 So that's my ruling on those, 60 days to produce all of

1 that information.

2 MS. TAYLOR: Does that (indiscernible) request for
3 production?

4 THE COURT: Say that again.

5 MS. TAYLOR: Does that apply to the motion about the
6 privacy in -- the private information, contact information,
7 for other users and criminal history information for
8 individuals having nothing to do with this case?

9 THE COURT: Yes.

10 MS. TAYLOR: Yes? Okay.

11 THE COURT: It does. Yes. Whether that's admissible at
12 trial or, you know -- that's another matter for another day.
13 But certainly seems to be reasonably calculated to be -- to
14 potentially lead to the discovery of relevant or admissible
15 evidence that relates to the claims in this case.

16 Also let me suggest that y'all seek complex case
17 designation. That doesn't have anything to do with me here
18 today, but it sounds like a case that needs that. One judge
19 handling everything, you know, all the motions. You don't
20 have to wait for the clerk of court to schedule motions
21 hearings. You can contact the judge directly and send them in
22 whenever. That judge probably won't be me because I'm not a
23 Second Circuit judge and this is not an adjacent circuit. So
24 that's just a suggestions. It just -- it -- yeah, it screams
25 to me as one of those cases that would benefit from complex

1 case designation.

2 MR. ASHMORE: And we thought you were volunteering, Your
3 Honor.

4 THE COURT: Not at all. I've got plenty here in Richland
5 County. So that takes care of that. And now I need to go for
6 real because I've moved my 1 o'clock lunchtime appointment to
7 a 2 o'clock appointment. But I think I've addressed
8 everything.

9 MS. BARBIER: Thank you, Your Honor.

10 MR. ASHMORE: Thank you for your time, Judge.

11 MS. TAYLOR: Thank you, Your Honor.

12 THE COURT: Thank you.

13 MR. ASHMORE: Okay.

14 THE COURT: Thank you all.

15 MR. FEW: Got you. Thanks so much.

16 THE COURT: Have a good day.

17 MS. TAYLOR: You too.

18 (Thereupon, the proceedings were concluded)

19 (End of Transcript of Record)

20

21

22

23

24

25

STATE OF SOUTH CAROLINA) IN THE CIRCUIT COURT 2
COUNTY OF AIKEN) C.A. NO. 2021-CP-020-0889

JULIANNE FOSTER	)
	)
Plaintiff,	)
versus	)
	)
AIRBNB, INC. ET AL	)
	)
Defendant(s).	)

 H E A R I N G
BEFORE THE HONORABLE J. CORDELL MADDOX, JR.

DATE: June 13, 2023
TIME:
LOCATION: South Carolina Circuit Court 2

TRANSCRIBED BY: Crystal Thomas

 LEGAL EAGLE
 Post Office Box 5682
 Greenville, South Carolina 29606
 864-467-1373
 depos@legaleagleinc.com

1 APPEARANCES:

2

3 Beattie Ashmore, Esquire

4 Attorney at Law

5 605 E. Washington Street

6 Greenville, SC 29601

7

8 Dick Harpootlian

9 Harpootlian Law Firm

10 1410 Laurel St,

11 Columbia, SC 29201

12

13 Attorneys for the Defendant.

14

15 Wesley Few, Esquire

16 Wesley D. Few, LLC

17 P.O. Box 9398

18 Greenville, SC 29604

19

20 Attorney for the Plaintiff.

21

22 ALSO APPEARING:

23 Mitch Brown

24 Jim Griffin

25 Deborah Barbier

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

Motion Hearing.....	4
Certificate of Transcriber.....	31

WITNESSES

<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>

FOR THE PLAINTIFF:

(None)

FOR THE DEFENDANT:

(None)

EXHIBITS

(None marked)

1 PROCEEDINGS

2 THE COURT: Okay. Let's go -- I know some of you
3 all probably have better things to do rather than argue a
4 Zoom motion in Aiken. I've looked through and read
5 everything. It seems to me that unless you have some real
6 different opinion that the arbitration issue needs to be
7 addressed first. That might take care of a lot of things.

8 So do y'all agree with that?

9 MR. HARPOOTLIAN: Yes, sir.

10 THE COURT: Okay. All right.

11 MR. HARPOOTLIAN: Your Honor --

12 THE COURT: Good to see all of you.

13 MR. HARPOOTLIAN: Good to see you. Your Honor,
14 Dick Harpootlian for the Defendant, Airbnb. I'm just going
15 to make some introductory remarks and then Mitch Brown and/or
16 Beattie will take over.

17 This case began as a lawsuit by a woman who was
18 videotaped by Mr. Griffin's client in her room at a house or
19 cabin where Mr. Griffin's client had apparently videotaped a
20 bunch of different folks over the years in various states of
21 undress or other poses. The -- Mr. Griffin's client has been
22 charged criminally. He also has apparently settled this case
23 with the Plaintiff, we hear for a substantial amount of
24 money, seven figures. So that piece is over. What's left is
25 a lawsuit by the Plaintiff.

1 UNIDENTIFIED SPEAKER: What's his name?

2 UNIDENTIFIED SPEAKER: Cordell.

3 UNIDENTIFIED SPEAKER: What's his first name?

4 UNIDENTIFIED SPEAKER: Cordell Maddox.

5 THE COURT: Yeah. Who's saying that?

6 MR. HARPOOTLIAN: I don't hear anybody. I don't
7 see anybody, but.

8 THE COURT: Well, when you hear someone say
9 Cordell Maddox, it -- I mean, it's my birthday tomorrow and
10 my mother used to call me at 8:30 tomorrow morning and tell
11 her that I was killing her every year for 53 years, but is
12 anybody trying to get me personally or is this something
13 weirder? Look, I ain't holding no video with ghosts. I'm
14 just telling you right now I'm not doing it. I mean, I
15 noticed how slick this Defendant has become Mr. Griffin's
16 client all of the sudden. I mean, that just seems to be a
17 little bit of a smear job, but go ahead.

18 All right. I assume somebody was just confirming
19 that my name was Cordell Maddox. It is. Okay. Go ahead.

20 MR. HARPOOTLIAN: Well, Your Honor, we stipulate
21 that you are, in fact, Cordell Maddox.

22 THE COURT: Well.

23 MR. HARPOOTLIAN: But the disagreement here is
24 whether or not an arbitration provision in the contract is
25 applicable to the Plaintiff. And, of course, you're going to

1 hear Mr. Brown in much more detail on this, but we believe
2 since they filed an amended complaint with 12 new causes of
3 action, dozens and dozens of new paragraphs, many of which
4 refer back to, which they did not do in their first
5 complaint, to their online contract that folks enter into
6 when they either book a place or offer a place to be booked.

7 So we think this is relatively a, you know, a new
8 suit, in effect. And so we can assert arbitration. And
9 again, there's all kinds of great case law that says we can
10 do this. And I think that once you hear Mr. Brown and
11 Beattie walk through some of this stuff, you're going to
12 determine that this case should not be consuming the
13 resources of common pleas, but in fact can go to an
14 arbitrator and get it resolved in relatively short order.

15 I will say this, that this case has now been
16 turned into a national case based on the way they've pled it
17 and the discovery they're seeking. That was not the initial
18 case. And so with having said that, let me turn this over to
19 Mitch Brown.

20 THE COURT: Okay. Okay, Mitch. Go ahead.

21 MR. BROWN: May it please the Court, Judge?

22 So we are, as Mr. Harpootlian said, we're moving
23 to compel arbitration. He and I got involved in this case at
24 a stage not long after the amended complaint was filed. A
25 motion to dismiss had been made, had been orally, but not

1 formally ruled upon by Judge Newman. We got involved in it
2 and we looked and said to Judge Newman, number one, you are
3 ordering some discovery here, with all due respect, that our
4 State Supreme Court has said is out of bounds because of non-
5 party privacy interests. And number two, we told her we're
6 going to -- we're moving for arbitration, to compel
7 arbitration right now. And in the previously filed answer,
8 the Airbnb specifically reserved its right to compel
9 arbitration.

10 Now the question is going to be the other side has
11 principally talked about waiver. They've talked about some
12 other things that I can address, but to start with, I do
13 think it's important to know that the U.S. Supreme Court came
14 out with a case called Sundance in which they said that the
15 prejudice component that is out there in federal case law and
16 it happens to be also in South Carolina case law when you're
17 looking at waiver questions is not to be considered. You're
18 supposed to just use the old timey did you knowingly
19 relinquish a known right waiver test. That's what they said,
20 okay.

21 We still have the arbitration scope should be
22 favorable in terms of arbitration and we still have -- so we
23 still have that in terms of scope and what the arbitration
24 provision covers versus what it doesn't. It's supposed to be
25 favorable in support of arbitration in that regard.

1 So when you look at waiver, there are a few facts
2 here that are important. And I won't belabor them, but
3 number one, in the terms and conditions, Judge, there is a
4 specific non-waiver provision in there, okay, that says if
5 we're not enforcing this on a particular occasion, that
6 doesn't mean we're not -- that they're waiving anything. So
7 they specifically saying we're not waiving things by non-
8 enforcement. Number two, there's a -- as I mentioned in the
9 pleading -- the Airbnb in their original pleading and in the
10 second amendment to the original complaint specifically
11 raised arbitration and stated they were not waiving
12 arbitration.

13 So and then number three, as Mr. Harpootlian had
14 mentioned, we now have a new lawsuit that's kind of restarted
15 everything with a massive number of I think there are 5
16 actually new causes of action, not 12, but there are a lot
17 and there's tons of other paragraphs in there, many of which
18 quote from policies or standards of Airbnb that are
19 incorporated into the terms of service agreement. And the
20 Plaintiff is specifically and expressly relying upon those
21 terms and pointing at those terms in bringing these new
22 claims including unfair trade practices, okay.

23 The reason all of that is important is because
24 there's some cases cited in our papers. One is called
25 Farsela vs. Nissan (phonetic) from 2023, not a South Carolina

1 case, Your Honor, but it's in our papers, in our rebuttal
2 papers.

3 THE COURT: Right.

4 MR. BROWN: There's another one called Solus
5 that's from 2022, also not South Carolina, but those are two
6 district court cases, Your Honor, where the courts are
7 saying, look, when you bring the new complaint, that restarts
8 -- that basically restarts the case. And if you haven't
9 waived arbitration then, you know, go forward with it.
10 That's what we're doing. And as I mentioned, in their first
11 complaint they didn't have all these quotes of Airbnb's
12 policies, terms, and standards, all of which are incorporated
13 in the terms of service. They didn't have that in there.
14 Now they do and we have specifically not waived.

15 And I'd like to draw the Court's attention to a
16 quick analogy. I was talking about this with Dick the other
17 day. Yeah. Every day in America millions of times there are
18 lenders, there are landlords that say your payment is late
19 and I've got a right to foreclose on you or a right to do
20 this or that to you, but you know what? I'm not waiving my
21 rights, but I'm going to take your payment, okay. The
22 Supreme Court has said now, the U.S. Supreme Court has said
23 we're supposed to treat waiver of arbitration exactly like we
24 treat waiver of everything else. And here, Airbnb
25 specifically stated we are not waiving arbitration

1 repeatedly. They made their amended complaint. We moved to
2 compel the arbitration which we specifically did not waive.
3 And I would argue it's analogous to those, you know, very
4 common situations that people find themselves in over time
5 where there's no waiver of a contract, right, just by virtue
6 of something that's happened.

7 The arguments that they make, Your Honor, against
8 this are on this, first, they say that we didn't prove that
9 Ms. Jain, who is the friend of the Plaintiff, J-A-I-N, that
10 she agreed to the particular terms of service, okay. That's
11 one of the arguments that they made. We didn't think, number
12 one, that that was even a contested fact because in their
13 amended complaint they referenced Ms. Jain's lawsuit in which
14 Ms. Jain, at paragraph 13 of her lawsuit, says that she
15 booked through Airbnb and Airbnb hosted house. And when you
16 do that, you are accepting the terms and conditions of the
17 Airbnb platform and online services.

18 Number two, for months and months, Plaintiff has
19 had evidence that was produced regarding the fact that
20 everybody knew this was an Airbnb case, everybody knew this
21 was an Airbnb house, and Ms. Jain signed up and clicked on
22 the online documentation to become a guest, and therefore,
23 the terms of service apply.

24 Their second argument is that, well, Plaintiff is
25 a non-signatory. And our argument there, as you might guess,

1 is direct benefits estoppel. Plaintiff is repeatedly -- and
2 I'm trying to -- I wish I had it handy with me, but I
3 counted. I mean, I'll give you a quick rundown. These are
4 paragraphs in their complaint that quote parts of standards
5 or terms or policies in the Airbnb.

6 THE COURT: Okay.

7 MR. BROWN: Number 4, 12, 32, 59, 60, 62, 70, 71,
8 72, 73. I mean, it keeps on going. They're quoting the very
9 terms in their lawsuit that they're now saying, we don't want
10 to be bound by the arbitration part of those terms. We just
11 want to benefit and bring a lawsuit based on these terms.
12 That is exactly what direct benefits estoppel is all about
13 and you can't do.

14 There's a case that I handled part of called
15 Wilson vs. Willis that I think is the -- I think is the State
16 Supreme Court's latest and greatest on this direct benefits
17 estoppel. And in that case, the Court said, look, it's not a
18 but for test. You can't just simply say but for a contract I
19 wouldn't be sued. That's not good enough. You have to --
20 the Plaintiff has to be pointing at parts of the contract and
21 relying on that.

22 Well, that's what they're doing here numerous,
23 numerous times. And therefore the Willis vs. Wilson case is
24 completely distinguishable and this is right on point as a
25 direct benefit estoppel case.

1 And I think, Your Honor, that might be the sum
2 total of essentially what we're talking about here. We have
3 made a motion, Your Honor, that is linked to this motion,
4 which is just a common sense type thing where we say, Judge
5 Maddox, while you're considering whether to compel
6 arbitration please either don't allow other judicial
7 proceeding to go on, so we're asking for a limited stay there
8 while you're considering this because you're kind of putting
9 cart before the horse if you just allow all this other
10 judicial stuff to go on while you're considering whether any
11 of it should be going on. So we have made that motion to and
12 I'd just mention that one briefly. That's kind of the
13 intention of that.

14 THE COURT: Well, just for practical matters, the
15 fact that there may be a multi-state additional cases
16 involved, I mean, are you eventually moving toward a class or
17 are these separate actions? And that's not anything that
18 really -- I'm just kind of curious. Does anybody know?

19 MR. BROWN: Your Honor, I don't know what their
20 intentions are, but I think -- and I don't believe that's
21 been brought up yet, but I believe that that would be blocked
22 by the terms of service also, but I am not saying that
23 definitively because I haven't looked at that issue closely
24 enough.

25 THE COURT: But you might have some cases moving

1 forward because I don't know which states you're -- but I do
2 know that the arbitration laws in each state are different,
3 so you may have some moving forward.

4 MR. BROWN: You're right, Your Honor, they are
5 different. But what we have here is, as Mr. Harpootlian was
6 going through, we have a single incident involving this lady
7 who is trying to essentially create an unfair trade practices
8 case and a punitive damages case. You know, it's got to be
9 one or the other, treble damages or punitive damages, and
10 pointing to all kinds of other events and other places as
11 evidence. So she's wanting to expand the scope of her case
12 to make it not just about her, but about lots of other
13 conduct involving Airbnb. That's what she's really trying to
14 do here. She hasn't tried to make a motion for class
15 certification that I'm aware of or anything like that.

16 THE COURT: Okay. Yeah. I'm just curious. Okay.

17 MR. HARPOOTLIAN: Your Honor, also if Mitch is
18 done, Mr. Griffin made a motion to compel arbitration.

19 MR. BROWN: That's right. And I did leave that
20 out, Your Honor. I apologize. Good thought, Dick, on that.
21 I'll let Mr. Griffin -- he's more than capable for speaking
22 for himself, but the point there we would simply make is a
23 third party claim was brought against him and he's moving to
24 compel arbitration as well. So, yeah, multiple parties
25 asking to compel arbitration.

1 THE COURT: I think he left in shame. Oh, there
2 he is. Okay. Sorry. I just -- I mean, you know, they were
3 painting you with this awful action because, you know.

4 MR. GRIFFIN: Judge, these video cameras make me
5 very nervous, very nervous.

6 THE COURT: Well, look, I just assume in every
7 Airbnb. I just wave in the room. But yeah. Anything you
8 want to say to that?

9 MR. GRIFFIN: To me, Your Honor?

10 THE COURT: Yeah.

11 MR. GRIFFIN: We do have a separate motion. We
12 did settle with the Plaintiff. It's a confidential
13 settlement and we thought we were out of the case. Airbnb
14 then filed a third party action to bring us back in the case.
15 They've alleged claims for an indemnification, contractually
16 and equitable indemnification. And we dispute, frankly,
17 Judge, and we're not admitting that our client, Mr. Revere,
18 had an agreement with Airbnb, but nevertheless, they're suing
19 under the terms of that agreement, and so we have moved to
20 compel arbitration on Airbnb's third party claim against us.

21 I don't think Airbnb opposes that motion, but --
22 so I can't speak for them, but that is pending and we do
23 request that the case either be stayed or dismissed on the
24 third party claim and that any claim by Airbnb be pursued
25 under the terms of the arbitration provision.

1 THE COURT: All right. So that's just basically
2 just piling on. You've got another claim. Okay. All right.
3 I mean, I do want to hear from people that don't want to have
4 arbitration. I mean, look, I've always been personally
5 disappointed that you could have a contract that would
6 require arbitration with contractual terms and then a tort
7 occur during the performance of that contract and it be held
8 in arbitration. I mean, that's -- I've been against the --
9 I've been ruled against a lot on that, so I've been beat into
10 submission on it. But I sure want to hear from the other
11 side.

12 MS. BARBIER: Good morning, Your Honor.

13 THE COURT: Good morning.

14 MS. BARBIER: Debbie Barbier for the Plaintiff.

15 THE COURT: Good morning.

16 MS. BARBIER: Along with Mr. Beasley and Mr. Few.
17 We represent Ms. Julianne Foster. And like Mr. Harpootlian,
18 I'd like to give you just a brief overview of the case
19 because we have been in front of a lot of the circuit court
20 judges in this case, but we have yet to have the pleasure of
21 being in front of you on it, so I just wanted to give you a
22 little bit of some background.

23 Ms. Foster, our client, is a working mom, mother
24 of two, single. She's the victim in one of three criminal
25 charges pending against Mr. Revere, and that's Mr. Griffin's

1 client, in Aiken County. She got informed in 2018 by Sled
2 (phonetic) that she had been repeatedly videotaped while she
3 was undressing in Mr. Revere's Airbnb. She was staying in a
4 house of his that's in Aiken because she attended a tennis
5 tournament with some of her girlfriends.

6 And so in Sled's investigation, they searched Mr.
7 Rivere's properties and they found 42 electronic devices.
8 And on those devices are thousands of videos of young girls
9 and women who are undressing, who are getting in the shower,
10 and many of them were in town for horse competitions and
11 things like that. But let me go to why we're here today
12 because I think the timing of the motion of Airbnb is very
13 important.

14 We have had a number of discovery battles in this
15 case over two years. And they haven't gone so well for
16 Airbnb. But on April 5th, Judge Jocelyn Newman heard a
17 number of motions related to discovery in this case and she
18 granted both of our motions to compel discovery and she
19 ordered Airbnb to produce, you know, hundreds of thousands of
20 documents. And they were ordered to retake their Rule
21 30(b)(6) deposition and appoint multiple representatives for
22 each and every one of the topics, the 24 topics that they did
23 not comply with the Court's previous rulings on. And that
24 took us nine months to get to the Rule 30(b)(6) deposition
25 because they moved for protective order. They lost that.

1 They moved to reconsider. And it was a long, drawn out
2 battle to get there. And then once they got there, they sent
3 one representative who basically refused to answer a number
4 of questions, and so Judge Newman ordered them to retake it.

5 Then they lost a motion that they filed to quash a
6 deposition notice for their head of their global operations.
7 And so as we have stated in our rule to show cause, which is
8 also before you today, they're just refusing to produce
9 documents that Judge Newman ordered them to produce. And we
10 did receive some documents on June 5th. And basically that
11 those documents reveal is that there are about 35,000 Airbnb
12 guests that have complained about being secretly videotaped.
13 And a lot of those guests are women, they're children.

14 They have been filmed while they were in the
15 shower with hidden cameras in the vents, hidden cameras in
16 light bulbs, hidden cameras in the walls. Women and children
17 have been filmed in the bedrooms of Airbnb with hidden
18 cameras in night lights, in alarm clocks, in speakers. They
19 have been filmed going to the toilet. They have been filmed
20 -- people have been filmed having sex. Children have been
21 filmed while they've been undressing, bathing, and just being
22 naked. And private conversations have been recorded in
23 violation of federal law. And these are hidden cameras with
24 wifi capabilities. So that host can listen and watch
25 unsuspecting people in real time.

1 THE COURT: Right.

2 MS. BARBIER: And predators can post videos to the
3 dark web. So that's what we're doing with. This is what we
4 have had to produce. And basically what the documents show
5 is that Airbnb does nothing about these complaints. The
6 reason we want discovery on them is because we can prove and
7 just with the little bit of discovery we've gotten, that they
8 have -- they don't call law enforcement. They don't
9 confiscate video cameras.

10 They warn hosts when a complaint is filed and they
11 give hosts time to destroy or hide evidence. They don't
12 notify other guests who have stayed there that they have been
13 filmed. They don't collect evidence to provide to law
14 enforcement. In many cases, they don't even kick the
15 perverts and the predators that are, you know, being hosts on
16 Airbnb off the platform. Instead, they continue to allow
17 people to host Airbnbs that have done this. They allow
18 felons and people with criminal histories to be Airbnb hosts.

19 So in this case, Your Honor, what we have is the
20 perfect storm. We have a predator like Mr. Revere who's
21 allowed to be an Airbnb host combined with a company that
22 touts itself as providing safety as its number one priority
23 and being a trusted community. And we have a lot of
24 unsuspecting people in South Carolina who have been
25 videotaped by him. It's a public safety issue, Your Honor.

1 And every time we get or Airbnb gets a bad ruling, they hire
2 new lawyers. And so immediately after Judge Newman's hearing
3 in which they lost all these motions -- and I have to tell
4 you.

5 In the hearing with Judge Newman, I said, "Judge,
6 when Airbnb gets a bad ruling, they go on to new lawyers."
7 This is their fourth set of lawyers, fourth set. And is, you
8 know, we have been in front of Judge Benjamin on this case,
9 Judge Keesly (phonetic), Judge Pope, Judge Dennis, Judge
10 McCloud, and Judge Newman. And the Airbnb has -- they've
11 repeatedly thumbed their noses at the orders of these judges.
12 When motions are granted, they just simply refuse to comply.
13 They don't produce documents. They haven't produced -- they
14 still haven't produced one email, one internal email.

15 And so what we have now is that they have decided
16 things are going so badly they want to try to get to
17 arbitration. And this is not the first time that they have
18 mentioned arbitration. In fact, when this case was first
19 fired, their lawyers said we are going to be transparent. He
20 asked for a number of extensions to answer, but he said, "I
21 want to let you know we're going to move for arbitration." I
22 said, "Well, can you show me an agreement where my client
23 agreed to arbitrate?"

24 And what came out was that there was no agreement.
25 In fact, they couldn't even show that Ms. Jain, the person

1 who rented the property, had agreed to the terms of service.
2 There is no document that Ms. Jain have signed and they have
3 produced and no document that Ms. -- they admitted, and it's
4 undisputed, that Ms. Foster, our client, didn't sign
5 anything. There's simply no agreement.

6 And so, Your Honor, you know, that's how we got to
7 this posture. We got to this posture because they don't like
8 where this case is headed and they don't like what evidence
9 is coming out and they've been hiding behind arbitration in
10 sexual assault cases, in sexual voyeurism cases for years.
11 They have stated in their brief that this isn't a sexual
12 assault case. Well, voyeurism in South Carolina, if you look
13 at the statute, is a sexual offense. One of the elements of
14 voyeurism is that it was done for sexual gratification. And
15 so it is a sexual offense.

16 And they have -- they tout to the public that they
17 were no longer after 2021 going to move sexual offense cases
18 to arbitration, but that's exactly what they've done here
19 because it just hasn't gone well for them. But getting to
20 the --

21 THE COURT: Well, let me -- and I don't mean to --
22 I don't want to interrupt you, but it seems to me the
23 decision about arbitration is that there is an agreement.
24 And I assume there was some agreement to the terms of use and
25 to arbitration. Is that -- does that exist?

1 MS. BARBIER: That does not exit, Your Honor. My
2 client was a -- stayed in the Airbnb and she did not sign up
3 for the Airbnb. She did not sign any terms of service.
4 There is no document, and they don't dispute that, that she
5 signed agreeing to this.

6 THE COURT: Now you're taking -- you're not taking
7 the position that she was a non-signatory, therefore you're
8 saying that there is no document for whoever rented that
9 Airbnb to require --

10 MS. BARBIER: So Ms. --

11 THE COURT: -- arbitration of a contract?

12 MS. BARBIER: Right, Your Honor. So, Ms. Jain,
13 Michelle Jain, is the one who actually rented the Airbnb
14 through Airbnb, okay. They have not produced a document that
15 she signed --

16 THE COURT: Okay.

17 MS. BARBIER: -- indicating that she agreed to
18 those terms of service. They have produced a computer
19 printout. Like it's one line basically with a date saying
20 that she agreed to the TOS, which I'm assuming is terms of
21 service, but they have not produced an affidavit from Ms.
22 Jain or any employee of Airbnb indicating that they have a
23 signed document that she did sign agreeing to arbitrate. And
24 our client did not agree to any of that and is not suing in
25 contract. She's not suing over a breach of the terms of

1 service. She's suing on tort and she's suing on unfair trade
2 practices.

3 And the operative facts, Your Honor, that she's
4 suing on the amended complaint, and the amended complaint was
5 filed in September of last year, the motion to amend. So
6 Airbnb has known about an amended complaint for a very long
7 time and they never have once raised arbitration until they
8 got ruled against on April 5th. And they did not mention to
9 Ms. -- sorry, to Judge Newman, that they were going to be
10 moving for arbitration. There's a transcript of that hearing
11 and I invite you to read it because they do not say we're
12 moving to arbitrate.

13 In fact, Your Honor, that was an afterthought
14 after they hired their fourth set of lawyers. So, but in
15 basic contract law, Your Honor, and arbitration law in South
16 Carolina, there's no support for Ms. Foster being forced to
17 arbitrate. She didn't consent to anything related to their
18 terms of service or anything related to arbitration. If
19 Airbnb wanted to make every person that stays in their
20 property sign a terms of service or an arbitration agreement,
21 they could easily do that.

22 They could require the person that signs up for
23 the Airbnb to make every person staying in the Airbnb sign
24 the terms of service or sign an arbitration agreement. They
25 don't do that. It would be very simple, but they don't do

1 that. And so there is no --

2 THE COURT: What about -- no, go ahead. Finish
3 your thought. Then I want to ask you about the direct
4 benefits.

5 MS. BARBIER: No, I'm sorry, Your Honor. I was
6 just going to say that it would be very easy for them to
7 require that, but they don't require that. And the law is
8 not that -- I mean, the law is not that any person who stays
9 in an Airbnb is subject to arbitration. I mean, the heart of
10 arbitration law is consent. And you can't consent to
11 something that you don't know exists. So their --

12 THE COURT: Well, and I think, Mr. Brown, you're
13 saying that, in fact, under direct benefits estoppel if you
14 stay in an Airbnb you are subject to arbitration, right? I
15 just want to make sure I've got the arguments right.

16 MR. BROWN: Your Honor, I don't think there's a
17 dispute that the Plaintiff herself didn't sign something. I
18 think to that extent, we're in agreement.

19 THE COURT: Right.

20 MR. BROWN: There is a -- however, I thought
21 everybody agreed that there was an agreement out there, terms
22 of service agreement. You can't click and become -- you
23 can't rent the Airbnb house without clicking into terms and
24 service and agreeing to that. It's all on the web. There's
25 not, you know, some deal where somebody shows up and hands

1 you a document that says please sign this and let me walk off
2 and do that. I mean, that's not how any of this works, of
3 course.

4 THE COURT: So you're saying as a part of the
5 rental process online, you go through, you look for your
6 place, you find it, you click on your dates, et cetera. And
7 then the last thing you click is the TOS button. And at that
8 point, you and everyone who uses that property are subject to
9 arbitration even for tortuous acts or criminal acts?

10 MR. BROWN: Well, we don't even have to go that
11 far, Judge, because the -- here what you have -- and I'll
12 just give you a couple of quick samples. Paragraph 94 of
13 their amended complaint says, Plaintiff and her friends
14 relied upon. This is Plaintiff, not just Ms. Jain, who
15 signed the agreement. Plaintiff and her friends relied upon
16 Airbnb's name reputation and Airbnb's claims that it would
17 provide a safe and trustworthy rental facility.

18 Now where do these Airbnb "claims" come from?
19 They reference and point to various policies. All those
20 policies that they're pointing to are on the internet and
21 they're all incorporated in the terms of service. And they
22 are specifically pointing at those things. Then the
23 Plaintiff says that she, that Airbnb owed a duty as a result
24 of the special relationship, okay. Where does that come
25 from? The contract that they are pointing at. And she also

1 says that Airbnb -- paragraph 168 says, "Airbnb hosts must
2 register through Airbnb's platforms to offer properties for
3 rent." And so that is a -- that's a statement by them in
4 their complaint, in their amended complaint.

5 THE COURT: But what you said earlier was that
6 under the theory direct benefits estoppel that I think our
7 South Carolina Supreme Court has espoused, that -- and I'm
8 just trying to get sure, that Ms. Barbier's client would be
9 subject to arbitration under that theory whether she signed
10 or not. That -- and again, I'm not agreeing with that. I
11 just want to make sure I'm clear on what you're saying.

12 MR. BROWN: Understood, Judge. And, yes, that is
13 correct. We are saying that because her claims, she is
14 trying to directly benefit from the standards, terms,
15 policies, and everything in the website which are all
16 incorporated into the terms of service, that's what she's
17 basing her claims on. She's saying that these -- Airbnb goes
18 out there and puts these things on the web and represents,
19 under her theory, that it's safe and all of this. And then
20 she wants to bring that and say there's a special
21 relationship duty as a result of all of that. They do allege
22 as well, Judge, that the Plaintiff, in fact, paid part of the
23 -- you know, her share of the rent on this even.

24 THE COURT: Well, yeah.

25 MR. BROWN: So even if --

1 THE COURT: And I didn't meant to interrupt you.
2 I knew that if I asked that question, but I wanted to make
3 sure you all were on the same page. So, and I'm going to
4 give you a chance to respond to Mr. Brown's theory that
5 because she's there that there's a South Carolina Supreme
6 Court case because that -- I mean, look. I don't mind
7 saying, and it's probably not the best thing to do is, I
8 don't like these arbitration agreements that hook people in.
9 And I'm not sure that any of us would in real life. But
10 every time I've ruled that way, you know, it comes back at me
11 like a ping pong ball, but with a little rock in the middle
12 of it. So, go ahead. I just wanted to make sure that we
13 were on the same page. And I interrupted your argument, so I
14 apologize.

15 MS. BARBIER: Oh, not at all, Your Honor. Well,
16 first of all, Plaintiff is not citing -- she's citing -- when
17 Airbnb is touting its commitment to safety, they're doing it
18 on its website. She's not citing to the terms of service
19 because the terms of service don't make any representations
20 as far as I can tell that help a plaintiff or that help a
21 consumer. It's a completely one-sided document in favor of
22 Airbnb and basically makes no promises or representations
23 about anything. So she's not citing that.

24 And the fact that Mr. -- that the Defendants are
25 saying that it's incorporated into their terms of service is

1 frankly, it's ridiculous, Your Honor. You could say that
2 about anything. Ms. Foster is suing in tort. She's not
3 suing for a breach of contract or a breach of the terms of
4 service. She's suing in tort and she's suing under the South
5 Carolina Unfair Trade Practices.

6 And, Your Honor, estoppel does not apply here. We
7 have cited a number of cases in our brief that basically are
8 very analogous because Ms. Foster received no benefit from
9 staying in the Airbnb. She was filmed and violated and
10 traumatized by staying in the Airbnb. She didn't get any
11 benefit from it. And there's a South Carolina case directly
12 on point where the Court said that, you know, a person who
13 went on a premises and was harmed didn't receive any benefit.
14 In fact, any harm they received was far outweighed by any
15 benefit. She didn't know she was being lured to that Airbnb
16 by Mr. Revere who was a predator. If she'd known that, she
17 never would have agreed to stay there.

18 And, Your Honor, so what they're also saying too
19 with regards to estoppel doesn't apply to Ms. Foster because
20 under South Carolina law there has to be -- you know, the
21 arbitration provision would have to comply with South
22 Carolina law. And here, this is a provision that Ms. Foster
23 never saw. I mean, they deposed her for a full day, Your
24 Honor, and asked her and, frankly, grilled her about every
25 traumatic experience that she's ever occurred in her life to

1 try to show that the fact that she was videotaped is of no
2 consequence. And so they could have asked her, and I don't
3 believe they did, whether or not she agreed to arbitrate or
4 whether or not she agreed to the terms of service, but she --
5 but the fact is, she didn't.

6 And Mr. Brown saying that, you know, the terms of
7 service are required for every person who goes on Airbnb's
8 website to rent or to be a host, that's not evidence, Your
9 Honor. That is not evidence. They haven't provided an
10 affidavit from an Airbnb employee. They haven't provided an
11 affidavit from Ms. Jain. They haven't provided any signed
12 document by anybody that this was agreed to.

13 So the threshold issue that Your Honor has to look
14 at is is there an agreement. They haven't provided proof of
15 that. Just because their lawyers say in a pleading that
16 there's an agreement in the terms of service that she must
17 have clicked on, that's not proof. And in our brief, Your
18 Honor, we have noted that in other cases Airbnb has provided
19 affidavits that say that. They didn't do that here and there
20 must be a reason for that. And that is because there are
21 sometimes, Your Honor, situations where people are allowed to
22 rent properties or host properties and maybe that terms of
23 service didn't get clicked on, but there's no proof of that.
24 And even if there were proof --

25 THE COURT: That is a threshold -- I mean, look.

1 That's sort of the end and beginning of the discussion with
2 me. I need to know that before I can -- and I trust all of
3 y'all. I know most of you and I trust you, but I do need to
4 know whether or not there was an actual memorialization of
5 the fact that they were agreeing to the terms of service,
6 which I'm not going to ask you to produce right now. I'm
7 just saying that seems to me to be sort of the threshold. If
8 that doesn't exist, then this is an easy case. If that
9 exists, then it's basically the bull of contracts clashing
10 horns with the bull of torts and arbitration agreements. But
11 --

12 MS. BARBIER: Well, Your Honor, I'm assuming that
13 if it existed, we would know it by now. You know, they
14 talked about filing a motion for arbitration two years ago.
15 And when I asked them to produce it, they never filed the
16 motion to compel arbitration. And so they haven't done that
17 now either, but I think discovery has gone so badly, they
18 have decided to try it anyway.

19 I would like to address waiver, Your Honor,
20 because and --

21 THE COURT: Sure.

22 MS. BARBIER: -- because I think that, you know,
23 is an important issue in this case. Basically what Airbnb
24 has done over the past two years has acted completely
25 inconsistent with its alleged right to arbitrate. They,

1 first of all, have moved to dismiss the original complaint.
2 They moved to dismiss the amended complaint. They've
3 vigorously opposed amending our complaint. They have
4 produced discovery. They have participated in depositions, a
5 number of depositions. They have filed an answer to the
6 amended complaint and concerted cross-claims against
7 Catherine Thomas.

8 They have asserted cross-claims against Rhett
9 Revere (phonetic) and brought him in, back in. They have
10 attended every deposition that's been taken. They engaged in
11 a two day 30(b)(6) deposition. They engaged in mediation in
12 this case, which obviously didn't resolve the case. They, as
13 I said, took the Plaintiff's deposition and have propounded
14 extensive discovery to her. They have sent out subpoenas to
15 her ex-husband, to her yoga instructor, to her best friend.
16 They have done a lot of discovery looking into Ms. Foster to
17 try to, frankly, smear her and deter her from wanting to
18 bring this case.

19 They have objected to every discovery request and
20 engaged in endless objections, motions to quash, motions to
21 reconsider, motions for protective orders. And so, you know,
22 they can't just say that filing an amended complaint revived
23 their right. There's no law to support that. There's no law
24 in revival in South Carolina, as they have just made up in
25 their motion.

1 The law is that if you act inconsistently for an
2 extensive period of time that you waive your right to assert
3 arbitration. You can't -- I mean, under their theory, when
4 would their -- when would waiver not apply? I mean, would it
5 be five years into the case? They could -- and getting ready
6 for trial and they could decide that they want to assert
7 their right to arbitrate. That just simply doesn't make any
8 sense, Your Honor.

9 We have not -- the only thing that we did in our
10 complaint is that we added more detail about the misconduct
11 of Airbnb and the notice that they have had for over a decade
12 that this problem has been occurring and the public safety
13 issue that it presents to not just South Carolinians, but
14 people all over the world who are being injured and who are
15 being victimized by people that host Airbnb.

16 And so, Your Honor, I think waiver is an
17 important, you know, consideration for this Court. I don't
18 think it's fair that the Plaintiff has been expending the
19 amount of resources that we've been expending for two years
20 and fighting discovery battles with a company that because
21 they make billions of dollars have decided that the rules of
22 this Court don't apply to them and have decided unilaterally
23 that they're not going to follow judge's orders because it
24 doesn't suit them and because it will open them up to public
25 scrutiny for what they do and don't do when people rent

1 Airbnbs and the dangers that exist within Airbnb.

2 This is a very important public safety issue, Your
3 Honor. You know, there are being a lot of unsuspecting
4 consumers in South Carolina, and South Carolina is a huge
5 state for Airbnb. We have a big --

6 THE COURT: Yeah. I know.

7 MS. BARBIER: -- tourism industry, as you know,
8 and there are a lot of people that are being endangered by
9 the conduct of people that host Airbnbs and whose rights are
10 being violated. And so it's a very important public safety
11 issue. It's not an issue that should be litigated in secret
12 in arbitration in Chicago or somewhere else. It's an
13 important that -- it's an issue that's very important to
14 South Carolinians and that they deserve to know about.

15 That's why we brought in Unfair Trade Practice Act
16 claim because when we delved into this case and learned what
17 Airbnb is doing, I mean, it is a consumer fraud. They
18 represent that they are committed, their number one priority
19 is safety, and that's simply not true. Their number one
20 priority is making billions of dollars at the expense of
21 millions of people who are being victimized. So, Your Honor,
22 we hope that you'll take that into consideration.

23 As far as the motion to stay goes, Your Honor,
24 they have effectively stayed this case for two years by not
25 providing discovery. I mean, the only meaningful discovery

1 was about eight days ago on June 5th where they produced 400
2 and some 20,000 documents after two years of going to court
3 over it. And now that they've done that, they don't want the
4 substance of these documents revealed, so they want to go to
5 arbitration. And, Your Honor, I fear that, you know, if --
6 they're just going to keep hiring new lawyers, keep going to
7 new judges, and keep disobeying orders of this Court until
8 somebody puts their foot down and says, you know, you have to
9 produce discovery that judges have ordered you to produce.

10 Judge Newman, Judge Jocelyn Newman, took -- I
11 think it was a four hour hearing. She read the entire
12 transcript of the 30(b)(6) deposition and she looked at every
13 request to produce that we moved to compel and gave a lot of
14 consideration to this case. And unlike what Mr. Brown says,
15 she wasn't told during that hearing that we're going to seek
16 arbitration. That just didn't happen. Basically, what they
17 said is we don't think we should have to produce these
18 documents. And now that they're being forced to, they've
19 come up with this -- frankly, Your Honor, this is a frivolous
20 motion. This is a frivolous motion that you should strike
21 because it is being done in an effort to thwart the orders of
22 this -- of the South Carolina judges.

23 THE COURT: Look, and I want to give everybody
24 time to talk, but I am -- you know, this is one of those days
25 with Zoom that I think I have 20 motions today and I've got

1 enough to chew on. I do need -- I would --

2 MR. FEW: Your Honor.

3 THE COURT: Yeah.

4 MR. FEW: If I may. This is Wes Few. I know the
5 other side's had a couple of people argue. Quick point.
6 Rule 6(d) requires an affidavit to be filed with a motion.
7 In order for the Court to make a determination as a factual
8 matter that there is an arbitration agreement, Airbnb needs a
9 witness that can testify to that. They have not done that.
10 We're two years into it. They have not even complied with
11 Rule 6(d).

12 For perspective, we were in front of Judge Markley
13 Dennis on June 6, 2022, when he ordered them for the first
14 time to comply with our discovery. And in that hearing,
15 their first set of lawyers, I argued to Judge Dennis, they
16 have yet to identify one single witness. The young lawyer
17 from Charlotte stood up and he said, "Yes, we have." And I
18 said, "Okay. Well, let's look at your discovery responses."
19 And he was right. They had identified witnesses, the parties
20 to the lawsuit. They had not identified one single witness
21 from Airbnb that could testify to any fact regarding to this
22 case on June 6, 2022.

23 And then when they filed these motions a year
24 later, every one of these lawyers knowing that the motion had
25 to be supported by an affidavit that could establish that

1 there was an arbitration agreement, they didn't do it. And
2 it's similar to these trade secret cases where lawyers try to
3 say someone has a trade secret. Trust me on it. We don't
4 have to trust them on it. They have to establish it as an
5 factual matter. They didn't get an affidavit from Michelle
6 Jain. They still don't have an affidavit from anybody that
7 can say Michelle Jain did this, and they didn't do it with
8 the motion. So that answers the question of whether or not
9 there is an agreement. And then the waiver is a whole other
10 issue that Debbie has already addressed.

11 THE COURT: Well, and that was what I was alluding
12 to before. It seems to me that the threshold question for me
13 is whether or not there is a memorialization of this person
14 agreeing to be bound by the terms of service. And I do
15 realize that it is just a click. I had been warned by my
16 oldest son who was -- at one point worked for Google, to
17 never click on terms of service without reading it, but I do
18 it all the time and God knows what Bangladeshi people have my
19 bank account or, you know, whatever. But, I mean, that seems
20 to me to be sort of a threshold question for me that I need
21 an answer for.

22 MR. ASHMORE: Your Honor, if I may, Beattie
23 Ashmore.

24 THE COURT: Yeah. How do we resolve that?

25 MR. ASHMORE: Your Honor, if I may, I'm being told

1 by one of the lawyers that we have provided the terms of
2 service by Michelle Jain previously. Now, Judge, you can't
3 use Airbnb unless you click on the terms of service. We
4 can't use WebEx unless we click on the terms of service. And
5 so, Your Honor, I think that document is out there. It
6 exists. I'm told we've already produced it, and so to the
7 extent we need to supplement the record or reproduce it, then
8 we would request permission to do so, Your Honor.

9 THE COURT: Yeah. Y'all just -- I mean, look, I
10 am -- I don't mind stopping at this point, letting you see if
11 that exists, I mean, and if it's been furnished. If you can
12 find it, Beattie, and send it to Deborah, that would be the
13 right thing to do.

14 MR. ASHMORE: Of course.

15 THE COURT: I mean, you know, this is serious.
16 And, to me, this is serious. Again, I wanted to be real
17 honest that I've always disliked the fact that by hitting
18 that term of service that you in the contractual case could
19 be bound to arbitration in a tort, but, you know, I once got
20 as a lawyer many years ago fighting a broker, rammed into
21 arbitration in New York under the arbitration agreement on
22 the 23rd of December. So I've been there. I've been where
23 you are.

24 So why don't we do this? I've got -- I've read
25 through everything, but just to the extent to take notes, I

1 don't have any problem with us just continuing this hearing.
2 I'll do it whenever you want to do it if you're okay with me
3 retaining jurisdiction and finding that document. You two
4 could connect up just so we know where we are.

5 MR. HARPOOTLIAN: Judge, Dick Harpootlian. I
6 think we can get you that document in the next hour. I don't
7 think that -- I mean, it was furnished. I don't know that
8 there's any need to have a continuation of the hearing. Once
9 you get that document, that should resolve all your issues.
10 If not, we'll be happy to come back before you.

11 THE COURT: Well, I think Ms. Barbier may
12 disagree with you. And so, why don't you get it to her? I
13 think that's the problem. You know, is it in that 423,000
14 pages of documents that she got 5 days ago?

15 MR. HARPOOTLIAN: No. She got it many, many,
16 many, many, many months before that. And again, we are new,
17 as she points out, to this case, but and I want you to
18 understand we in no way agree with her hyperbole,
19 accusations, misstatements that she made. And we don't need
20 to get in a fight here today. We can do that on another day.
21 But I know you've got 20 other people waiting to have a
22 hearing.

23 THE COURT: Well, and I mean, I just -- look, I've
24 -- after 21 years, I mean, I've said so many things that
25 could get me in trouble. I'm looking at this crowd. I mean,

1 I know at least one person on here is the bottom of the
2 barrel of lawyers in South Carolina, so I mean they can't go
3 too far. And Dick has basically slammed Jim Griffin and
4 just accused -- just called a guy --

5 MR. GRIFFIN: Yeah. Yeah, Judge. My silence does
6 not equate to acquiescence with what he said about my client.
7 We'll be filing a defamation action soon. Thank you.

8 THE COURT: Well, you've got a damages issue
9 there, but that's a whole other issue. I don't want to get
10 into it. All right. Why don't we do this? I will take what
11 I have under advisement, but I'm not going to do anything
12 until you -- we may need to at least -- at least maybe Mitch
13 and Deborah, whoever. I may need to have another -- I may
14 need to have another quick conversation after you've
15 furnished that document to her and she's had a chance to look
16 at it and to me.

17 You understand what I'm saying? I mean, just
18 that's a threshold issue. If it doesn't exist, this is all
19 real easy for me. If it does, then I need to look at the
20 estoppel issue. And I've got enough to decide most of this
21 stuff. I'll take it under advisement. Let's put it that
22 way. But I --

23 MS. BARBIER: Judge, that's fine and we appreciate
24 your consideration of it. Can you please order that Airbnb
25 continue with discovery until a ruling is made?

1 THE COURT: Yeah. And I know that I am going to
2 do that only because there are other judges that have ordered
3 discovery. And I'm self-aware enough to know that in the
4 past it has taken me a while to do things, only a couple of
5 years, but I will get to this pretty quick, especially that
6 issue as to whether or not it's going to be -- the entire
7 thing referred to arbitration. But to the extent you can, I
8 think -- I don't think it's my place at this point to step in
9 where a judge has already stepped and stay orders for
10 discovery because, quite frankly, if you have arbitration,
11 you're going to have to do that anyway.

12 So, with that, I make all of you hate me and I'll
13 -- why don't we just -- why don't you get the information to
14 me, to the Plaintiff, and then I'm almost positive we're at
15 least going to have to have an informal conference, so, you
16 know, by Zoom or whatever, whenever you want to. I'll make
17 myself available to you.

18 So I'll take -- so officially all these are under
19 advisement. I'm waiting on the term of service agreement to
20 be sent to me and to the Plaintiff. And then if I have any
21 other questions about waiver or estoppel, I'll let you know
22 if I need you to -- I don't need any more memos, but
23 sometimes it helps me if you've got -- like especially, Ms.
24 Barbier, this issue of estoppel is something I'd like your
25 opinion on and just like a paragraph, but just a letter. You

1 understand?

2 MS. BARBIER: Yes. We can --

3 THE COURT: Their position is that she had the
4 benefits. And I understand that being taped and violated in
5 such a vile way is not a benefit, but I think given that --
6 what was the name of that case because I remember reading it?
7 And again, I -- it goes against my Baptist belief, but what
8 was the name of the case that --

9 MS. BARBIER: Well, Your Honor, the case on waiver
10 is Liberty Builders, and that is 336 S.C. 658.

11 THE COURT: Yeah. But I'm talking about the one -
12 -

13 MS. BARBIER: And then the case on estoppel --

14 THE COURT: The one on estoppel.

15 MS. BARBIER: Yes. If you'll just give me one
16 moment, Your Honor, I've got it in my brief, but I can --

17 MR. BROWN: Judge, it's Wilson vs. Willis is I
18 think what you're --

19 THE COURT: Okay.

20 MR. BROWN: -- you're talking about. But, Judge,
21 the only other thing I would like to give you is because
22 especially my friend on the other side said this argument was
23 ridiculous, I would like to just send you the two
24 incorporation provisions in the terms of service and policy,
25 that it specifically incorporate all the other things into

1 the agreement. So, you know, that's not me making that up.
2 Those are specific provisions that say that in there, so I'd
3 like to just --

4 THE COURT: It can be whatever you want. Just
5 know that I've been to Malta three weeks ago in a bike race,
6 then had COVID, so I don't think anything else bad can happen
7 to me, but it will take a week or so for me to get through
8 all this. Just know that, okay.

9 MR. BROWN: Yes, Judge.

10 MS. BARBIER: Your Honor, I appreciate that. The
11 case on equitable estoppel is Hodge vs. UniHealth Post-Acute
12 Care of Bamberg. In that case, the Court declined to apply
13 equitable estoppel against non-signatory to an arbitration
14 agreement. And that was a nursing home case in a death
15 because they said the only arguable benefit that the
16 Plaintiff received was being admitted to the facility, but
17 they said that the injuries later led to her death. And we
18 find it difficult to say that they benefitted from that. And
19 it's very similar to what we have here, Your Honor. Yes, she
20 got to stay in the house, but she was also now is on, you
21 know, the web undressing, so we think that the detriment to
22 that far outweighs any benefit.

23 THE COURT: And, Mr. Brown, I assume you take the
24 opposite position and that's in your brief.

25 MR. BROWN: Yes, sir. We're pointing to the --

1 she's trying to take advantage of the terms to advance
2 claims. Those are the benefits she's trying to take. Yeah.

3 THE COURT: Okay.

4 MR. GRIFFIN: And, Judge, I hate to weigh in, but
5 there's zero evidence her client is on the web doing
6 anything, zero evidence.

7 THE COURT: Well --

8 MR. GRIFFIN: Why she would say that is
9 astonishing.

10 THE COURT: Well --

11 MS. BARBIER: We disagree with that, Your Honor.

12 THE COURT: I know. I suspect, you know, like I
13 said, with the exception of one person here, you're all good
14 lawyers and I appreciate it. And Beattie knows I'm talking
15 about him and --

16 MR. ASHMORE: Sorry, Ryan.

17 THE COURT: Hey, if you want to stick around, I'm
18 getting ready to have a hearing with my clerk from last year
19 who is -- I'm going to torture like online and he knows it.
20 And even though his dad is a federal judge and a friend of
21 mine and he was one of the best clerks I've ever had, he just
22 knows what's coming. So if you really just want to leave the
23 picture on and -- his name is Martin Cain and just look out
24 for him because I'm tell you I'll be dead, but as I told him
25 the entire time, you're going to be something someday. Just,

1 you know, but today you're just going to be meat in a
2 grinder, so.

3 MR. ASHMORE: His dad was a classmate and one of
4 the finest federal judges in all of America, Your Honor.

5 THE COURT: Well, actually, he is. And I will say
6 this out loud. He was one of the best law clerks I ever had.
7 I enjoyed him. Look, he's -- I took the kid to the Peninsula
8 Grille in Charleston and it's been like a because of maybe
9 historical activities, I've never gone anywhere with a law
10 clerk, but I actually took him just because the kid was a
11 good kid. But I'm just telling you he could come in here
12 with a halo on and I'm going to chop him up and hold him up
13 with jabs for about two rounds and then knock him out on the
14 third which is, you know, historical with me too. So I'm
15 just giving you that heads up if you want to watch. Martin
16 is here waiting and --

17 MR. ASHMORE: I can't wait.

18 THE COURT: Y'all, I will take all this under
19 advisement. I'm not going to issue a stay at this point, but
20 I will get to this pretty quick. And if you've got anything
21 else that you want me really to split. This is a large file
22 and I'm fine doing that, but if you're got something that you
23 really want to look at, just send an email to me. Make sure
24 everybody is included and we'll go through it, okay?

25 MR. BROWN: Thank you, Your Honor.

1 MS. BARBIER: Thank you, Your Honor.

2 MR. GRIFFIN: Thank you, Your Honor.

3 (End of designation at 1:17:57

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATE OF TRANSCRIBER

I, CRYSTAL THOMAS, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the South Carolina Circuit Court 2, Aiken County, South Carolina, on the 13th day of June, 2023.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

August 11, 2023



Crystal Thomas, CET

Transcriber