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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 IV**

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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, 202344

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, 202347

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, 202357

Order Staying Case Pending Appellate Decision, filed August 24, 202362

Order Denying Airbnb’s Motion to Compel Arbitration, filed September 13, 202367

Pleadings

Plaintiff’s Summons & Complaint, filed April 28, 202181

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 (Harpoottlian) 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, 20231228

Motion to Dismiss the Complaint

Airbnb’s Motion to Dismiss Complaint, filed August 3, 20211233

Airbnb’s Memorandum in Support of Motion to Dismiss, filed Aug. 26, 20211237

Airbnb’s Motion to Dismiss Amended Complaint, filed January 20, 20231254

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, 20221367

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, 20221533

Motion for Reconsideration

Airbnb’s Motion for Reconsideration, filed Aug. 4, 20221545

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, 20221729

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, 20231784

Airbnb’s Motion to Quash Plaintiff’s Notice of Deposition of Tara Bunch and for Protective Order, filed January 19, 20231829

Riviere’s Motion to Compel Arbitration, filed May 23, 20231858

Riviere’s Motion to Dismiss or Stay Case, filed May 26, 20231862

Letter from Airbnb to Judge Maddox, filed June 16, 20231865

Letter from Plaintiff to Judge Maddox, filed June 29, 20231878

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, 20211920

Email Chain between Plaintiff’s Counsel and Airbnb’s counsel, July 7, 20211922

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
SECOND JUDICIAL CIRCUIT

JULIANNE FOSTER,

Plaintiff,

v.

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

Defendants.

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

**PLAINTIFF'S MEMORANDUM IN
OPPOSITION TO DEFENDANT AIRBNB'S
MOTION FOR A PROTECTIVE ORDER**

Plaintiff Julianne Foster, by and through her undersigned attorneys, files this response opposing Defendant Airbnb Inc.'s ("Airbnb") Motion for a Protective Order filed on June 14, 2022 ("Motion"). Airbnb seeks a protective order "barring or otherwise limiting the corporate-representative deposition" to be taken pursuant to South Carolina Rule of Civil Procedure 30(b)(6), which Plaintiff noticed for July 12, 2022. Airbnb also requests that the noticed deposition date be postponed to a mutually agreed upon date after the Court rules on this motion. Airbnb continues to waste this Honorable Court's time and resources by failing to comply with its discovery obligations.¹ Airbnb's Motion should be seen for what it really is – another stall tactic – and denied.

1. On March 20, 2022, Plaintiff provided Airbnb with a draft Notice of Deposition under Rule 30 and Rule 30(B)(6), SCRCP ("Draft Notice"). (Ex. A – Plaintiff's Draft Notice). On April 13, 2022, Airbnb responded objecting to *all* twenty-four (24) of the matters of inquiry set

¹ On June 6, 2022, Judge Dennis granted Plaintiff's Motion to Compel as to all Defendants. Ex. F – June 6, 2022 Order Granting Motion to Compel.

out in her Draft Notice. (Ex. B – Airbnb’s Response to Plaintiff’s Draft Notice at 3-14). Airbnb’s over-stated 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. Nonetheless, 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”). (Ex. C – Plaintiff’s Notice). Airbnb responded by filing the instant Motion for a Protective Order.

2. In its Motion, Airbnb alleges that Plaintiff summoned Airbnb witnesses to South Carolina to testify about 24 overly broad topics and “never bothered . . . even asking Airbnb—a California-based company—when or where it could reasonably make [such] witnesses available.” (Mot. for Protective Order at ¶ 1). However, this is simply not true. On March 20, 2022, Plaintiff’s counsel requested that Airbnb provide convenient dates for depositions and stated: “Please let me know this week when in April or May you can all be available for these depositions. We will try to accommodate everyone’s schedule to the extent possible.” (Ex. D – Plaintiff’s email to Airbnb). Furthermore, not only did Plaintiff’s counsel give Airbnb an opportunity to provide convenient dates in her Draft Notice, Plaintiff also explicitly provided Airbnb in the very first paragraph with a virtual deposition option: “PLEASE TAKE NOTICE, that, under Rule 30 and also Rule 30(b)(6), SCRC, Plaintiff, Julianne Foster (“Foster”) will examine Defendant, AIRBNB, Inc., (“AIRBNB”) in a stenographic deposition which will be taken before qualified Notary Public in-person or via Zoom video conference beginning at 9:00 a.m. _____, 2022.” (Ex. A – Plaintiff’s Draft Notice at 1). It was only after Airbnb failed to provide any potential dates or request a virtual deposition that Plaintiff noticed the deposition.

Moreover, Plaintiff has repeatedly attempted to effectuate this discovery process – only to be stalled by Airbnb’s unresponsiveness. For example, Plaintiff’s counsel set a deadline for Airbnb’s date preferences, stating in her email: “If we don’t receive suggested dates by the end of this week, we will proceed to notice the depositions.” (Ex. D – Plaintiff’s email to Airbnb). Because Plaintiff’s counsel received no response from Airbnb regarding its preferences, Plaintiff proceeded to notice the deposition on May 26, 2022—which was actually well-over two months after Plaintiff provided Airbnb with her Draft Notice. *Id.* Additionally, when this Court ordered all counsel to confer during the hearing held on May 31, 2022, Plaintiff’s counsel again requested that Airbnb provide convenient dates and times for depositions. Airbnb is a billion-dollar company, with millions of users; yet Airbnb continues to stonewall this discovery process by refusing to comply with its discovery obligations, even after this Court ordered them to do so, (Ex. F - June 6, 2022 Order), and despite the Court admonishing the parties at the May 31st hearing to “quit playing games,” (Ex. E. May 31, 2022 Hearing Tr. at 16:5-6).

3. Airbnb contends that Plaintiff does not appreciate that it is a global company and that Plaintiff is seeking to force Airbnb to educate its witnesses about a decade of policies and practices and memorize and recite lists of lawsuits and employees. (Motion for Protective Order ¶ 3). Plaintiff appreciates that Airbnb is a global company. However, global companies are governed by the South Carolina Rules of Civil Procedure and are not excused or exempt from 30(b)(6) depositions simply because of their size. In fact, one of the main reasons for Rule 30(b)(6) is to prevent “bandying” by which officers and agents of the company are deposed and each disclaims knowledge of facts that are clearly known to persons in the organization. *See also Payless Shoesource Worldwide, Inc. v. Target*, No. 05-4023-JAR, 2008 WL 973118, * 11 (D. Kan. Apr. 8, 2008) (“Because Target is a large corporation and in some instances might claim that the left

hand doesn't know what the right hand is doing is simply insufficient, as this is the exact sort of sand-bagging technique Rule 30(b)(6) depositions were designed to avoid.”).

“When a deposition is noticed pursuant to Rule 30(b)(6), the burden is on the corporation to designate a person to testify on its behalf who is knowledgeable about the relevant subject matter.” *Fox v. Tyson Food, Inc.*, No. CV-99-BE-1612-M, 2002 WL 35650180, at *2 (N.D. Ala. Mar. 15, 2002) (citation omitted). This “duty to provide a witness or witnesses with the requisite knowledge and to prepare these witnesses [remains], despite the [alleged] difficulty of investigating the subject matter requested by the deposing party.” *Buycks-Roberson v. Citibank Fed. Sav. Bank*, 162 F.R.D. 338, 343 (N.D. Ill. 1995). Citing *Atanassova v. Gen. Motors, LLC*, No. 2:20-cv-01728-RMG, 2021 WL 1946520, *3 (D.S.C. Mar, 12, 2021), Airbnb points out that “Rule 30(b)(6) is not designed to be a memory contest” (Mot. for Protective Order ¶ 3). However, Airbnb is required to make a good faith effort to prepare a designee. *Atanassova*, 2021 WL 1946520, *3 (citing *Risinger v. SOC, LLC*, 306 F.R.D. 655, 663 (D. Nev. 2015) (noting that, although a party must make a good faith effort to prepare its designee, “Rule 30(b)(6) is not designed to be a memory contest”)). Plaintiff has not requested that Airbnb’s designees memorize anything. Instead, Plaintiff simply requests that Airbnb make a good faith effort and comply with its duty to “designate the persons having knowledge of the matters sought by the discovering party and to prepare those persons in order that they can answer fully, completely, and unequivocally the questions posed by the discovering party as to the relevant subject matters.” *Buycks-Roberson*, 162 F.R.D. at 342 (citations omitted).

Moreover, “[e]ven if the documents are voluminous and the review of those documents would be burdensome, the deponents are still required to review them in order to prepare themselves to be deposed.” *Calzaturificio S.C.A.R.P.A. s.p.a. v. Fabiano Shoe Co.*, 201 F.R.D. 33,

37 (D. Mass. 2001) (citation omitted). While “the burden upon the responding party, to prepare a knowledgeable Rule 30(b)(6) witness, may be an onerous one, . . . [there are no] less onerous means of assuring that the position of a corporation that is involved in litigation, can be fully and fairly explored.” *Id.* (citations omitted). And thorough “preparation is necessary because the individuals so deposed are required to testify to the knowledge of the corporation, *not* the individual.” *Id.* (emphasis in the original) (citations omitted) (internal quotations omitted). Nevertheless, Airbnb takes the unreasonable stance that it “does not even know how to begin to collect much of the requested information, much less how to educate witnesses so as to satisfy Plaintiff’s requests.” (Mot. for Protective Order ¶ 3). However, objecting to a Rule 30(b)(6) deposition because the required investigation would be “difficult” or “time consuming” is baseless and unpersuasive.

4. Airbnb contends that Plaintiff topic areas are “vague, ambiguous, insufficiently described, or otherwise unintelligible in the context of Airbnb’s business” and that Plaintiff might have remedied these issues if she had called Airbnb’s counsel and conferred in good faith. (Mot. for Protective Order ¶ 4). “A party noticing a deposition pursuant to Rule 30(b)(6) must describe with reasonable particularity the matters on which the examination is requested.” *Louisiana Pac. Corp. v. Money Mkt. I Institutional Inv. Dealer*, 285 F.R.D. 481, 486 (N.D. Cal. 2012) (citation omitted). “However, the reasonable particularity requirement of Rule 30(b)(6) cannot be used to limit what is asked of the designated witness at a deposition.” *Id.* (citations omitted) (internal quotations omitted). Rather, “[Rule] 30(b)(6) notice establishes the minimum about which the witness must be prepared to testify, not the maximum.” *Id.* (citations omitted). Further, Rule 30(b)(6) 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, a Div. of United*

Techs. Corp., 161 F.R.D. 475, 476 (S.D. Fla. 1995), *aff'd sub nom. King v. Pratt & Whitney*, 213 F.3d 646 (11th Cir. 2000), and *aff'd sub nom. King v. Pratt & Whitney*, 213 F.3d 647 (11th Cir. 2000).

Airbnb contends that Plaintiff's request for "[a]ll non-privileged information of Airbnb, Inc. regarding the factual allegations in the case of *Foster v. Riviere*," (Ex. C – Plaintiff's Notice), "does not come close to meeting Plaintiff's burden." (Mot. for Protective Order ¶ 4). However, when Plaintiff's specific requests are "combined with Rule 26(b)(1), the limit of that testimony is 'any matter, not privileged, which is relevant to the subject matter involved in the pending action.'" *See Tuition Payer 100 v. Bishop of Charleston*, No. CV 2:21-613-RMG, 2021 WL 3611936, at *2 (D.S.C. Aug. 11, 2021) (where the court found that Plaintiff's request to question a non-party on "the planning, design, and building of [defendant] . . . includ[ing] information about any meeting minutes, contracts or payments from the project" was sufficient under the reasonable particularity requirement). Moreover, here, "both parties are well aware of the discoverable issues in this case;" and Airbnb has been "on sufficient notice of what discoverable matters . . . [Plaintiff] would inquire into," even prior to Plaintiff's Notice. *Id.* (citation omitted).

Importantly, this lawsuit has been ongoing since April 28, 2021. Since then, Airbnb has had access to and presumptively reviewed numerous documents that suggest matters Plaintiff would inquire as to, including but not limited to the Complaint itself, Plaintiff's Motion to Compel filed on March 3, 2022, and two deposition notices, one of which was a draft sent to Airbnb out of courtesy. Further, matters of discovery were discussed with this Court and privately between counsel at the hearing held on May 31, 2022. *See United States v. Taylor*, 166 F.R.D. 356, 360 (M.D.N.C.), *aff'd*, 166 F.R.D. 367 (M.D.N.C. 1996) (where the court found that "the areas of inquiry in plaintiff's Rule 30(b)(6) notice . . . [were] addressed in oral argument, and in two prior

written orders”; and thus, met the reasonable particularity requirement by means outside of the actual notice of deposition, obligating defendant to proceed with the deposition); *see also Alexander v. F.B.I.*, 186 F.R.D. 137, 139-40 (D.D.C. 1998) (where the court rejected the defendants’ argument that plaintiffs’ matter of inquiry was not sufficient under the reasonable particularity requirement given the facts of case and a letter plaintiff sent defendants that “enumerated seven areas of testimony on which the . . . witness . . . would be expected to testify”). Additionally, Airbnb states that Plaintiff’s matters of inquiry “leave [it] with the impossible task of guessing what information Plaintiff actually seeks.” (Mot. for Protective Order ¶ 4). However, Plaintiff has no duty to put Airbnb on notice as to exact testimony she hopes for, instead Plaintiff must satisfy the reasonable particularity standard, which she has done here, and then it is up to the Airbnb to designate persons that must testify not only to “facts within the corporation’s knowledge, but also [to] [their] . . . subjective beliefs and opinions.” *Atanassova v. Gen. Motors LLC*, No. 2:20-CV-01728-RMG, 2021 WL 1946520, at *1 (D.S.C. Mar. 12, 2021) (citation omitted) (internal quotations omitted).

5. Airbnb contends that “Plaintiff’s requests suffer from the deeper flaw that they are not reasonably calculated to lead to relevant information.” (Mot. for Protective Order ¶ 5).

Relevant here, Rule 26(b)(1) provides:

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter.

Rule 26(b)(1), SCRCF. And the relevance of each matter of inquiry provided by Plaintiff relates back to Plaintiff’s Complaint filed on April 28, 2021. For example, the incident that is the subject

of this case occurred on property, owned by co-Defendants, and endorsed and promoted as a rental property by Airbnb. (Complaint ¶ 12). Furthermore, several of Plaintiff's requests relate explicitly to Airbnb's involvement with the property and co-Defendant owners. The relevant requests include but are not limited to:

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.

(Ex. C – Plaintiff's Notice at 2). Additionally, Airbnb admittedly permits “millions of hosts [to] list millions of properties on its platform,” (Mot. for Protective Order ¶3), and holds itself out as “a trusted community marketplace for people to list, discover, and book unique accommodations around the world,” all the while purporting itself as a company that prioritizes guest safety. (Complaint ¶ 20). Based on this, Plaintiff's requests for information with respect to Airbnb's policies and protocols regarding background checks, (Ex. C – Plaintiff's Notice at 2-3); undisclosed or concealed monitoring devices, *id.* at 3; and its inspection of host properties and vetting of hosts, *id.*, are more than relevant, especially given the facts of this case—where co-Defendants were permitted to “host” on Airbnb's platform, while maintaining concealed and undisclosed video recording devices that captured Plaintiff during private and intimate moments. Furthermore, Plaintiff's request for information regarding other lawsuits is relevant and necessary to establish Airbnb's negligence. Airbnb has continuously failed to warn of or protect guests, including Plaintiff, from concealed cameras in its rental properties.

Additionally, Plaintiff's request for information regarding “AirCover” protection is relevant because AirCover is included for free with every booking and it is advertised as an

initiative to keep guests safe, which goes directly to the facts of this case and establishing Airbnb's negligence. Moreover, and importantly, the Court itself has recognized the relevancy of these matters of inquiry. On June 6, 2022, this Court ordered Airbnb to identify employees and/or produce documents with respect to: Airbnb's background checks on Defendants Rhett Riviere and/or Katherine Thomas; the application, registration, and service of Defendant Thomas as an Airbnb host; Airbnb's guest safety from April 2019 to the present; and Airbnb's actions to determine whether Defendants Thomas or Riviere videotaped Airbnb guests. (Ex. F - June 6, 2022 Order at 2-3). All of these Court-ordered discovery obligations directly relate to Plaintiff's matters of inquiry in the deposition Notice, including but not limited to those outlined above.

6. Airbnb continues to use the attorney-client privilege and work product doctrine as a sword to prevent Plaintiff from obtaining discoverable information, rather than a shield to protect the sacred attorney-client relationship. (Mot. for Protection Order ¶ 6). Specifically, Airbnb contends that "some of Plaintiff's requests" would require testimony about privileged information or information that Airbnb cannot disclose because of the Stored Communications Act or "other applicable confidentiality obligations." *Id.*

Under Rule 26(b)(5)(A), SCRCP:

When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing the information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

Rule 26(b)(5)(A), SCRCP. Airbnb has utterly failed to "expressly" claim and describe the nature of the purported protected materials, as required by the Rule. Instead, Airbnb uses the attorney-client privilege and work product doctrine as a blanket objection to support its Motion. However, "[c]ourts have rejected a party's assertion of privilege or work product protection prior to a Rule

30(b)(6) deposition unless the requested topics, on their face, call for testimony invading the attorney-client privilege or attorney work product doctrine.” *St. John Haney v. Kavoukjian*, No. 2:19-cv-2098-RMG, 2020 WL 12762509, *3 (D.S.C. Aug. 3, 2020) (citing *McBride v. Medicalodges, Inc.*, 250 F.R.D. 581, 587 (D. Kan. 2008); *S.E.C. v. Kramer*, 778 F. Supp. 2d 1320, 1328 (M.D. Fla. 2011) (explaining that permitting [plaintiff] to assert a blanket claim of privilege in response to a Rule 30(b)(6) notice creates an unworkable circumstance in which a defendant loses a primary means of discovery without a meaningful review of his opponent's claim of privilege.). Plaintiff does not intend to seek any privileged information in this deposition. While some topics could potentially implicate privileged attorney-client communications or the work product doctrine, the proper approach is for Airbnb to make specific objections to specific questions, not for the topic to be precluded altogether based on speculation about what questions Plaintiff’s counsel might ask at the deposition.

Furthermore, Airbnb’s contention that some of Plaintiff’s requests would require testimony about information which it cannot disclose under the Stored Communications Act (“SCA”), 18 U.S.C. §§ 2701 et seq., is without merit. For the most part, Plaintiff is not seeking any private information about any particular host which might potentially violate the SCA. Rather she is seeking general information about Airbnb’s policies and procedures. And, moreover, even where Plaintiff is seeking information about a particular host, i.e., the co-Defendants, the SCA provides that a provider “may divulge the contents of a communication with the lawful consent of the originator or an addressee or intended recipient of such communication.” 18 U.S.C. § 2702(b)(3). “In similar situations, courts have held that a defendant cannot be liable under the Stored Communications Act for disclosing communications where the defendant was itself the ‘addressee or intended recipient’ of those communications.” *In re Facebook Privacy Litig.*, 791 F. Supp. 2d

705, 714 n.8 (N.D. Cal. 2011) (citing *In re Am. Airlines, Inc., Privacy Litig.*, 370 F. Supp. 2d 552, 560–61 (N.D. Tex. 2005) (holding that a defendant was not liable under the Stored Communications Act for disclosing personal information where it was the intended recipient, even if the defendant was “contractually bound by its privacy policy not to disclose [such] information” and could be held liable for breach of contract for doing so)).²

7. Under Rule 26(c), SCRCPP, the Court may, for good cause shown, “issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.” Rule 26(c), SCRCPP. *See also Hollman v. Woolfson*, 384 S.C. 571, 578, 683 S.E.2d 495, 498 (2009) (citations omitted). However, such an order should only be issued “[i]f the discovery process threatens to become abusive or create a particularized harm to a litigant or third party.” *Hollman*, 384 S.C. 578, 683 S.E.2d 498 (citations omitted). Thus, “a person requesting a protective order [must] show[] a particularized harm which will be caused by allowing the discovery.” *Id.* (citations omitted). And “[i]f a person requesting a protective order shows a particularized harm which will be caused by allowing the discovery, the opposing party has the burden of showing the information sought is ‘relevant and necessary’ to the case.” *Id.*

Airbnb has shown no particularized harm whatsoever in its Motion for a Protective Order. Instead, Airbnb provides baseless and unexplained objections to Plaintiff’s requests, along with irrelevant declarations stating that it “does not even know where to begin” and that it has been left with “an impossible task of guessing what information Plaintiff actually seeks,” (Mot. for

² Furthermore, in *Al Noaimi v. Zaid*, No. 11-1156-EFM, 2012 WL 4758048 (D. Kan. Oct. 5, 2012), the court held that it had the authority to require a party to execute consent to permit the disclosure of his emails by his service provider. *See also Glazer v. Firemen’s Fund Ins. Co.*, No. 11-civ-4374 (PGG) (FM), 2012 WL 1197167 (S.D.N.Y. Apr. 5, 2012) (holding that court had the authority to direct a party to consent to a service provider’s disclosure of online chats); *Flagg v. City of Detroit*, 252 F.R.D. 346 (E.D. Mich. 2008) (court directed party to provide his consent under the SCA for service provider to produce stored text messages).

Protective Order at ¶ 3),—neither which identify a particularized harm that would require this Court to grant a protective order. Moreover, even if Airbnb had identified a particularized harm (which it has not), Plaintiff has shown that the information sought is relevant and necessary to her case. Accordingly, the Court should deny Airbnb’s Motion for a Protective Order.

8. “It is recognized that mut[u]al knowledge of relevant facts gathered by both parties is essential to proper litigation.” *Kearney v. Palliser, M.D.*, No. 2017-CP-26-4962, 2020 WL 12175631, at *4 (S.C. Com. Pl. Nov. 23, 2020) (citing *Hickman v. Taylor*, 329 U.S. 495, 507 (1947)). “Instruments of discovery serve as a device to narrow and clarify basic issues between the parties and ascertain facts relative to those issues so parties can obtain the fullest possible knowledge of the issues and facts before trial.” *Id.* (citing *Hickman*, 329 U.S. at 501). Airbnb must comply with its discovery obligations, including this Court’s Order compelling it to do so. Such compliance is necessary to accord “with public policy supporting reasonable and necessary inquiries . . . in efforts to narrow issues and ascertain relevant facts and the broad scope of discovery rules.” *Id.* Moreover, such compliance is necessary under Rule 3.4(a), RPC, Rule 407, SCACR, which provides in part that “[a] lawyer shall not . . . unlawfully obstruct another party’s access to evidence.” Moreover, Rule 3.4(a), Comment [1] states: “Fair competition in the adversary system is secured by prohibitions against destruction or concealment of evidence, improperly influencing witnesses, *obstructive tactics in discovery procedure*, and the like.” (emphasis added).

Conclusion

Because Airbnb has failed to articulate any particularized harm to it or any particular confidentiality that Plaintiff’s requests would breach, and Plaintiff has sufficiently established the relevance of her requests, Plaintiff respectfully requests this Court deny Airbnb’s Motion for a

Protective Order and order Airbnb to prepare and designate its witnesses for the July 12, 2022 Rule 30(b)(6) deposition, which was noticed on May 26, 2022.

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF

June 24, 2022
Greenville, South Carolina

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,)	PLAINTIFF’S NOTICE OF DEPOSITION
)	OF DEFENDANT AIRBNB INC. UNDER
vs.)	RULE 30(B)(6), SCRPC
)	
Rhett Riviere, Katherine A. Thomas,)	
Chase Enterprises, LLC of South Carolina,)	
and 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 or via Zoom video conference beginning at 9:00 a.m. _____, 2022.

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, Inc. during the time period of January 1, 2019 through the present.

2. All information of Airbnb, Inc. 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 the AirCover protection, including all audiences to

which it is presented (i.e. limited to hosts, available to hosts and guests) and whether 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 to AIRBNB's notification of state statutes related to real estate property management licensure to hosts and potential hosts including links to outside sources for assistance.
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 safety of guests 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 vetting of 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. The employee training record(s) for all employees of Airbnb, Inc. that have responsibilities related to guest safety 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 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 relate to guest safety 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 Rule30(b)(6) deposition is to get answers on the subject matter described with reasonable particularity by the noticing party, not to simply get answers limited to what the deponent happens to know.” Alexander v. F.B.I., 186 F.R.D. 148, 152 (D.D.C. 1999). The testimony elicited at the Rule 30(b)(6) deposition represents the knowledge of the corporation, not the individual deponents. U.S. v. Taylor, 166. F.R.D. 356 (M.D.N.C. 1996). “[I]f

it becomes obvious during the course of a deposition that the designee is deficient, the [organization] is obligated to provide a substitute.” Prokosch v. Catalina Lighting, 193 F.R.D. 633 (D. Minn. 2000).

Duty to Prepare

An organization cannot avoid its Rule30(b)(6) obligations by “sticking its head in the sand,” refusing to look for the answers, and then saying it does not know the answer. In re Independent Service Orgs Antitrust Litig., 168 F.R.D. 651, 653 (D. Kan.1996). If the representative(s) cannot testify as to the corporation’s collective information on the matters requested, then the corporation and/or its attorneys must collect the information and prepare the representative(s) so that the representative(s) can give complete, knowledgeable, and binding testimony. Starlight Int’l Inc. v. Herlihy, 186 F.R.D. 626, 638 (D. Kan. 1999). A thorough, “reasonable” investigation may require an organization to rely on business records, other documents, interviews with present and former employees. U.S. v. Taylor, 166 F.R.D. at 361.

Imposing a duty to prepare its representative(s) ensures that an organization will not ambush an opponent by conducting half-hearted inquiry before the deposition but a thorough and vigorous one before trial. Id. at 362. “If that preparation means tracking much the same investigative ground that counsel and the risk management / peer review committee have already traversed, but independently of that investigation, so be it.” Wilson v. Lakner, 228 F.R.D. 524 (D. Md. 2005). The company must produce, a knowledgeable deponent competently prepared to fully 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,

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ATTORNEYS FOR PLAINTIFF JULIANNE FOSTER

March 20, 2022
Greenville, South Carolina

ELECTRONICALLY FILED - 2022 Jun 24 12:38 PM - AIKEN - COMMON PLEAS - CASE#2021CP0200889

April 13, 2022

Via Email Only

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Re: *Julianne Foster v. Rhett Riviere, Katherine A. Thomas, et al.*
C/A Number: 2021-CP-02-00889
Our File Number: 2105306

Dear Debbie:

We write to respond to your March 20, 2022 e-mail requesting depositions of:

- 1) Airbnb, Inc. under South Carolina Rule of Civil Procedure 30(b)(6) spanning twenty-four (24) broad proposed topic areas;
- 2) Brian Chesky, Airbnb's Chief Executive Officer;
- 3) Tara Bunch, Airbnb's Head of Global Operations; and
- 4) Nick Shapiro, Airbnb's former Head of Trust and Risk Management.

Airbnb will discharge its discovery obligations under South Carolina law and make its employees reasonably available for depositions, but Plaintiff, too, must follow the Rules. Harassing Airbnb with threats to notice the depositions of senior executives that have nothing to do with any of the underlying events giving rise to this lawsuit is a non-starter. As is a demand that Airbnb produce witnesses to memorize and recite lists of employee names, publicly available lawsuits, and nearly a decade's worth of policies unrelated to Plaintiff's suit. Airbnb is willing to offer a corporate designee to offer testimony on the topics as described below, and we are of course willing to meet and confer concerning these issues.

Depositions of Current and Former Airbnb, Inc. Executives

Airbnb objects to Plaintiff's demand to go straight to the top of Airbnb's corporate ladder and depose CEO Mr. Chesky, Head of Global Operations Ms. Bunch and former senior executive Mr. Shapiro. These are some of the highest ranking officers and executives (and former executive) in a global, publicly traded corporation. There has been

Wesley Few, Esq.
Deborah Barbier, Esq.
Ryan Beasley, Esq.
April 13, 2022
Page 2

no showing that any of the proposed deponents have any personal knowledge regarding what happened to Ms. Foster at one property in one city on one weekend in May 2019, and they are almost certain to have none. Beyond pure harassment value, there is no valid basis to even notice such depositions.

First, deposing Airbnb's senior executives would not likely lead to relevant testimony. See SCRPC 26(b)(1). Plaintiff's claims against Airbnb center largely around Airbnb's allegedly deficient background check of Rhett Riviere. According to its latest 10-K, Airbnb's community has grown to over 4 million hosts with listings in over 100,000 cities across the globe. Airbnb's senior executives are not—nor have they ever been—responsible for running individual background checks, including the ones at issue here. Nor are they responsible for the details of the various policies Plaintiff's Complaint discusses or how such policies could have applied to 115 Third Avenue, Aiken, South Carolina. There is no legitimate reason to depose them.

Moreover, taking the deposition of any senior executive would be unreasonably burdensome, disproportionate to the needs of the case, and harassing. See SCRPC 26(a), (b)(1). Courts have recognized that "apex" depositions of senior executives "creates a tremendous potential for abuse or harassment." See, e.g., *In re Lipitor (Atorvastatin Calcium) Marketing*, 2014 WL 12621613, at *2 (D.S.C. 2014) (J. Gergel). A party requesting the deposition of senior executives must therefore first show that (1) the executive has unique or special knowledge of the facts at issue; and (2) other less burdensome avenues for obtaining the information sought have been exhausted. *Id.*

Plaintiffs cannot meet either prong of this test. Plaintiffs cannot show the required unique or special knowledge of the facts at issue in this case. And Plaintiffs have not even tried to exhaust less burdensome avenues. This request is improper on its face. Airbnb respectfully requests that Plaintiffs not pursue these depositions, to avoid burdening the court with unnecessary motion practice.

Airbnb's Corporate 30(b)(6) Deposition

Airbnb also objects to Plaintiff's request to take a corporate deposition, as currently framed, as unduly burdensome. Plaintiff has not even attempted to get any of the information she seeks from individual deponents, and instead asks Airbnb to undertake the costly task of educating corporate witnesses on 24 broad and disparate topics ranging from Airbnb's guest safety issues to its financial statements. Most of these topics have no relationship to the specific events at issue in Plaintiff's complaint, and some of them appear intended to elicit information solely to attempt to embarrass or harass Airbnb. For example, some topics would require Airbnb to educate witnesses about nearly a decade of Airbnb

Wesley Few, Esq.
Deborah Barbier, Esq.
Ryan Beasley, Esq.
April 13, 2022
Page 3

policies, while others require it to prepare witnesses to memorize and recite lists of employees and settlement amounts over a similar time period. Rule 30(b)(6) depositions are not meant to be a memory test or a fishing expedition. Each of the noticed topics are irrelevant or otherwise objectionable, as Airbnb explains in more detail below.

In the interest of compromise, Airbnb is nevertheless willing to make a corporate witness available for a 30(b)(6) deposition on the following topics:

- **The existence of agreements or contracts between Airbnb, on one hand, and Rhett Riviere, Chase Enterprises, LLC, and/or Katherine Thomas that were in effect on May 17 and 18, 2019.**
- **The process by which Airbnb generally conducted background checks of potential hosts in the summer of 2016, how Airbnb located vendors used at that time to conduct these background checks, and what information and records Airbnb understood those vendors to generally check in the summer of 2016.**
- **Airbnb’s policies (if any) regarding the use of video cameras by Airbnb hosts that were in effect in May 2019.**
- **Whether and if so, to what extent, Airbnb conducted inspections of the property located at 115 Third Ave., Aiken, South Carolina between the summer of 2016, when Katherine Thomas signed up as a Host, and May 2019.**

This offer is made while preserving the objections Airbnb has raised in this letter and any others it may raise should Plaintiff serve deposition notices. Airbnb’s willingness to make a corporate witness available to testify to these topics is contingent on Plaintiff dropping her harassing request to depose Airbnb’s current and former corporate executives and her request for a corporate witness on the other, irrelevant topics. Finally, Airbnb objects to what Plaintiff sets out as Airbnb’s “duties and obligations” for the 30(b)(6) deposition on pages 4-12 of the proposed Notice of Deposition as inaccurate. Airbnb will comply with applicable law in preparing and producing any corporate witness.

Matters of Inquiry

1. The organizational, leadership and management structure of Airbnb, Inc. during the time period of January 1, 2019 through the present.

Wesley Few, Esq.
Deborah Barbier, Esq.
Ryan Beasley, Esq.
April 13, 2022
Page 4

Airbnb objects to Topic 1 as overbroad, unduly burdensome, and not proportionate to the needs of the case. Some or all of this information is publicly available in Airbnb's public filings. Airbnb also objects to Topic 1 as not likely to be related to a claim or defense of any party in this case. Airbnb's organizational, leadership, or management structure has nothing to do with Plaintiff's claims, which are about Airbnb's research into Katherine Thomas, Rhett Riviere, and the property at 115 Third Ave SW, Aiken, South Carolina, as well as policies and procedures applying thereto.

2. All information of Airbnb, Inc. in the case of Foster v. Riviere, et al – 2021-CP-02 00889.

Airbnb objects to Topic 2 as vague and ambiguous. Airbnb does not understand what Plaintiff means by the phrase “[a]ll information of Airbnb Inc. in the case of *Foster v. Riviere*.” Airbnb also objects to Topic 2 as overbroad, unduly burdensome, and not proportionate to the needs of the case. No witness could reasonably prepare to testify knowledgeably about “[a]ll information” in this case. Airbnb also objects to Topic 2 to the extent it encompasses material protected from discovery by the attorney-client privilege, work product doctrine, or any other doctrine. Nor could Airbnb be reasonably expected to educate a corporate witness on information in the hands of plaintiff or a third party.

3. All agreements and/or contracts between Rhett Riviere, Chase Enterprises, LLC of South Carolina, and/or Katherine Thomas with Airbnb.

Airbnb objects to Topic 3 as overbroad, unduly burdensome, and not proportionate to the needs of the case to the extent it sweeps in agreements or contracts not involving Airbnb and to the extent it addresses agreements and/or contracts that were not in effect during the events of May 17 and 18, 2019, that form the basis of Plaintiff's claims. None of that information is related to a claim or defense of any party in this case.

Subject to the foregoing objections and conditioned on acceptance of Airbnb's offer above, Airbnb will agree to produce a witness to testify about the existence of any agreements or contracts between Airbnb, on one hand, and Rhett Riviere, Chase Enterprises, LLC, and/or Katherine Thomas that were in effect on May 17 and 18, 2019.

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

Wesley Few, Esq.
Deborah Barbier, Esq.
Ryan Beasley, Esq.
April 13, 2022
Page 5

Julianne Foster.

Airbnb objects to Topic 4 as overbroad, unduly burdensome, and not proportionate to the needs of the case. A witness cannot reasonably be prepared to testify about every “material[] of any kind” that Airbnb may have that “concern[s], reference[s] or relate[s] to” every single other party to the case. Nor are “[a]ll” such documents, no matter the author or subject, relevant to the specific claim or defense the parties have raised in this case. Finally, Airbnb objects to the undefined phrase “concern, reference or relate” as vague and ambiguous. Airbnb also objects to Topic 4 to the extent it encompasses material protected from discovery by the attorney-client privilege, work product doctrine, or any other doctrine.

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.

Airbnb objects to Topic 5 as seeking information not reasonably calculated to lead to evidence related to the claim or defense of any party in this case. Hosts’ knowledge of policies and procedures related to background checks are irrelevant to Plaintiff’s claims, which relate to the sufficiency of the background checks of Ms. Thomas and Mr. Riviere that actually took place. Airbnb also objects to Topic 5 as overbroad, unduly burdensome, and not proportionate to the needs of the case by seeking “[a]ll facts, information, and opinions” and without any limitation as to time period. Airbnb also objects to the undefined term “opinion” as vague and ambiguous. Airbnb also objects to the phrase “[a]ll facts, information, and opinions upon which AIRBNB’s online booking program notifies” as unintelligible. Airbnb also objects to Topic 5 as seeking private information protected by the Stored Communications Act or other applicable statute or regulation to the extent it calls for communications from third parties, or personally identifiable or otherwise sensitive information about third parties.

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.

Airbnb objects to Topic 6 as overbroad, unduly burdensome, and not proportionate to the needs of the case by seeking “[a]ll facts and information”

Wesley Few, Esq.
Deborah Barbier, Esq.
Ryan Beasley, Esq.
April 13, 2022
Page 6

and without any limitation as to time period. Airbnb also objects to Topic 6 as overbroad, unduly burdensome, and not proportionate to the needs of the case to the extent it seeks information about specific background checks beyond those of Ms. Thomas and Mr. Riviere. Airbnb also objects to the undefined terms “databases of public state and county criminal records,” “state and national sex offender registries,” and “third-party checks,” all of which are vague and ambiguous. Airbnb also objects to the phrase “[a]ll facts and information upon which AIRBNB . . . checks databases” as unintelligible.

Subject to the foregoing objections and conditioned on acceptance of Airbnb’s offer above, Airbnb will agree to produce a witness to testify about The process by which Airbnb’s generally conducted background checks of potential hosts in the summer of 2016, how Airbnb located vendors used in the summer of 2016 to conduct these background checks, and what information and records Airbnb understands those vendors to have generally checked in 2016.

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.

Airbnb objects to Topic 7 as overbroad, unduly burdensome, and not proportionate to the needs of the case by seeking “[a]ll” facts and information about any time a host was denied from using Airbnb’s platform due to a background check and without any limitation as to time period. The only specific background checks that are relevant here are those of Ms. Thomas and Mr. Riviere. Airbnb also objects to topic 7 as seeking information not reasonably calculated to lead to relevant information. Airbnb also objects to the phrase “guest(s) reservation(s) canceling due to background check findings” as vague and ambiguous. Airbnb also objects to the phrase “[a]ll facts and information upon which AIRBNB’s background check practices caused a host to be rejected . . . or guest(s) reservation(s) canceling” as unintelligible. Airbnb also objects to Topic 5 as seeking private information protected by the Stored Communications Act or other applicable statute or regulation to the extent it calls for communications from third parties, or personally identifiable or otherwise sensitive information about third parties.

Subject to the foregoing objections and conditioned on acceptance of Airbnb’s offer above, Airbnb will agree to produce a witness to testify about the process by which Airbnb generally conducted background checks of potential hosts in

Wesley Few, Esq.
Deborah Barbier, Esq.
Ryan Beasley, Esq.
April 13, 2022
Page 7

the summer of 2016.

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).

Airbnb objects to Topic 8 as overbroad, unduly burdensome, and not proportionate to the needs of the case by seeking “[a]ll” facts and opinions Airbnb uses to filter for background checks. Airbnb also objects to Topic 8 as seeking information not reasonably calculated to lead to relevant information. Airbnb also objects to the undefined phrase “filters for background checks” as vague and ambiguous. Airbnb does not understand what Plaintiff means. Airbnb also objects to the phrase “[a]ll facts and information upon which AIRBNB agrees to filters” as unintelligible.

Subject to the foregoing objections, Airbnb will agree to produce a witness to testify about the process by which Airbnb generally conducted background checks of potential hosts in the summer of 2016.

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.

Airbnb objects to Topic 9 as overbroad, unduly burdensome, and not proportionate to the needs of the case by seeking “[a]ll” facts, information, and opinions any time a host was denied from using Airbnb’s platform due to a background check and without any limitation as to time period. The only specific background checks that are relevant here are those of Ms. Thomas and Mr. Riviere. Airbnb also objects to Topic 9 as seeking information not reasonably calculated to lead to relevant information. Plaintiff’s claims have nothing to do with reinstatements, appeals, or guest background checks. Airbnb also objects to the undefined phrase “associated with implications” as vague and ambiguous. Airbnb also objects to the phrase “[a]ll facts, information, and opinions upon which AIRBNB executes removal, reinstatement, criteria for eligibility, and appeals” as unintelligible. Airbnb also objects to Topic 9 as seeking private information protected by the Stored Communications Act or other applicable statute or regulation to the extent it calls for communications from third parties, or personally identifiable or otherwise sensitive information about third parties.

Wesley Few, Esq.
Deborah Barbier, Esq.
Ryan Beasley, Esq.
April 13, 2022
Page 8

Subject to the foregoing objections, Airbnb will agree to produce a witness to testify about the process by which Airbnb generally conducted background checks of potential hosts in the summer of 2016.

10. All facts and information related to the AirCover protection, including all audiences to which it is presented (i.e. limited to hosts, available to hosts and guests) and whether hosts can opt out of AirCover protection.

Airbnb objects to Topic 10 as seeking information not reasonably calculated to lead to relevant information. Airbnb also objects to Topic 10 as overbroad, unduly burdensome, and not proportionate to the needs of the case by seeking “[a]ll” facts and information “related” to AirCover protection for “all audiences.”

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.

Airbnb objects to Topic 11 as seeking information not reasonably calculated to lead to relevant information. Airbnb also objects to Topic 11 as overbroad, unduly burdensome, and not proportionate to the needs of the case by seeking “[a]ll” facts and information—including data—“related” to any type of monitoring device. Nor does this case involve any reinstatement or appeal of a host who violated a privacy policy. Airbnb also objects to the phrase “governance of their privacy policies” as vague and undefined.

Subject to the foregoing objections and conditioned on acceptance of Airbnb’s offer above, Airbnb will agree to produce a witness to testify about Airbnb’s policies (if any) regarding the use of video cameras by Airbnb hosts that were in effect in May 2019.

12. All facts and information to AIRBNB’s notification of state statutes related to real estate property management licensure to hosts and potential hosts including links to outside sources for assistance.

Airbnb objects to Topic 12 as seeking information not reasonably calculated to lead to relevant information. Airbnb does not provide legal advice to Hosts, nor does it have any responsibility to keep abreast of state and local properties where Hosts maintain properties, which is the responsibility of Hosts alone. Airbnb also objects to the undefined phrase “state statutes

Wesley Few, Esq.
Deborah Barbier, Esq.
Ryan Beasley, Esq.
April 13, 2022
Page 9

related to real estate property management licensure.” Airbnb does not understand the specific statutes about which Plaintiff means to ask. Airbnb also objects to Topic 12 as overbroad, unduly burdensome, and not proportionate to the needs of the case by seeking “[a]ll” facts and information regarding the statutes in all 50 states and without any limitation as to time period.

13. All communications between “Michele” and Defendant Katherine Thomas via AIRBNB’s online booking program since April 12, 2019.

Airbnb objects to the undefined name “Michele” as vague and ambiguous. For the purpose of this response, Airbnb interprets “Michele” to mean Michelle Jain, the guest who booked a stay at 115 Third Ave SW, Aiken, South Carolina on May 17 and 18, 2019. Airbnb also objects to Topic 13 as seeking information not reasonably calculated to lead to relevant information. Airbnb does not understand what relevant testimony its corporate representative could offer about the communications between two parties who are not employed by Airbnb; questions about those communications should be directed to Ms. Jain and Ms. Thomas. Airbnb also objects to Topic 13 as overbroad, unduly burdensome, and not proportionate to the needs of the case by seeking testimony about “[a]ll” communications between a guest and a host. Airbnb also objects to Topic 13 as seeking information protected by the Stored Communications Act or other applicable statute or regulation to the extent it calls for communications from third parties, or personally identifiable or otherwise sensitive information about third parties.

14. All Protocols, manuals, memoranda, or other written standards of care or instructions that reference or concern the safety of guests while staying in an Airbnb property during the time period of December 1, 2013 through the present.

Airbnb objects to Topic 14 as overbroad, unduly burdensome, and not proportionate to the needs of the case by seeking “[a]ll” instructions that “reference or concern” the “safety of guests” for nearly a decade. Airbnb objects to the phrase “safety of guests” as vague and ambiguous. Airbnb also objects to Topic 14 as seeking information not reasonably calculated to lead to relevant information. Airbnb also objects to the term “Airbnb property” because Airbnb does not own, control, or manage the properties hosts list via its online platform. Airbnb also objects to Topic 14 to the extent it encompasses material protected from discovery by the attorney-client privilege, work product doctrine, or any other doctrine. Airbnb also objects to

Wesley Few, Esq.
Deborah Barbier, Esq.
Ryan Beasley, Esq.
April 13, 2022
Page 10

the phrase “Protocols, manuals, memoranda, or other written standards of care” as vague and ambiguous. Airbnb also objects to Topic 14 as seeking private information protected by the Stored Communications Act or other applicable statute or regulation to the extent it calls for communications from third parties, or personally identifiable or otherwise sensitive information about third parties.

Subject to the foregoing objections and conditioned on acceptance of Airbnb’s offer above, Airbnb will agree to produce a witness to testify about Airbnb’s policies (if any) regarding the use of video cameras by Airbnb hosts that were in effect in May 2019.

15. All Protocols, manuals, memoranda, or other written standards of care or instructions that reference or concern the vetting of hosts by Airbnb during the time period of December 1, 2013 through the present.

Airbnb objects to Topic 15 as overbroad, unduly burdensome, and not proportionate to the needs of the case by seeking testimony about “[a]ll” policies that “reference or concern” any forms of “vetting” hosts for nearly a decade. Airbnb also objects to Topic 15 as seeking information not reasonably calculated to lead to relevant information. Airbnb also objects to the use of the undefined term “vetting” as vague and ambiguous. Airbnb also objects to Topic 15 to the extent it encompasses material protected from discovery by the attorney-client privilege, work product doctrine, or any other doctrine. Airbnb also objects to Topic 15 as seeking private information protected by the Stored Communications Act or other applicable statute or regulation to the extent it calls for communications from third parties, or personally identifiable or otherwise sensitive information about third parties.

Subject to the foregoing objections and conditioned on acceptance of Airbnb’s offer above, Airbnb will agree to produce a witness to testify about the process by which Airbnb’s general conducted background checks of potential hosts in the summer of 2016.

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.

Airbnb objects to Topic 16 as overbroad, unduly burdensome, and not proportionate to the needs of the case by seeking testimony about “[a]ll”

Wesley Few, Esq.
Deborah Barbier, Esq.
Ryan Beasley, Esq.
April 13, 2022
Page 11

policies that “reference or concern” host property inspection, regardless of the reason, over the course of nearly a decade. Airbnb also objects to Topic 16 as seeking information not reasonably calculated to lead to relevant information. Airbnb also objects to Topic 16 to the extent it encompasses material protected from discovery by the attorney-client privilege, work product doctrine, or any other doctrine.

Subject to the foregoing objections and conditioned on acceptance of Airbnb’s offer above, Airbnb will agree to produce a witness to testify about whether and if so, to what extent Airbnb conducted inspections of the property located at 115 Third Ave., Aiken, South Carolina between the summer of 2016 and May 2019.

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.

Airbnb objects to Topic 17 as overbroad, unduly burdensome, and not proportionate to the needs of the case by seeking testimony about “[a]ll” policies that “reference or concern” policies governing the use of video cameras, over the course of nearly a decade. Airbnb also objects to Topic 17 as seeking information not reasonably calculated to lead to relevant information. Airbnb also objects to Topic 17 to the extent it encompasses material protected from discovery by the attorney-client privilege, work product doctrine, or any other doctrine.

Subject to the foregoing objections, Airbnb will agree to produce a witness to testify about Airbnb’s written policies (if any) regarding the use of video cameras by Airbnb hosts that were in effect in May 2019.

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.

Airbnb objects to Topic 18 as overbroad, unduly burdensome, and not proportionate to the needs of the case by seeking testimony about every single “report[] and/or complaint[]” over the course of nearly a decade without any limitation in geographic scope. Airbnb also objects to Topic 18 as seeking information not reasonably calculated to lead to relevant information. Airbnb

Wesley Few, Esq.
Deborah Barbier, Esq.
Ryan Beasley, Esq.
April 13, 2022
Page 12

also objects to Topic 18 to the extent it encompasses material protected from discovery by the attorney-client privilege, work product doctrine, or any other doctrine. Airbnb also objects to Topic 18 as seeking private information protected by the Stored Communications Act or other statute or regulation to the extent it calls for communications from third parties, or personally identifiable or otherwise sensitive information about third parties.

19. All lawsuits filed against Airbnb related to guests being secretly videotaped during the time period of December 1, 2013 through the present.

Airbnb objects to Topic 19 as overbroad, unduly burdensome, and not proportionate to the needs of the case by seeking testimony about every single lawsuit filed against Airbnb over the course of nearly a decade without any limitation in geographic scope. This information is publicly available. Airbnb also objects to Topic 19 as seeking information not reasonably calculated to lead to relevant information. Airbnb also objects to Topic 19 to the extent it encompasses material protected from discovery by the attorney-client privilege, work product doctrine, or any other doctrine.

20. All settlements entered into by Airbnb related to guests being secretly videotaped during the time period of December 1, 2013 through the present.

Airbnb objects to Topic 20 as overbroad, unduly burdensome, and not proportionate to the needs of the case by seeking highly confidential information about every single lawsuit filed against Airbnb over the course of nearly a decade without any limitation in geographic scope. Airbnb also objects to Topic 20 as seeking information not reasonably calculated to lead to relevant information. Airbnb also objects to Topic 20 to the extent it encompasses material protected from discovery by the attorney-client privilege, work product doctrine, or any other doctrine. Airbnb also objects to Topic 20 as seeking private information protected by the Stored Communications Act or other applicable statute or regulation to the extent it calls for communications from third parties, or personally identifiable or otherwise sensitive information about third parties.

21. The employee training record(s) for all employees of Airbnb, Inc. that have responsibilities related to guest safety during the time period of December 1, 2013 through the present.

Airbnb objects to Topic 21 as overbroad, unduly burdensome, and not

Wesley Few, Esq.
Deborah Barbier, Esq.
Ryan Beasley, Esq.
April 13, 2022
Page 13

proportionate to the needs of the case by seeking testimony about confidential employee records for anyone whose responsibilities touch on any type of “guest safety” for a period of almost ten years. Airbnb objects to the undefined phrase “responsibilities related to guest safety” as vague and ambiguous. Airbnb also objects to Topic 21 as seeking information not reasonably calculated to lead to relevant information. Airbnb also objects to Topic 21 to the extent it encompasses material protected from discovery by the attorney-client privilege, work product doctrine, or any other doctrine.

22. The identity of all Airbnb employee(s) involved in the vetting of Airbnb hosts during the time period of December 1, 2013 through the present.

Airbnb objects to Topic 22 as overbroad, unduly burdensome, and not proportionate to the needs of the case by seeking testimony about a broad swath of employees with no geographic limitation for a period of almost ten years. Airbnb objects to the undefined term “vetting” as vague and ambiguous. Airbnb also objects to Topic 22 as seeking information not reasonably calculated to lead to relevant information.

23. The internal reports and/or external reports and/or audits during the last ten years of Airbnb that relate to guest safety during the time period of December 1, 2013 through the present.

Airbnb objects to Topic 23 as overbroad, unduly burdensome, and not proportionate to the needs of the case by seeking testimony about every “internal and/or external report[] and/or audit[]” relating to any form of “guest safety” for the past decade. Airbnb also objects to the phrase “relate to guest safety” as vague and ambiguous. Topic 23 is also unintelligible; a “report” from April 2012 could not possibly relate to guest safety in December 2013, and neither category is relevant to this May 2019 incident. Airbnb also objects to Topic 23 as seeking information not reasonably calculated to lead to relevant information. Airbnb also objects to Topic 23 to the extent it encompasses material protected from discovery by the attorney-client privilege, work product doctrine, or any other doctrine.

24. The assets and liabilities of Airbnb, Inc.

Airbnb objects to the undefined terms “assets and liabilities” as vague and ambiguous. Airbnb also objects to Topic 24 as overbroad, unduly burdensome, and not proportionate to the needs of the case by seeking

Wesley Few, Esq.
Deborah Barbier, Esq.
Ryan Beasley, Esq.
April 13, 2022
Page 14

information that is either publicly available through Airbnb's SEC filings, or else highly confidential, and without any limitation as to time period. Airbnb also objects to Topic 24 as seeking information not reasonably calculated to lead to relevant information and is designed to harass. Airbnb also objects to Topic 24 to the extent it encompasses material protected from discovery by the attorney-client privilege, work product doctrine, or any other doctrine.

Good Faith Meet and Confer

As noted herein, Airbnb wishes to meet and confer with the Plaintiff about the topic areas and the individual witnesses requested for deposition, in good faith, before any discovery motion practice ensues. Please advise if and when you wish to do so and we can schedule it for a mutually convenient time. Thank you for your cooperation.

Should you have any questions, please do not hesitate to contact me.

With kindest regards,

BUTLER WEIHMULLER KATZ CRAIG LLP



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LAW/zh

CC: Kevin O'Brien
Julie Moose
John Harte

period of January 1, 2013 through the present.

2. All non-privileged information of Airbnb, Inc. 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 safety of guests 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 vetting of 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, Inc. that have responsibilities related to guest safety 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 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 relate to guest safety 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 Rule30(b)(6) deposition is to get answers on the subject matter described with reasonable particularity by the noticing party, not to simply get answers limited to what the deponent happens to know.” Alexander v. F.B.I., 186 F.R.D. 148, 152 (D.D.C. 1999). The testimony elicited at the Rule 30(b)(6) deposition represents the knowledge of the

corporation, not the individual deponents. U.S. v. Taylor, 166 F.R.D. 356 (M.D.N.C. 1996). “[I]f it becomes obvious during the course of a deposition that the designee is deficient, the [organization] is obligated to provide a substitute.” Prokosch v. Catalina Lighting, 193 F.R.D. 633 (D. Minn. 2000).

Duty to Prepare

An organization cannot avoid its Rule30(b)(6) obligations by “sticking its head in the sand,” refusing to look for the answers, and then saying it does not know the answer. In re Independent Service Orgs Antitrust Litig., 168 F.R.D. 651, 653 (D. Kan.1996). If the representative(s) cannot testify as to the corporation’s collective information on the matters requested, then the corporation and/or its attorneys must collect the information and prepare the representative(s) so that the representative(s) can give complete, knowledgeable, and binding testimony. Starlight Int’l Inc. v. Herlihy, 186 F.R.D. 626, 638 (D. Kan. 1999). A thorough, “reasonable” investigation may require an organization to rely on business records, other documents, interviews with present and former employees. U.S. v. Taylor, 166 F.R.D. at 361.

Imposing a duty to prepare its representative(s) ensures that an organization will not ambush an opponent by conducting half-hearted inquiry before the deposition but a thorough and vigorous one before trial. Id. at 362. “If that preparation means tracking much the same investigative ground that counsel and the risk management / peer review committee have already traversed, but independently of that investigation, so be it.” Wilson v. Lakner, 228 F.R.D. 524 (D. Md. 2005). The company must produce, a knowledgeable deponent competently prepared to fully 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,

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/s/Wesley D. Few

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ATTORNEYS FOR PLAINTIFF JULIANNE FOSTER

May 26, 2022
Greenville, South Carolina

RE: Foster v. Riviere - Message (HTML)

File Message Help

Ignore Delete Archive Reply Forward Meeting Delete Junk v All Respond To Manager Team Email Reply & Delete Quick Steps Done Create New

RE: Foster v. Riviere

Deborah Barbier
 To: Andrew Watson <awatson@butler.legal>
 Cc: Ryan Lewis Beasley; Anna Cathcart (5308); Ryan Duffy; Whitney Hill; Zaina Hashini; Kevin O'Brien (5302)

2022-02-22_DRAFT 30(b)(6) Depo Notice to AIRBNB - cgy edits.pdf
 205 KB

2022-02-22
 You forwarded this message on 3/22/2022 1:06 PM.

Reply Reply All Forward

Sun 3/20/2022 9:57 PM

Hi Andy - Attached are the list of topics for the Rule 30(b)(6) deposition of AirBnb. We also plan to take the depositions of Brian Chesky, Tara Bunch, and Nick Shapiro. Please let me know this week when in April or May you can all be available for these depositions. We will try to accommodate everyone's schedule to the extent possible. If we don't receive suggested dates by the end of this week, we will proceed to notice the depositions.

Best regards,

Debbie

Deborah B. Barbier

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From: Andrew Watson <awatson@butler.legal>

Sent: Thursday, March 17, 2022 1:03 PM

To: 'Wes Few' <wes@wesleyfew.com>; John Harre <john@whartelaw.com>; Julie Moose <julie.moose@mjcclaw.com>

Cc: Deborah Barbier <ddeb@deborahbarbier.com>; Ryan Lewis Beasley <rlb@ryanbeasleylaw.com>; Anna Cathcart (5308) <Anna.Cathcart@pheihs.com>; Ryan Duffy <rduffy@butler.legal>; Whitney Hill <whill@butler.legal>; Zaina Hashini <zhashini@butler.legal>; Kevin O'Brien (5302) <Kevin.O'Brien@pheihs.com>

Subject: RE: Foster v. Riviere

I am not responding to the substance of this e-mail discussion, but the form.

Not sure why everyone keeps reducing the list of cc on these emails that are discovery-related..... All attorneys are not even copied (omitted Ryan in my office; Kevin in Pheips). I have added my folks back on.

This is a busy case in terms of number of e-mails. Someday, someone, probably me, will fail to respond to something important because it was only sent to one person on the service list and not the others. I really want to avoid that. Let's just get in the habit of including everyone, please, unless it is particularly sensitive information that is actually "attorney's eyes only". It will avoid delays and things getting missed among the many e-mails that come across all our in-boxes.

Foster, Julianne - Civil Dispute - 2022-022

74°F Clear 10:27 PM 6/23/2022

VIEW MATTER

I N D E X

(There were no witnesses called.)

E X H I B I T S

(There were no exhibits submitted.)

ELECTRONICALLY FILED - 2022 Jun 14 2:40 PM - AIKEN - COMMON PLEAS - CASE#2021CP0200889
ELECTRONICALLY FILED - 2022 Jun 24 12:38 PM - AIKEN - COMMON PLEAS - CASE#2021CP0200889

P R O C E E D I N G S

1
2 THE COURT: The next one is Foster vs. Riviere, et al.
3 It looks like two matters: A Rule to Show Cause and Motion
4 to Compel.

5 If you will identify yourselves, please, for purposes
6 of the record, and the parties you represent.

7 MR. FEW: Thank you, Your Honor. Wes Few, I represent
8 the Plaintiff, Julianne Foster, and this is Deb Barbier, who
9 represents the Plaintiff as well.

10 MS. BARBIER: Good morning, Your Honor.

11 THE COURT: Good morning.

12 MS. MOOSE: Good morning, Your Honor, Julie Moose for
13 Defendants Riviere and Chase Enterprises.

14 THE COURT: Okay.

15 MR. DUFFY: Good morning, Your Honor. Ryan Duffy for
16 Defendant Airbnb, Inc.

17 MR. WLODARCZYK: Good morning, Your Honor. Damon
18 Wlodarczyk on behalf of Katherine Thomas. My notice of
19 appearance was just filed this morning.

20 THE COURT: Thank you so much. Glad to have you.

21 All right. We have a Motion to Compel and a Motion for
22 Rule to Show Cause.

23 MR. FEW: Your Honor, we'll focus on the Motion to
24 Compel first --

25 THE COURT: I figured you might.

1 MR. FEW: -- if it please the Court. We do have one
2 issue remaining with the Rule to Show Cause and nobody is
3 here on that, but, basically, we've asked that they give us
4 an Affidavit of, basically, a records custodian saying that
5 this is a complete response to the subpoena, and we haven't
6 gotten a response to that.

7 THE COURT: We'll definitely accommodate and help you
8 on that.

9 MR. FEW: Thank you, Your Honor.

10 May it please the Court, Wes Few again on behalf of the
11 Plaintiff, Julianne Foster. I don't know how much Your
12 Honor has had a chance starting off after the holiday
13 weekend to look at our Motion --

14 THE COURT: I've reviewed your Motion and Memo. In
15 fact, I have that right here in front of me.

16 MR. FEW: We filed my consultation letter this morning.

17 THE COURT: I haven't seen that.

18 MR. FEW: May I approach?

19 THE COURT: Sure. Absolutely.

20 MR. FEW: Your Honor, the reason we don't have a lot of
21 filings to go with this is one of the things that you're
22 going to hear about here as we argue today is that there's
23 been -- this is really not so much before the Court directly
24 as it is indirectly, but there's been some abuses of the
25 discovery process, specifically, with over-designating

1 confidentiality. And in an abundance of caution, that's why
2 we didn't file this letter with our initial Motion because
3 the confidentiality was being used as a sword and not a
4 shield.

5 So my client, Julianne Foster, is a mother of two,
6 lives in Greenville, South Carolina, plays on a tennis team.
7 In April of 2019, one of the members of her tennis team got
8 some information about coming to the tennis tournament down
9 here. I believe it was a state championship, I'm not sure
10 what level, 3/5, 4/5, whatever. So Julianne discussed with
11 Michelle, who booked the Airbnb, that they would stay at
12 this Airbnb, so that's what they did and they Venmoed back
13 and forth. My client, basically, knew that they had booked
14 a place through Airbnb.

15 Well, she came into town and she dropped -- I'm going
16 to summarize it because this is not -- she, basically,
17 dropped her stuff off. I don't know if she changed clothes
18 at that point in time, went and played a tennis match. Came
19 back, took a shower, changed clothes and ended up being
20 there really only one night. Well, it turns out -- and some
21 people ask well, how in the world, Mr. Few, did your client
22 find out about the secret recordings that were made of her?
23 Well, that's a good question.

24 So my client, it's important to know for the Court,
25 didn't know any of these people. Didn't contract with them.

1 All she did was come and stay to play in a tennis tournament
2 on May 17th, 18th of 2019. And then sometime in September,
3 Michelle Jane gets contacted by SLED about the fact that
4 there were these secret recordings made during the time that
5 Michelle Jane had the Airbnb rental through the Defendants.

6 My client then gets a call from her friend, Michelle
7 Jane, and says, you know, you need to talk to this guy with
8 SLED. The guy from SLED comes and meets with her and says
9 we have these recordings of you completely naked, getting
10 dressed, getting undressed. There's 13 videos that have
11 been produced. These are not our videos. This is
12 information that we had to get from SLED in order to
13 produce.

14 So I think it's important for the Court to understand
15 the significance of this case in terms of what has happened
16 in the last 20 years to the Peeping Tom statute. The
17 Peeping Tom statute, I looked at it this morning, was last
18 amended in 2001. I remember getting a Nokia nonflip phone
19 in around 2004, so even though we knew things were going
20 towards electronics, in 2001, I don't think the legislature
21 had in mind that someone would have the ability to take
22 something about this size, put it on a counter and video
23 record people and then shoot it out by way of Bluetooth and
24 have it recorded whenever, however that they wanted to do.
25 And Mr. Riviere is experienced in all this because we've

1 seen where he talks on Facebook about how he set these
2 cameras up on his boat.

3 So, Your Honor, Airbnb didn't even exist until 2008.
4 We put some stuff in our memorandum. They boast about
5 having 150 million users. They're a billion-dollar company.
6 They're running advertisements during the Super Bowl,
7 they're running advertisements now. They are a new huge
8 company. And they have given us, basically, nothing in
9 discovery. I can summarize what --

10 THE COURT: Why do they say they won't give it to you?

11 MR. FEW: Well, here's the timeline, Your Honor --

12 THE COURT: I appreciate that, Mr. Few. I have long
13 since established my rule because I had this happen years
14 ago and it just hit me. I was doing a Motion to Compel and
15 arguing and I said let's take the first up issue. And he
16 states, not as specifically as you did, but he rambles on
17 and the lawyer stood up and said if that's what you want,
18 I'll give you that.

19 MR. FEW: Yes, sir.

20 THE COURT: And he said, let's go to number two. I
21 said, whoa, whoa, you want to talk about this? And I said,
22 I tell you what you do, I've got other hearings, y'all go
23 outside and y'all talk among yourselves and what you can't
24 resolve, come back in and I'll deal with that. You know
25 what happened? They came back in and said, Judge, we've

1 resolved this.

2 And I started -- that triggered something and I started
3 doing that and came up with my three questions: What is it
4 you want? Why do they say they won't give it to you, not
5 why you think they won't? And why are you entitled to it?

6 I understand to some extent. What is it you want? You
7 want all -- what are you looking for?

8 MR. FEW: So, Your Honor --

9 THE COURT: I don't need the history, I just want to
10 know what you're looking for.

11 MR. FEW: We just want complete discovery responses --

12 THE COURT: Complete discovery defined as what? What
13 is it you think they have that they haven't given to you?

14 MR. FEW: Airbnb, they have not identified one single
15 witness. We got their documents on April 1st of this year
16 --

17 THE COURT: Have y'all talked about this?

18 MS. MOOSE: Your Honor, if I may, I represent Riviere
19 and Chase. I don't know why we're here today.

20 THE COURT: Well, I tell you what y'all do, y'all go
21 out and talk among yourselves and then you come back in and
22 I'll be happy to hear you both. In the meantime, I'll take
23 the next case. Y'all talk to each other.

24 MR. FEW: Your Honor --

25 THE COURT: Mr. Few, don't push this envelope, sir.

1 MR. FEW: Well, I just wanted to say one thing, and
2 we'll do that --

3 THE COURT: You can say anything you want, but I want
4 you to talk to them because you said they haven't given you
5 any list of anything and they say well, we don't know what
6 we're here for. So y'all talk about it. Thank you.

7 MS. MOOSE: Thank you, Your Honor.

8 MR. FEW: Thank you, Your Honor.

9 THE COURT: Thank you.

10 (Hearing was adjourned at 10:05 a.m.)

11 (Hearing was reconvened at 10:53 a.m.)

12 THE COURT: Thank y'all for talking. Where are we?
13 What do we need to do?

14 MR. FEW: Your Honor, I'll be glad to give a summary of
15 what we accomplished. I completely understand the Court's
16 position on this. I just want to say for the record, we've
17 gotten no documents from Mr. Harte's client other than 111
18 pages that we got that, essentially, were documents that
19 were at one time sealed that have now been unsealed pursuant
20 to a Motion that we filed.

21 So their reason for not giving us documents is that we
22 didn't give them search terms. Well, we did give them
23 search terms. And one part of my search terms that I gave
24 them was we can't tell you what witnesses to search for
25 because we don't know who all your client communicated with

1 about these matters. And we learned in there a moment ago
2 that our view of the case, which we believe falls within 26
3 that we're entitled to discover anything that's reasonably
4 related to -- likely to lead to something discoverable
5 entitles us to find out the communications.

6 An example of that would be a guy named Brian Cavanaugh
7 who came up in the deposition of Katherine Thomas on January
8 the 6th of this year, that he contacted her out of the blue.
9 When she went to SLED, she gave them a screen shot of the
10 phone call that he made to her and then there was a flurry
11 of text messages between the two of them. His name appears
12 in documents that we've since obtained by way of subpoena
13 that could have been given to us by Mr. Harte.

14 So Mr. Wlodarczyk made an appearance today for
15 Katherine Thomas because Judge Keesley had given her until
16 June the 6th to get new counsel. He advised us in the
17 discussion that he doesn't have any search terms to add to
18 whatever they're going to do for their electronic discovery.

19 So item number one is, we believe 30 days is an
20 abundance of time to do whatever this electronic discovery
21 that they claim they're going to do is. So we would ask the
22 Court to order that they have 30 days to produce documents
23 pursuant to this electronic search that we've been trying to
24 resolve. We've given them our search terms, which are you
25 know the witnesses, you need to search their e-mails. So

1 that is going to be done. That would be item number one and
2 I think we have an agreement on it.

3 Secondly, in the meeting, Ms. Moose indicated that she
4 has documents in her possession that she could produce now,
5 but she's not produced them thus far because in the letter,
6 I said I wanted everything at one time. Well, I hope I have
7 since clarified that, that I would be delighted to receive
8 things if it's three pages or two pages at a time. We just
9 want to get responsive documents from the Defendant.

10 An example would be Mr. Cavanaugh, the mysterious guy
11 who contacts Katherine Thomas when she goes to SLED --

12 THE COURT: Mr. Few, let's --

13 MR. FEW: Yes, Your Honor.

14 THE COURT: Let's don't keep doing the argument part.

15 MR. FEW: I understand. I understand.

16 So we pressed them in there about what are the
17 documents that you have that you could produce now, which,
18 by the way, that's standard interrogatory, I think, number
19 four under Rule 33(b) that says identify the documents that
20 are responsive. So we were told that they were e-mails and
21 then when we pressed again, we were told that they're not
22 e-mails that they're texts.

23 So we would request that everything that they have
24 gathered already be produced within ten days. Being mindful
25 of the fact, Your Honor, that we served the discovery with

1 the Complaint on April 30th of --

2 THE COURT: I'd appreciate if you don't -- I'm going to
3 make a decision about that. Let's just stay with what it is
4 they said they're going to produce, okay?

5 MR. FEW: Well, Your Honor --

6 THE COURT: Why don't we do this, why don't you tell me
7 what you -- I understand there may be some issues here,
8 there may be some confidentiality issues, there may be a lot
9 of things. That's what we have privileged logs for. Then
10 the Court becomes involved and I can do that. This isn't my
11 first rodeo with this kind of stuff.

12 MS. MOOSE: Yes, sir, Your Honor, I completely
13 understand. What happened was we supplemented our discovery
14 --

15 THE COURT: I just want you to produce -- whatever you
16 have, produce. Anything --

17 MS. MOOSE: Your Honor --

18 THE COURT: -- that you object to, say I object for
19 these reasons.

20 MS. MOOSE: Your Honor, I have hired -- we have hired a
21 third party vendor to search. And I found out this morning
22 that Ms. Thomas's counsel has no changes to the search
23 terms. I called the third vendor while we were on break.
24 He said he doesn't know how long it's going to take him to
25 do the searches without having the search terms because

1 there's all these different devices.

2 THE COURT: You know --

3 MS. MOOSE: So I don't know that I can have it in 30
4 days.

5 THE COURT: -- the search terms are very simple. If
6 you have -- and let me just say this: This comes from
7 something I did and Chief Justice Pleicones did when he was
8 a circuit court judge, I think, in Rock Hill and it's led me
9 to start doing some things as well. They said we don't have
10 anything or we've given you everything we have and they
11 found some things. Well, the penalties were six figures,
12 and that got everybody's attention.

13 I had, not a major case as that, but I had one in
14 Hampton years ago and Johnny Parker's firm handled it and
15 they asked for certain things. And the lawyer -- a local
16 lawyer representing the company said we don't have anything.
17 I said, okay, I said, Mr. Parker, they don't have anything.
18 So submitted a memo and further Motion, said here's what I
19 have from what they produced identical materials in another
20 suit that I had. That led me to say ummm. So the local
21 lawyer said well, that's what counsel in Chicago said. I
22 said, well, that's fine. Next time, I want counsel from
23 Chicago to be present in every single motion we have and I
24 want that counsel to put it on the record.

25 And what I've started doing is this: I don't care who

1 you have, I want you all to produce -- this isn't -- we're
2 all lawyers. You know what's relevant and what's not. And
3 if you have an objection to it, whether it's relevant or not
4 has got nothing to do with discovery. So I want you to
5 produce it. And I want an Affidavit by whoever's doing this
6 and that's it.

7 And then if you find something, Mr. Few, through other
8 means, now we're getting into a situation where we can start
9 putting sanctions on things. But I'm not going to sanction
10 anybody right now. This is obviously a dispute, we're got
11 lawyers and we'll see where we go. But --

12 MS. MOOSE: Your Honor --

13 THE COURT: -- we've got to get to first base first.

14 MS. MOOSE: -- that's the whole reason we have a third
15 party vendor.

16 THE COURT: Well, first of all, you knew you were going
17 to have to do it, why didn't you hire it a long time ago?

18 MS. MOOSE: We did, Your Honor, but they opposed -- Ms.
19 Thomas's lawyers had a conflict and had to get out and we
20 had to have that heard. Then we had a period of time where
21 she had to get counsel.

22 THE COURT: Well, I'll you what, you're going to get
23 busy. 30 days to produce it.

24 MS. MOOSE: Your Honor, I don't know if my third party
25 vendor can get it done.

1 THE COURT: Tell your third party vendor you better
2 hire some people, you've got 30 days.

3 MS. MOORE: Okay, Your Honor. Thank you.

4 MS. BARBIER: Your Honor, just briefly, I just want to
5 make sure we are clear on a couple of fundamental issues in
6 this case, especially with respect to the discovery that
7 they are going to produce. First of all, Your Honor, we
8 have interviewed witnesses who say there are other --

9 THE COURT: I appreciate all that. That's going to be
10 great when you get something that they produce and they say
11 this is it and you can say, well, wait a minute. That's
12 precisely what I'm talking about. I'm not going to deal in
13 abstracts.

14 MS. BARBIER: Okay, I understand that. But --

15 THE COURT: Well, if you understand that, then you're
16 getting the cart before the horse.

17 MS. BARBIER: Ms. Moose said this morning that they
18 believed this was only about one videotape and that's not
19 correct.

20 THE COURT: Well, y'all have told them that.

21 MS. BARBIER: I just wanted to put that on the record,
22 Your Honor.

23 THE COURT: Well, you can put it on the record. You've
24 made a Motion. As I said, it's very simple, if you find
25 something -- after they've given you an Affidavit that says

1 this is it and you find something out, then we're talking
2 about some serious sanctions. And I don't think the lawyers
3 want to be going to the office of disciplinary counsel nor
4 do I think the companies want to be penalized. But the
5 bottom line is, that's what's going to happen, folks, so
6 let's quit playing the games, let's do something.

7 Yes, sir?

8 MR. WLODARCZYK: May it please, Your Honor. Damon
9 Wlodarczyk, the prior law firm was relieved and I was hired
10 on Wednesday. I just represent Katherine Thomas in this
11 action. I don't know anything about what's been changed. I
12 don't have any depositions or anything.

13 THE COURT: Well, you know what, that's what -- I used
14 to -- when I first started, we actually went to lawyers'
15 offices and sat down and talked to people face-to-face.
16 Then we got real sophisticated and we started using
17 conference calls. Then we get really sophisticated with
18 e-mails and we end up texting. Y'all need to talk to each
19 other. That's simple how to do that. I mean, it's not
20 rocket science, folks.

21 MR. WLODARCZYK: No, I understand, Judge. I was just
22 asking for some time to actually get the file and speak to
23 them.

24 THE COURT: I would suggest that you speak to counsel.
25 You got him here right now. You speak to him and find out

1 what you need, but I'm giving you 30 days. Then if you need
2 to extend it, you can make a Motion to extend it, but it's
3 30 days. I want the order prepared, produce within 30 days.

4 MR. FEW: Your Honor, we also had a separate discussion
5 with Airbnb, but we also want them to identify -- for
6 example, Airbnb has not identified any witnesses on their
7 behalf.

8 THE COURT: They may or may not have any, I don't know.

9 MR. DUFFY: Your Honor, I can't agree to produce
10 witnesses who may or may not exist.

11 THE COURT: Well, I understand that, but you -- this
12 lawsuit was filed when?

13 MR. FEW: April 28th, 2021.

14 THE COURT: So you haven't bothered to find out whether
15 you've got witnesses or not in this lawsuit?

16 MR. DUFFY: We looked through --

17 THE COURT: You've got 30 days to give them witnesses
18 and if you don't, then we'll talk about whether they can
19 testify or not.

20 MR. FEW: One other thing we asked them for, Your
21 Honor, is we have a specific request for production for the
22 application that would have been provided by Katherine
23 Thomas to become an Airbnb host. The distinction that they
24 made back there was it's not so much an application, you
25 just sign up. Well, we want to know what data she was

1 required to provide. We can't ascertain that from what
2 they've produced.

3 THE COURT: Well, let me ask you a question, who's the
4 person that she talked to to book the house, book the place?

5 MR. WLODARCZYK: Ms. Foster did not actually book --

6 THE COURT: Whoever booked --

7 MR. WLODARCZYK: It's Airbnb, so it's an online
8 platform and she signed up and booked it on her own
9 volition.

10 THE COURT: So there was no person involved?

11 MR. WLODARCZYK: There would be no person -- no --

12 THE COURT: Then you need to respond and say there's no
13 person that she ever talked to.

14 MR. WLODARCZYK: Sure.

15 THE COURT: And if you find somebody, then we've got a
16 problem. So that's the response to that. I mean, come on,
17 folks, that's just common sense. You don't say well, we
18 don't know who we're looking for. That one you knew, there
19 was no person.

20 MR. WLODARCZYK: Yes, Your Honor.

21 THE COURT: Okay. That sounds like to me that's a
22 response.

23 MR. FEW: Thank you, Your Honor.

24 THE COURT: Thank you all.

25 MS. MOOSE: Thank you, Your Honor.

1 MS. BARBIER: Judge, would you like us to submit a
2 proposed order?

3 THE COURT: Yes, if you will, please, and if you'll
4 e-file it, please.

5 MS. BARBIER: Thank you, sir.

6 THE COURT: Thank you very much.

7 MS. MOOSE: Judge, can we have an opportunity to
8 comment?

9 THE COURT: I would suggest y'all share it when it's
10 filed and then we'll deal with that, okay? I'm going to
11 assume that y'all did that. Thank you.

12 What about the Rule to Show Cause? I dealt with that
13 subpoena. I think it's probably subsumed by all of this
14 other stuff.

15 MR. FEW: My preference on the record would be just to
16 continue it. Mr. Mostellar didn't appear. I've been in
17 some communication with him --

18 THE COURT: Well, we'll continue that.

19 MR. FEW: I guess if we could submit an order that just
20 ask them to give us a records custodian Affidavit, that
21 would --

22 THE COURT: Again, folks, y'all know what you've got to
23 do. Come on, man.

24 Who's the Rule to Show Cause against, an individual?

25 MR. FEW: It's the attorney for Katherine Thomas in the

1 dog lawsuit that was sealed from 2019. We subpoenaed him
2 because we couldn't get documents from the parties.

3 THE COURT: Okay.

4 MR. FEW: But if it's okay with the Court, I would just
5 give them 30 days to get us a records custodian Affidavit.
6 We'll put that in the order and I'll run that by Mr.
7 Mostellar.

8 THE COURT: All right.

9 MR. FEW: Thank you, Your Honor.

10 THE COURT: Thank you very much.

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

I, PENNY M. JOHNSON, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that said proceedings were transcribed to the best of my ability from the audio recording and supporting information; and that I am neither counsel for, related to, nor employed by any of the parties to this case, and I have no interest, financial or otherwise, in its outcome.

June 4, 2022

Penny M. Johnson
Penny M. Johnson
Court Reporter III

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

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ELECTRONICALLY FILED - 2022 Jun 24 12:38 PM - AIKEN - COMMON PLEAS - CASE#2021CP0200889

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.

**DEFENDANT AIRBNB, INC.’S
REPLY MEMORANDUM OF LAW IN
FURTHER SUPPORT OF ITS
MOTION FOR A PROTECTIVE
ORDER**

In her Opposition, Plaintiff hardly bothers to defend most of her topics on the merits. Instead, she falsely accuses Airbnb of failing to comply with its discovery obligations. Airbnb submits this reply to correct the factual record and address Plaintiff’s troubling (and now repeated) mischaracterization of the facts.¹

Plaintiff blames Airbnb for failing to identify a date for the deposition. This is false. Plaintiff sent a draft set of 30(b)(6) depositions topics on a Sunday and demanded that Airbnb provide dates for the deposition by the end of that week, but she failed to disclose to the Court Airbnb’s response. (See Pl. Ex. D.) The very next day, Airbnb responded, noting the “obvious” objectionability of Plaintiff’s sweeping topics, and warning Plaintiff that “given the breadth of your proposed topic areas, I cannot guarantee a full response

¹ Airbnb’s legal arguments are fully set forth in the Memorandum of Law filed in support of its Motion. To the extent Plaintiff insists that Airbnb should have just “combined” her topics “with Rule 26(b)(1)” to arrive at non-objectionable topics, because the parties “are well aware of the discoverable issues,” she is wrong. (Opp. at 6 (internal quotation marks omitted).) Rule 30(b)(6) expressly places the burden on Plaintiff to craft 30(b)(6) topics with “reasonable particularity,” which, as Airbnb has shown in its brief, Plaintiff has failed to do. See, e.g., *Loboa v. Women’s Health All.*, P.A., No. 5:18-CV-00329-FL, 2020 WL 889739, at *1 (E.D.N.C. Feb. 24, 2020) (“To meet Rule 30’s reasonable particularity requirement . . . the [noticed] topics may not be overbroad or lack limitations on time or geographic scope.”).

by this Friday.” (See Duffy Supp. Dec. Ex. A.) Nonetheless, Airbnb said it would “do our best to cooperate on scheduling and getting you our objections timely.” Airbnb then asked “whether the deposition would be live or over Zoom,” because that could impact scheduling and noted that Airbnb’s home office is in California but it was not yet known where the witness would be located. (*Id.*) Plaintiff’s counsel responded, stating he was on “spring break” but that he would call Airbnb’s counsel the next day to discuss certain evidence issues and “[t]he other issues.” (See Duffy Supp. Dec. Ex. B.) Plaintiff’s counsel never called Airbnb’s counsel about the Rule 30(b)(6) deposition topic areas or scheduling issues. (See Duffy Supp. Dec. Ex. C.)

Airbnb on April 13, 2022 sent a letter outlining its objections to the proposed topics, proposing alternates, and asking to meet-and-confer. (See Motion for a Protective Order, Ex. 2.) Airbnb could not at that point propose dates because it could not identify a witness until after there was some basic agreement on topics. Plaintiff never responded to the April 13, 2022 letter, never called Airbnb’s counsel, and never attempted to meet-and-confer, as Airbnb requested. Rather, on May 26, 2022, served the 30(b)(6) deposition notice, unilaterally noticing the deposition to take place in person in South Carolina on July 12, 2022.

After that, Plaintiff refused to move the date, notwithstanding her false statements to the contrary. Plaintiff claims that she asked Airbnb for a mutually agreeable date at the May 31 hearing (**after** she had already unilaterally noticed the deposition for July). This too is false. At that hearing, counsel for Airbnb stated that Airbnb would likely ask to move the deposition to a mutually agreeable date. Plaintiff flatly refused, insisting that the date

would not be moved, and saying that she expected Airbnb would file a Motion for a Protective Order. (See Duffy Supp. Dec. ¶ 7.)

This is not the only time Plaintiff has misled the Court about a deficient meet-and-confer process. In her prior motion to compel further discovery responses, she falsely told this Court that she had undertaken “herculean” efforts to meet-and-confer with Airbnb. She was unable to identify any such conference at the hearing, forcing the Court to order a meet-and-confer on the spot. (See Motion for a Protective Order, Ex. 4 at 8:17-25 (Plaintiff unable to answer question “Have y’all talked about this?” and being warned “don’t push this envelope”).)

For these and the reasons set forth in Airbnb’s Motion and Memorandum of Law, Airbnb requests the Court quash Plaintiff’s 30(b)(6) notice in its entirety. Airbnb is willing to produce a witness to testify at a mutually agreeable date on a reasonable number of topics that pertain to the incident over which Plaintiff has sued. Because Plaintiff’s deposition notice goes well beyond that, and for the reasons stated above and in Airbnb’s Motion and Memorandum of Law, Airbnb’s motion for a protective order should be granted. Airbnb requests that the deposition date of July 12, 2022 be postponed to a mutually agreeable date chosen between the parties and that the deposition proceed via Zoom or in the geography where the witness resides. To the extent the Court denies this motion in any part, Airbnb will need time to prepare one or more witnesses to give corporate deposition testimony based on the Court’s potential ruling.

DATED this 27th day of June, 2022.

BUTLER WEIHMULLER KATZ CRAIG LLP

/s/ Ryan P. Duffy

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STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

JULIANNE FOSTER,

Plaintiff,

v.

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

Defendants.

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

**SUPPLEMENTAL DECLARATION
OF RYAN P. DUFFY IN SUPPORT
OF DEFENDANT AIRBNB, INC.'S
MEMORANDUM OF LAW IN
SUPPORT OF ITS MOTION FOR A
PROTECTIVE ORDER**

DECLARATION OF RYAN P. DUFFY

I, Ryan P. Duffy, hereby declare and state as follows:

1. I am a member of the State Bar of South Carolina and am admitted to practice before the Courts of this State. I am an attorney in the law firm of Butler Weihmuller Katz Craig LLP, attorneys for Defendant Airbnb, Inc (“Airbnb”) in this litigation. I make this declaration in support of Airbnb’s Motion for a Protective Order. I have personal knowledge of the matters stated herein and, if called upon, I could and would testify to the truth thereof.

2. In its Opposition to Airbnb’s Motion for a Protective Order, Plaintiff attached an email sent by counsel for Plaintiff on March 20, 2022 attaching a list of proposed topics for a 30(b)(6) deposition. Plaintiff failed to attach Airbnb’s reply, which was sent the very next day and is attached hereto as Exhibit A. In reply, counsel for Airbnb noted the objectionable nature of some of the topics, said he could not guarantee a full response in the timeframe requested by Plaintiff, but that “we will do our best to cooperate on scheduling and getting you our objections timely.” Counsel for Airbnb went on to ask if

the depositions would be conducted over Zoom and noted that Airbnb's home office is in California "though I do not know the location where the testifying witness(es) will be located yet."

3. In response to Airbnb's March 21, 2022 email response, Plaintiff's counsel replied, stating that his co-counsel is on trial and he is on "spring break," and that he would call Airbnb's counsel the next day to discuss evidence and "[t]he other issues." See *3/21/22 Email from W. Few, attached as Exhibit B*. Plaintiff's counsel never called Airbnb's counsel to discuss the Rule 30(b)(6) deposition. See *3/23/22 Email from C. Young, attached as Exhibit C*.

4. On May 26, 2022, Plaintiff served a 30(b)(6) deposition notice on Airbnb, unilaterally scheduling the deposition to occur in person in South Carolina on July 12, 2022.

5. In Plaintiff's Opposition to Airbnb's Motion for a Protective Order, Plaintiff states that during the hearing on May 31, 2022, when Judge Dennis ordered the parties to confer, that "Plaintiff's counsel again requested that Airbnb provide convenient dates and times for depositions." See *Plaintiff's Opposition Brief, p. 3 of 13*. I attended that hearing for Airbnb. Plaintiff's statement is incorrect—Plaintiff's counsel **did not** request Airbnb provide convenient dates and times for depositions. In fact, Plaintiff had already unilaterally noticed Airbnb's deposition to proceed on July 12.

6. In reality, at the May 31, 2022 meet and confer session, the undersigned stated to Plaintiff's counsel that Airbnb received Plaintiff's Rule 30(b)(6) deposition notice on May 26, 2022, and that Airbnb would likely request it be rescheduled to a mutually convenient date.

7. Plaintiff's counsel responded, stating the date would not be moved, and that she expected Airbnb would file a Motion for a Protective Order.

8. Plaintiff's counsel **did not** request additional, convenient dates and times for the Rule 30(b)(6) deposition, and did not in any way indicate a willingness to reschedule the unilaterally set deposition.

DATED this 27th day of June, 2022.

BUTLER WEIHMULLER KATZ CRAIG LLP

/s/ Ryan P. Duffy

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Attorneys for Defendant Airbnb, Inc.

Ryan Duffy

From: Andrew Watson <awatson@butler.legal>
Sent: Monday, March 21, 2022 9:19 AM
To: 'Deborah Barbier'; 'Wes Few'; John Harte; Julie Moose; 'cassy@wesleyfew.com'; Staff@wesleyfew.com
Cc: Ryan Lewis Beasley; Anna Cathcart (5308); Ryan Duffy; Whitney Hill; Zeina Hasbini; Kevin O'Brien (5302)
Subject: RE: Foster v. Riviere
Importance: High

Hi Debbie,

First, thanks for copying all members of my office team on this matter. I appreciate that.

Second, I will get this over to my client today as to the topic areas. There are a few that are obviously objectionable on their face, but we will address them all in writing in one response regarding availability of a witness as to the non-objectionable topic areas. (For example, Airbnb is a publicly traded company so its financials are publically available to you in their SEC filings.). Given the breadth of your proposed topic areas, I cannot guarantee a full response by this Friday 3/25 as indicated, but we will do our best to cooperate on scheduling and getting you our objections timely.

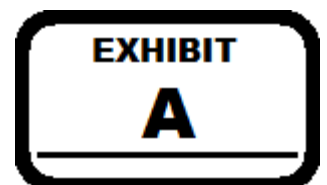
Third, as to your request for Mr. Chesky, Ms Bunch and Mr Shapiro, they are current or former executives of Airbnb. I will confer with my client, but given that you are going to take a 30(b)(6) deposition, I anticipate my clients will object to these "apex" depositions, absent some showing that these witnesses have actual personal knowledge or involvement with this case, beyond what a 30(b)(6) witness prepared to testify would have, and you are not noticing three such executives for deposition simply to harass Airbnb. But, I will get back to you on that as well.

Fourth, please advise as to whether any or all of these depositions will be conducted over Zoom, when/if they occur, as that will impact scheduling for all involved, I am sure. Airbnb's home office is in California, though I do not know the location of where the testifying witness(es) will be located yet.

Lastly, this is another good faith meet and confer effort to remind Plaintiff that we have yet to be given two very crucial pieces of evidence in discovery from the Plaintiff, that we will insist upon receiving and having time to review them for a reasonable time before Airbnb is deposed – (1) the actual recordings of the Plaintiff at the Cottage in question, that are at issue in this case; (2) the actual paperwork for Mr. Riviere's purported arrest / charge for Peeping Tom crimes in 1979 or thereabouts, as referenced tangentially in the SLED documents and as cited by Plaintiff's counsel at the Motion to Dismiss hearing. Considering Airbnb is accused, in part, of somehow being aware of (or failing to be aware of) this record as a basis for liability, it is paramount that it be provided. Both of these requests have been followed-up by my office several times over the last few months.

We will work cooperatively with you and all counsel on these matters. Thanks for the e-mail.

Andy





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

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From: Deborah Barbier <dbb@deborahbarbier.com>

Sent: Sunday, March 20, 2022 9:57 PM

To: Andrew Watson <awatson@butler.legal>; 'Wes Few' <wes@wesleyfew.com>; John Harte <john@jwhartelaw.com>;

Julie Moose <julie.moose@mgclaw.com>; 'cassy@wesleyfew.com' <cassy@wesleyfew.com>; Staff@wesleyfew.com

Cc: Ryan Lewis Beasley <rlb@ryanbeasleylaw.com>; Anna Cathcart (5308) <Anna.Cathcart@phelps.com>; Ryan Duffy <rduffy@butler.legal>; Whitney Hill <whill@butler.legal>; Zeina Hasbini <zhasbini@butler.legal>; Kevin O'Brien (5302) <Kevin.O'Brien@phelps.com>

Subject: RE: Foster v. Riviere

Hi Andy – Attached are the list of topics for the Rule 30(b)(6) deposition of AirBnb. We also plan to take the depositions of Brian Chesky, Tara Bunch, and Nick Shapiro. Please let me know this week when in April or May you can all be available for these depositions. We will try to accommodate everyone's schedule to the extent possible. If we don't receive suggested dates by the end of this week, we will proceed to notice the depositions.

Best regards,

Debbie

Deborah B. Barbier

Deborah B. Barbier, LLC
1811 Pickens Street
Columbia, South Carolina 29201
(803) 445-1032 (office)
(803) 445-1036 (fax)
(803) 730-6290 (cell)
www.deborahbarbier.com

From: Andrew Watson <awatson@butler.legal>

Sent: Thursday, March 17, 2022 1:03 PM

To: 'Wes Few' <wes@wesleyfew.com>; John Harte <john@jwhartelaw.com>; Julie Moose <julie.moose@mgclaw.com>

Cc: Deborah Barbier <dbb@deborahbarbier.com>; Ryan Lewis Beasley <rlb@ryanbeasleylaw.com>; Anna Cathcart (5308) <Anna.Cathcart@phelps.com>; Ryan Duffy <rduffy@butler.legal>; Whitney Hill <whill@butler.legal>; Zeina Hasbini <zhasbini@butler.legal>; Kevin O'Brien (5302) <Kevin.O'Brien@phelps.com>

Subject: RE: Foster v. Riviere

I am not responding to the substance of this e-mail discussion, but the form.

Not sure why everyone keeps reducing the list of cc on these emails that are discovery-related..... All attorneys are not even copied (omitted Ryan in my office; Kevin in Phelps). I have added my folks back on.

This is a busy case in terms of number of e-mails. Someday, someone, probably me, will fail to respond to something important because it was only sent to one person on the service list and not the others. I really want to avoid that. Let's just get in the habit of including everyone, please, unless it is particularly sensitive

Ryan Duffy

From: wesfewsc@gmail.com
Sent: Monday, March 21, 2022 10:33 PM
To: Andrew Watson
Cc: Deborah Barbier; Wes Few; John Harte; Julie Moose; cassy@wesleyfew.com; staff@wesleyfew.com; Ryan Lewis Beasley; Anna Cathcart (5308); Ryan Duffy; Whitney Hill; Zeina Hasbini; Kevin O'Brien (5302)
Subject: Re: Foster v. Riviere

Andrew,
 Deb is in trial, and I am on "spring break."
 You see how well that is working out for me.
 I will call you tomorrow regarding the videos.
 The other issues we can also discuss tomorrow.
 Thanks, -Wes

Wes Few | 864-527-5906 - direct | [864-404-7792](tel:864-404-7792) - mobile | wes@wesleyfew.com | [P.O. Box 9398 Greenville, SC 29604](mailto:P.O.Box.9398@sc.gov) | www.wesleyfew.com

This electronic message and any attachments are confidential property of sender, and may include privileged information. The information contained in this e-mail is intended only for the use of the person to whom it was addressed. Any other interception, copying, accessing, or disclosure of this message is prohibited. Forwarding or other use of this information without permission may result in liability or sanctions. If you have received this message in error, please delete the message and notify sender as soon as possible. 00305-001

On Mar 21, 2022, at 9:18 AM, Andrew Watson <awatson@butler.legal> wrote:

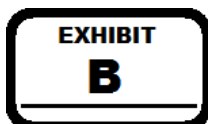
Hi Debbie,

First, thanks for copying all members of my office team on this matter. I appreciate that.

Second, I will get this over to my client today as to the topic areas. There are a few that are obviously objectionable on their face, but we will address them all in writing in one response regarding availability of a witness as to the non-objectionable topic areas. (For example, Airbnb is a publicly traded company so its financials are publically available to you in their SEC filings.). Given the breadth of your proposed topic areas, I cannot guarantee a full response by this Friday 3/25 as indicated, but we will do our best to cooperate on scheduling and getting you our objections timely.

Third, as to your request for Mr. Chesky, Ms Bunch and Mr Shapiro, they are current or former executives of Airbnb. I will confer with my client, but given that you are going to take a 30(b)(6) deposition, I anticipate my clients will object to these "apex" depositions, absent some showing that these witnesses have actual personal knowledge or involvement with this case, beyond what a 30(b)(6) witness prepared to testify would have, and you are not noticing three such executives for deposition simply to harass Airbnb. But, I will get back to you on that as well.

Fourth, please advise as to whether any or all of these depositions will be conducted over Zoom, when/if they occur, as that will impact scheduling for all involved, I am sure. Airbnb's



Ryan Duffy

From: Cassy Young <cassy@wesleyfew.com>
Sent: Wednesday, March 23, 2022 1:58 PM
To: Andrew Watson; 'wesfewsc@gmail.com'
Cc: Deborah Barbier; Wes Few; John Harte; Julie Moose; Staff@wesleyfew.com; Ryan Lewis Beasley; Anna Cathcart (5308); Ryan Duffy; Whitney Hill; Zeina Hasbini; Kevin O'Brien (5302); ELIZABETH@ryanbeasleylaw.com; Krissy Heise; Melissa Johnson (5323); Natalia V. Ertseva-Thomas; Stephanie Cartin; Tina Beard; Sylvia Harte
Subject: RE: Foster v. Riviere

Andy,

Wes just reached out to me – he apologizes for not giving you a call yesterday. I think he mentioned he’s trying to take a “spring break” and spend some time with his HS daughter – but that’s been hit or miss. Anyways, in response to the videos, Wes and the team propose showing lead attorneys to each defendant only the videos on a Zoom call. Again, their singular goal is to keep as many people from seeing our client in such a manner. Please let us know if this will work for you all and if so – we can coordinate a time for the call and viewing.

Thank you,
 Cassy

Cassy G. Young, Paralegal | Wesley D. Few, LLC | 864-527-5906 | cassy@wesleyfew.com | P.O. Box 9398, Greenville, SC 29604 | www.wesleyfew.com

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From: Andrew Watson <awatson@butler.legal>
Sent: Tuesday, March 22, 2022 7:48 AM
To: 'wesfewsc@gmail.com' <wesfewsc@gmail.com>
Cc: Deborah Barbier <dbb@deborahbarbier.com>; Wes Few <wes@wesleyfew.com>; John Harte <john@jwhartelaw.com>; Julie Moose <Julie.Moose@mgclaw.com>; Cassy Young <cassy@wesleyfew.com>; Staff@wesleyfew.com; Ryan Lewis Beasley <rlb@ryanbeasleylaw.com>; Anna Cathcart (5308) <Anna.Cathcart@phelps.com>; Ryan Duffy <rduffy@butler.legal>; Whitney Hill <whill@butler.legal>; Zeina Hasbini <zhasbini@butler.legal>; Kevin O'Brien (5302) <Kevin.O'Brien@phelps.com>
Subject: RE: Foster v. Riviere

No problem, Wes. I will be at my direct # below until about 2 pm today, and after that on my cell phone 305.785.5038 the rest of the day.

Andy



L. Andrew Watson | Partner | Licensed in NC, SC, FL & GA
 BUTLER WEIHMULLER KATZ CRAIG LLP
 11605 N. Community House Road, Suite 150 | Charlotte, NC 28277
 Direct 704.940.9805 | Office 704.543.2321
www.butler.legal | [email](#) | [bio](#) | [linkedin](#) | [vCard](#) | [location](#)



From: wesfewsc@gmail.com <wesfewsc@gmail.com>

Sent: Monday, March 21, 2022 10:33 PM

To: Andrew Watson <awatson@butler.legal>

Cc: Deborah Barbier <dbb@deborahbarbier.com>; Wes Few <wes@wesleyfew.com>; John Harte <john@jwhartelaw.com>; Julie Moose <Julie.Moose@mgclaw.com>; cassy@wesleyfew.com; staff@wesleyfew.com; Ryan Lewis Beasley <rlb@ryanbeasleylaw.com>; Anna Cathcart (5308) <Anna.Cathcart@phelps.com>; Ryan Duffy <rduffy@butler.legal>; Whitney Hill <whill@butler.legal>; Zeina Hasbini <zhasbini@butler.legal>; Kevin O'Brien (5302) <Kevin.O'Brien@phelps.com>

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[Greenville, SC 29604](mailto:Greenville,SC.29604) | www.wesleyfew.com

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Fourth, please advise as to whether any or all of these depositions will be conducted over Zoom, when/if they occur, as that will impact scheduling for all involved, I am sure. Airbnb's home office is in California, though I do not know the location of where the testifying witness(es) will be located yet.

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.

**DEFENDANT AIRBNB, INC.’S MOTION
TO RECONSIDER THE COURT’S
AUGUST 3, 2022 ORDER GRANTING IN
PART AND DENYING IN PART
AIRBNB’S MOTION FOR A
PROTECTIVE ORDER**

Defendant Airbnb, Inc. (“Airbnb”) respectfully requests that the Court reconsider its Order of August 3, 2022 as to certain of the 24 topics in Plaintiff’s 30(b)(6) notice of deposition of Airbnb, the “Duties and Obligations for this Deposition” within the notice incorporated into the Order, as well as the August 31, 2022 deadline to complete the deposition.

“Courts have the inherent power to do all things reasonably necessary to insure that just results are reached to the fullest extent possible.” *Ex parte Dibble*, 279 S.C. 592, 595, 310 S.E.2d 440, 442 (Ct. App. 1983) (citing *State ex rel. Gentry v. Becker*, 351 Mo. 769, 174 S.W.2d 181 (1943)). For the reasons discussed below, reconsideration of the Court’s August 3 Order is warranted here.

Argument

On June 14, 2022, Airbnb filed a Motion for a Protective Order barring or otherwise limiting the 30(b)(6) deposition Plaintiff unilaterally noticed to occur on July 12, 2022. Plaintiff opposed the Motion, and on June 28, 2022, the Court held a hearing on the matter. Attached hereto as **Exhibit A** is the transcript from the June 28, 2022 hearing. At the hearing, the Court instructed both “Airbnb and the plaintiffs each to send [the Court] a proposed order.” **Exhibit A**, Tr. 32:14.

The Court further advised that it would “take the two [competing] orders and then cut and paste and move things around.” On July 18, 2022, Plaintiff and Airbnb submitted competing orders to the Court. On the evening of August 2, 2022, counsel for Plaintiff emailed the Court, referencing Plaintiff’s proposed order but not referencing or attaching Airbnb’s competing proposed order. On August 3, 2022, the Court entered an Order that is substantively identical¹ to Plaintiff’s proposed order but did not incorporate topics from Airbnb’s competing proposed order.

At the hearing on Airbnb’s Motion for Protective Order, the Court gave the parties “guidance” on Plaintiff’s requests. In particular, the Court indicated that Plaintiff’s “safety question” and “the territorial question” need to be “narrowed somewhat.” **Exhibit A**, Tr. at 33:1-4. The Court further noted that some topics in Plaintiff’s deposition notice could implicate a “staggering number of people.” **Exhibit A**, Tr. at 33:4-9. The Court told the attorneys for Plaintiff that whatever they could do “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.” **Exhibit A**, Tr. at 33:10-12.

Yet the proposed order Plaintiff submitted did not tighten up the demands in accordance with the Court’s guidance or as appropriate for this litigation. For example, in Topic 15, Plaintiff changed only the phrase “vetting of hosts by Airbnb” to “gathering of information related to the suitability of AIRBNB hosts by AIRBNB.” *Compare Exhibit C*, Plaintiff’s Initial Notice of Deposition at p. 3, ¶ 15 with **Aug. 3, 2022 Order** at p. 6, ¶ 15. This is the exact same request using slightly different words without any actual narrowing. Similarly, plaintiff’s modification to

¹ As the Court’s email to counsel noted, the Court’s Order “slightly modified” Plaintiff’s proposed order “to extend the deadline to August 31.” **Exhibit B**. The Court’s email did not mention Airbnb’s competing proposed order, nor did the Court’s Order incorporate any of Airbnb’s proposed deposition topics.

proposed topic 14 (and relatedly in topics 21 and 23) still seeks information well beyond the facts alleged in this case.

Further Plaintiff's proposed deposition notice still seeks a staggeringly broad 24 deposition topics (many covering information more than a decade old) for an incident that occurred on two days in May 2019. Indeed, the topics in Plaintiff's proposed order continued to implicate a "staggering number of people." **Exhibit A**, Tr. at 33:10-12. Airbnb's competing proposed Order, attached hereto as **Exhibit D**, presents topics reasonably relevant to the litigation and limited in temporal and geographic scope. Several examples illustrate this:

- Topic 2 in Plaintiff's proposed deposition notice seeks, without any limitation, "All non-privileged information of AIRBNB regarding the factual allegations in the case of Foster v. Riviere, et al. – 2021 CP 02-00889." By contrast, Airbnb's proposed version of this topic states "All non-privileged information of AIRBNB concerning any knowledge of concealed video-cameras at 115 Third Ave., Aiken, South Carolina from 2016 through May 2019 (the "Property") before May 2019 and the background checks conducted on Rhett Riviere and Katherine Thomas before May 2019." **Exhibit D** at pp. 3, 5.
- Similarly, Topic 7 in Plaintiff's proposed deposition notice seeks, without temporal, scope or geographic limitation, "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." Airbnb's proposed version states "AIRBNB's policy addressing what information that, if received through AIRBNB's background

check practices in South Carolina from 2016 through May 2019, could cause a host to face adverse action from AIRBNB.” **Exhibit D** at pp. 3, 6-7.

- Topic 23 in Plaintiff’s proposed deposition notice broadly demands information having nothing to do with Riviere or the claims at issue in this case; it seeks, “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.” Airbnb’s proposed version (Topic 13 in **Exhibit D**) states, “Any non-privileged reports and complaints from 2016 through May 2019 made to AIRBNB of guests being secretly videotaped while staying at the Property.” **Exhibit D** at pp. 4, 11.
- Moreover, Airbnb’s proposed topic 18 (“Any non-privileged reports and complaints from 2016 through May 2019 made to AIRBNB of guests being secretly videotaped while staying at the Property.”) provides appropriate temporal and geographic limitations that are absent from Plaintiff’s proposed topics 18-20, which are so broad as to exceed the bounds of permissible discovery. **Exhibit D** at pp. 4, 9-10.

As demonstrated above, Airbnb’s proposals on these topics (and all others) are far more reasonable. *See* **Exhibit D** at pp. 5-11. Airbnb respectfully requests that this Court reconsider its Order and adopt Airbnb’s proposed deposition topics. If the Court is not inclined to do so, it should, at minimum, incorporate those topics into a revised Order after considering the reasonableness of each party’s requests.

“Duties and Obligations for this Deposition”

Plaintiff’s counsel’s demands to Airbnb, labeled as “Duties and Obligations for this Deposition” for Airbnb posture this case so that Plaintiff can force an Airbnb corporate witness into Court on a Rule to Show Cause if Plaintiff believes that the witness did not respond to questions properly. *See August 3, 2022 Order* at pp. 7-13. This type of posturing is unnecessary. Counsel is well aware of Airbnb’s duties and counsel’s obligations under the South Carolina Rules of Civil Procedure. Yet, Plaintiff’s deposition notice -- now turned into an Order of this Court -- goes well beyond the South Carolina Rules, threatening to jail a witness “until the matters are testified to properly.” *See August 3, 2022 Order* at p. 12. Airbnb respectfully requests that this Court permit the parties to proceed under normal procedures for depositions under the South Carolina Rules of Civil Procedure and strike the section of its Order entitled “Duties and Obligations for this Deposition.” *See, e.g.*, Rules 30(d) and 30(j), SCRPC.

Date of Deposition

Irrespective of the Court’s ruling on the deposition topics, Airbnb respectfully request this Court order the corporate deposition to occur on or before September 30, 2022. Respectfully, August 31, 2022 is not enough time to prepare Airbnb corporate representative(s) who reside in California for a deposition of this breadth.

Conclusion

For these reasons and for those that may be stated in a hearing on this matter, Airbnb respectfully requests this Court reconsider its August 3, 2022 Order.

Dated this 4th day of August, 2022

Respectfully submitted,

/s/ Beattie B. Ashmore
Beattie B. Ashmore
SC Bar No.: 10419
650 East Washington Street
Greenville, SC 29601
PH: (864) 467-1001
E: beattie@beattieashmore.com

EXHIBIT A

1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF AIKEN) COURT OF COMMON PLEAS NONJURY

3 JULIANNE FOSTER,) TRANSCRIPT
 4)
 5 PLAINTIFF,) OF
 6 vs.) RECORD
 7 RHETT RIVIERE, KATHERINE A. THOMAS,)
 8 CHASE ENTERPRISES, LLC OF SOUTH)
 9 CAROLINA, AND AIRBNB, INC.,) 2022-CP-02-889
 DEFENDANTS.)

June 28th, 2022

B E F O R E :

THE HONORABLE WILLIAM P. KEESLEY, Judge.

A P P E A R A N C E S :

DEBORAH B. BARBIER, WESLEY FEW, and RYAN BEASLEY
ESQ.
Attorneys for the Plaintiff

JOHN W. HARTE
ESQ.
Attorney for Defendant Rhett Riviere

ANDREW WATSON, RYAN DUFFY, AND DAWN SESTITO
ESQ.
Attorneys for Defendant AIRBNB, INC.

DAMON C. WLODARCZYK
ESQ.
Attorney for Defendant Katherine Thomas

Transcribed by Pamela E. Green, from
DCRP, Digital Courtroom Recorder Project

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I N D E X

(WHEREUPON, there were no exhibits marked or testimony taken during this hearing.)

1 P R O C E E D I N G S

2

3 THE COURT: Let's go on the record on 2021-CP-02-00889,
4 Julianne, G -- J-U-L-I-A-N-N-E, Foster versus Paul Riviere,
5 R-I-V-I-E-R-E, and others. It's June the 28th, 2022. The
6 time is 12:19PM.

7 This hearing's been scheduled using the webEx virtual
8 courtroom. The -- Court Administration does not assign
9 court reporters for these types of proceedings. The webEx
10 platform is recording the proceedings, and if a transcript
11 is needed, one will be prepared by a transcriptionist using
12 the webEx recording.

13 The August, 2021 Order of the Supreme Court requires
14 the consent of the parties in order to proceed in this
15 fashion. So, the plaintiff, I have Deborah, D-E-B-O-R-A-H,
16 B. Barbier, B-A-R-B-I-E-R.

17 Is that right, ma'am?

18 MS. BARBIER: Yes, sir, Your Honor. Good afternoon.
19 I'm here also with Wes Few, my co-counsel, and Ryan Beasley,
20 my cocounsel.

21 THE COURT: Are you gonna speak?

22 MS. BARBIER: I am, sir.

23 THE COURT: Okay. And do you consent?

24 MS. BARBIER: I do, Your Honor.

25 THE COURT: I have Ryan L. Beasley, B-E-A-S-L-E-Y, and

1 Wesley Few for the plaintiff also.

2 For Rhett Riviere I have John W. Harte.

3 Do you consent, Mr. Harte?

4 MR. HARTE: Yes, Your Honor.

5 THE COURT: H-A-R-T-E.

6 I have Andrew Watson for AIRBNB.

7 Do you consent, Mr. Watson?

8 MR. WATSON: Yes, Your Honor.

9 THE COURT: And Damon, D-A-M-O-N, C. Włodarczyk,
10 W-A-L-O-R-A, I'm sorry, W-L-O-D-A-R-C-Z-Y-K, for the
11 Defendant Thomas.

12 Do you consent, Mr. Włodarczyk?

13 MR. WŁODARCZYK: I consent, Your Honor.

14 THE COURT: And we have with us Dawn Sestito,
15 S-E-S-T-I-T-O, who is not yet admitted pro hac vice, for
16 AIRBNB.

17 I'm asked to request that you please speak clearly,
18 that you not talk over each other, and since no one is going
19 to be writing down as a court reporter who might be speaking
20 at any given time, you're asked to say your name before you
21 speak.

22 All right. I have a call in user.

23 who is this?

24 MR. WATSON: It may be my co-counsel, Ryan Duffy,
25 D-U-F-F-Y. He's traveling to Aiken because there's another

1 matter related to this case happening at two o'clock. So,
2 he's in route listening in. He would not be arguing. I'm
3 assuming that's who it is.

4 THE COURT: Mr. Duffy, are you with us?

5 MR. DUFFY: Yes, Your Honor.

6 Can you hear me?

7 THE COURT: I, I can hear you. I can mute you if you
8 want to.

9 MR. DUFFY: Sure. That'd be great.

10 THE COURT: All right.

11 MR. DUFFY: Thank you.

12 THE COURT: I read the file last name. It's rather
13 extensive. It's a motion by AIRBNB for protection from
14 discovery.

15 So, Mr. Watson, let me hear from you please.

16 MR. WATSON: Thank you, Your Honor.

17 May it please the Court.

18 Again, Andrew Watson on behalf of AIRBNB. Thank you
19 for hearing this motion in expedited fashion due to the, the
20 unilaterally chosen July 12th deposition date that we
21 could not agree -- get an agreement for it to be moved.

22 So, we're here seeking a protective order on behalf of
23 AIRBNB pursuant to Rule 26(a), 26(b)(1), and 30(b)(6) as to
24 the corporate designee or designees of AIRBNB, Incorporated.

25 In essence, what we want, Your Honor, in addition to

1 the logistical relief in terms of continuation of the
2 July 12th date, we want the ability for AIRBNB, a
3 California corporation, to produce witnesses virtually by
4 Zoom just we we're doing for this hearing, and then, of
5 course, substantively, which is what the bulk of this
6 hearing will be about. we're seeking reasonable
7 particularity as to the, the topic areas that have been
8 noticed.

9 Since this is I believe Your Honor's first interactions
10 with this case, a very short overview. This case arises
11 from alleged surreptitious video recording that was made of
12 the plaintiff while she was at a rental property, a cottage
13 in Aiken. The rental was booked by her friend, Michelle
14 Jane, from a Katherine Thomas, who is a defendant in this
15 action as well. Miss Jane is not a party in the case. The
16 rental property was owned by Mr. Riviere and his corporate
17 entity and they are defendants in the case.

18 AIRBNB is the last defendant in the case and its only
19 connection with this matter is the fact that Miss Jane, who
20 rented the cottage, and Ms. Thomas, who offered the cottage
21 for rental, did so on the AIRBNB digital platform. It's a
22 worldwide app and platform that's used to conduct rentals
23 just like this and the users agree to terms of service when
24 they sign up to be either a, a guest, or as AIRBNB calls
25 them, hosts for rentals.

1 The terms of service, there's no dispute, don't allow
2 for undisclosed secret cameras on a rental property
3 especially if they're actually recording the occupants. Ms.
4 Thomas agreed to those terms when she signed up to be a host
5 in 2016, which is a key date, and then this incident
6 happened in which it was later discovered that Ms. Foster,
7 the plaintiff, a friend of Miss Jane, was surreptitiously
8 recorded in May of 2019 during the short term rental.

9 So, those are the two key event dates that I'm gonna be
10 referencing. It's 2016 and May of 2019.

11 There has been discovery in this case already. There's
12 been written discovery back and forth. AIRBNB has produced
13 its records regarding its background check, efforts as to
14 Ms. Thomas when she signed up and beyond, and, and there
15 were no red flags as to what she -- any history that would
16 of given AIRBNB or anyone an indication that someone, in
17 this instance it's alleged that Mr. Riviere, who has a
18 separate criminal action pending, surreptitiously planted
19 these cameras and recorded her.

20 The complaint against AIRBNB is rooted in negligence,
21 that somehow they were under a duty to protect Ms. Foster
22 from the alleged criminal act of a -- of Mr. Riviere as a
23 third party and caused her harm.

24 Briefly, I'm not -- I want to mention how we got here
25 because I think it, it is important. In March of -- as we

1 laid out -- this out in our motion as well with some
2 exhibits, in March of 2022, March 20th to be exact, this
3 proposed notice was sent to us by counsel for Ms. Foster
4 with the 24 topics. It's Exhibit 1 to our motion, Your
5 Honor.

6 The very next day I responded to counsel and explained
7 that, due to the breadth and objectionability of these topic
8 areas, it's gonna take my client a little bit of time to
9 respond but we're gonna respond in writing in one place so
10 that there can be a meaningful meet and confer. That email
11 was submitted as an exhibit to the reply brief that was
12 filed last week, last Friday.

13 We did -- AIRBNB went through and submitted that letter
14 which was attached to our motion for protective order as
15 Exhibit 2 on April 13th of 2022, and we went topic by
16 topic through every one of the 24 areas explaining what the
17 objections were and why narrower topics were -- no topic at
18 all was appropriate as the case may be. That was
19 April 13th. We got no written response. We got no verbal
20 response. We got no email explaining their position --
21 plaintiff's position on those matters.

22 What instead we got was, on May 26th of 2022, we got
23 the signed notice of deposition which modified slightly I
24 believe four or five of the topic areas with additional
25 verbiage but otherwise left them all in tact. It removed

1 the Zoom option for attendance for AIRBNB and it set the
2 date of July the 12th.

3 There was a hearing on a, on a different motion with
4 Judge Dennis on May 31st, just a few days after that
5 notice had been issued, and my cocounsel, Mr. Duffy, was
6 there present and was in the hall or in a conference room
7 conferring about the subject motion with Ms. Barbier and
8 this -- the topic of this deposition notice was discussed.
9 Mr. Duffy mainly just asked can we continue the
10 July 12th date so that we can have time to properly have
11 this motion for protective order heard and then, of course,
12 for witnesses to be prepared and educated and to be able to
13 testify.

14 Ms. Barbier told Mr. Duffy no, that the deposition
15 would not be moved, but that she was aware that there was
16 going to be a motion for protective order and go ahead and,
17 and get your motion heard. And so here we are, Your Honor.

18 As to the substance of the motion, the emphasis here is
19 reasonable particularity as to the matters requested.
20 That's what AIRBNB needs in order to educate one or more
21 witnesses on these 24 topic areas as they're provided.

22 They're not -- it's important to note also that this
23 case is not on a trial roster. This case has not been
24 mediated. This case has had paper discovery but only one
25 fact, only one deposition taken at all and that was of one

1 of the defendants, Ms. Thomas.

2 Counsel has not pursued any other depositions relating
3 to the AIRBNB individuals as of yet and is, is seeking to do
4 a whole host of discovery by way of this 30(b)(6) deposition
5 for which they never actually served written discovery. For
6 example, they're asking AIRBNB to educate a witness and
7 produce them about not only 10 years worth of lawsuits
8 worldwide against them relating to recordings to the extent
9 they can even locate them by that characteristic and search
10 for them that way, but also individual complaints that may
11 have been made by a renter or a guest of a renter but that
12 didn't result in a lawsuit, and then any settlements of any
13 of those matters for a 10 year period.

14 To be able to prepare a witness for some -- those type
15 of topic areas, and those would be Topics 18, 19, and 20,
16 for example, would be unduly burdensome, time consuming. To
17 the extent that they're lawsuits involved, those are
18 publically available records that plaintiff can find and
19 locate or they can serve a written discovery request to
20 attempt to locate these records rather than force a deponent
21 who hasn't -- has an obligation, if they're produced on
22 those topics, to then have to do all that homework and
23 research ahead of the deposition.

24 And, again, with all of these, AIRBNB's not willing --
25 is, is willing to appear. It is not looking to shirk its

1 responsibility to produce a 30(b)(6) witness. It just needs
2 to have a scope and a, a timeframe that is not objectionable
3 and that is manageable enough to actually be able to educate
4 someone, because as anyone whose dealt with 30(b)(6)
5 witnesses knows, it's, it's a double edged sword.

6 If we had just gone ahead and attempted to comply with
7 this notice and produce a witness, we would -- and objected
8 to everything, we would of been told you should of brought a
9 motion for protective order to try and limit all these
10 areas. Now that we're here, we're trying to limit those
11 areas. The argument from counsel is going to be that we're
12 seeking to somehow avoid our responsibilities and cause
13 undue delay in the process.

14 AIRBNB -- let's see. AIRBNB, in the meet and confer in
15 the Exhibit 2 to our motion, not only did it answer each of
16 the 24 topic areas, Your Honor, but it proposed to narrow
17 the, the topics to four which are set forth on Page 3 of
18 that correspondence to attempt to tie this somehow to the
19 facts of the case. I know, during some of the earlier
20 cases, there was talk of how there shouldn't be fishing
21 expeditions done when it comes to discovery.

22 This is a case where AIRBNB's background check of
23 Ms. Thomas and/or Mr. Riviere is relevant. And to the
24 extent those topic areas can be limited to what was done by
25 AIRBNB with respect to those individuals, that's

1 appropriate. What was the process that AIRBNB had in the
2 Summer of 2016 when Ms. Thomas showed up -- signed up as a
3 host, that's appropriate.

4 what's not appropriate is what we ended up with, which
5 is essentially either boundless or a 10 year swath of
6 identify every employee that you've ever had who deals in
7 the subject matter of responsibility of guest safety, which
8 is not defined by the plaintiff. Guest safety can include
9 so many things particularly when you're dealing with rental
10 properties.

11 It can be loose floorboards. It can be somebody's
12 identity or data from their credit card was stolen. It
13 could be the roof caves in. It can be somebody enters a
14 building and attacks them or, you know, sexual crimes. All
15 sorts of things are encompassed in guest safety. And if
16 AIRBNB had a simple individual who says I'm the person in
17 charge of "guest safety" and I can testify to that, that
18 would be one thing. But what's being asked is just simply
19 beyond the pale and overbroad.

20 I don't think Your Honor necessarily wants to go 1
21 through 24 through all of these. We've done so in more
22 detail both in the meet and confer letter and in our
23 briefing and the exhibits attached.

24 I will comment on a couple of them though. There's a
25 phrase used in a few of the topic areas, 15 and 22, called

1 the vetting of hosts and AIRBNB is being required to produce
2 a witness about the vetting of hosts. It's unclear what
3 that means. If they want to know about what the background
4 check procedure is, that's perfectly fine. That's
5 understandable because they have already been produced the
6 documents about that. But vetting of hosts, beyond the
7 background check, it's unclear to AIRBNB what that means,
8 what that encompasses.

9 when it comes to -- the word opinions is included
10 throughout a couple of the responses. I believe Number 5
11 and Number 9 of the topic areas asking AIRBNB to testify not
12 only about facts but about opinions as to its procedures for
13 removing individuals or suspending them from the digital
14 platform. It's unclear exactly how that would be relevant
15 or discoverable in this matter and it's, it's not defined or
16 explained.

17 And, lastly, as I mentioned, guest safety or the safety
18 of guests. You know, there's one topic that says you need
19 to produce a witness and it's -- I believe it's Topic 23, to
20 identify the employees responsible for guest safety over a
21 10 year period. That's, you know, simply a research and
22 memory contest, Your Honor. That's not something a 30(b)(6)
23 witness is going to be able to adequately be prepared to do
24 when a company that's worldwide with thousands of employees.

25 They can produce, educate -- and educate a witness or

1 witnesses on these topics but it just has to be reasonable,
2 and that's really the, the thrust of why this motion is, is
3 filed at this time.

4 Ultimately, you know, as I said we want to comply. We
5 want to produce a witness. We'd like to, to ask the Court
6 to, to continue this deposition from the July 12th date.
7 I've also been informed by counsel for Ms. Thomas,
8 Mr. Wlodarczyk, that he's unavailable for that unilaterally
9 selected date anyway.

10 But, regardless, we'd ask that it be, number one, that
11 the notice be continued, number two, that AIRBNB be allowed
12 to attend virtually when the deposition is re-noticed, and,
13 most importantly, that these 24 topic areas be narrowed
14 sufficiently so that AIRBNB can reasonably comply and
15 educate a witness or witnesses upon them. And, of course,
16 that's going to take time, which also is the reason why
17 we're asking for the July 12th date to be moved back by
18 order of the Court if not by agreement of counsel
19 informally.

20 There's a lot I've left out. It's, it's been a long
21 morning. I know Your Honor's heard a lot of cases and I'm
22 happy to answer things that the Court wishes to address.
23 But otherwise that's our motion and that's what we're
24 seeking, Your Honor.

25 THE COURT: Thank you.

1 Ms. Barbier.

2 MS. BARBIER: Good afternoon, judge.

3 I'll, I'll try to be brief as well. I know Your Honor
4 has ruled on a number of motions for protective orders in
5 your years on the bench. So, I won't, I won't suggest that
6 you need me to tell you the law on this area -- in this area
7 of the law.

8 But, Your Honor, just briefly to, to elaborate on some
9 of the background that Mr. Watson gave you. This case was
10 filed in April of 2021. We've taken one deposition thus far
11 and we just had a hearing, as he noted, on May 31st on our
12 motion to compel because essentially what we have had over
13 the last year of this -- of the life of this case is
14 stalling, delaying, and stonewalling. That's what we have
15 been dealing with.

16 After a motion to stay was granted by Mr. Harte's --
17 made -- that was made by Mr. Harte's client because he's
18 actually criminally charged in this matter, one of the
19 things that Mr. Watson left out is that my client was not
20 just video recorded in a rental property. She was video
21 recorded in a bedroom while taking off her clothes. And so,
22 Mr. Harte's client and Ms. Thomas obtained videos of her in
23 a state of undress.

24 So, Your Honor, we have had, after the motion to
25 dismiss by AIRBNB was denied, I had discussions in December

1 of 2021 with Mr. Watson about a Rule 30(b)(6) deposition
2 that I wanted to take along with some other depositions of
3 AIRBNB employees. He indicated to me that he couldn't give
4 me who the designees would be or give me any convenient
5 dates because he first needed to know the topics. I said
6 fair enough.

7 So I worked on a draft notice to send to them and to
8 present to them what topics would be needed so they could
9 indicate who would be the designees under the rule that they
10 would, that they would designate. Once I sent them that,
11 Your Honor, letter, Your Honor, in March of 2022, and asked
12 them for convenient dates, what we got was, a month later, a
13 letter that you've seen, which is the exhibit to our motion
14 and to theirs, objecting to every single topic claiming to
15 not understand the words and the terms that we've used,
16 which many of which, Your Honor, were taken from their own
17 website, okay, and I didn't understand that AIRBNB, as they
18 have indicated in their motion, says that we don't
19 appreciate that they're a global company with millions of
20 hosts and millions of properties.

21 They're to me, Your Honor, is that how, how dare we
22 bother them with our silly little lawsuit in South Carolina
23 because they're just -- they're, they're busy making
24 billions of dollars.

25 But I'll tell you Your Honor what we do appreciate.

1 That -- we appreciate the fact that, as of 2021, AIRBNB had
2 51,000 rental properties in South Carolina, and AIRBNB's --
3 South Carolina is AIRBNB's ninth most popular state.
4 Charleston, according to the Internet, is the most
5 profitable city in America to have an AIRBNB.

6 And so, Your Honor, what I do appreciate is that AIRBNB
7 chose to do business, significant business, in the State of
8 South Carolina, and that makes them subject to the rules of
9 this Court and the Rules of Civil Procedure, and that -- and
10 simply because they are a global business making billions of
11 dollars doesn't mean that they don't have time to educate
12 somebody on the relevant topics of guest safety, the guest
13 safety that they say they have as a priority in their
14 business, that people rely upon when they rent an AIRBNB
15 that they're going to be safe from people like Mr. Riviere
16 who has been practicing voyeuristic activities for many,
17 many decades now.

18 So, Your Honor, I -- as I said, I asked for dates
19 beginning in December of 2021. AIRBNB, to this day, has
20 still not given me a convenient time that they would have
21 for a deposition of their 30(b)(6) designees.

22 The, the -- Your Honor, the topics are very simple and
23 very straightforward. AIRBNB has gone to the trouble of
24 hiring very smart lawyers from North Carolina and
25 California. I'm -- I am quite confident that the lawyers in

1 North Carolina and California understand the terms that
2 AIRBNB used on its own website. I invite them to hire a
3 lawyer from South Carolina because I'm quite sure they could
4 find one that would understand the term guest safety as it's
5 used on their own website.

6 But if you go through the topics, Your Honor, it's very
7 clear. What we're asking for is the person that AIRBNB who
8 is most knowledgeable on the topic of the facts and the
9 circumstances related to this particular lawsuit, the
10 renting of the property to Miss Jane, and the communications
11 regarding that which are non-privileged. Everything we've
12 asked for is non-privileged. We have not asked for anything
13 that would be -- fall under a privilege. The notice
14 specifically says that.

15 And the proper protocol, Your Honor, if they had a
16 privileged argument, a valid privileged argument, would be
17 to take the 30(b)(6), and if we asked for privileged
18 information, instruct their client not to answer and move
19 for protective order. That is the -- that is the protocol,
20 as we all know, when you are worried about privileged
21 material being sought. But I can assure you, our notice
22 clearly states, in Number 2, it says all non-privileged
23 information of AIRBNB regarding the factual allegations in
24 the case of Foster v. Riviere.

25 We asked for the contracts and the agreements between

1 Mr. Riviere, Chase Enterprises, Katherine Thomas with
2 AIRBNB. We asked for their records -- the person most
3 knowledgeable about the records and the documents related to
4 Mr. Riviere, Chase Enterprises, Katherine Thomas, and Ms.
5 Foster.

6 We also asked for, Your Honor, the things that are
7 noted on their website as being a priority in terms of guest
8 safety. We asked for the organization -- you know, the
9 person most knowledgeable about the, the leadership at
10 AIRBNB and who's responsible for guest safety, who's
11 responsible for vetting the host. And when I say vet the
12 host, Your Honor, it's not, it's not complicated.

13 What is AIRBNB is doing to ensure that they're not
14 allowing people to be hosts who have -- who are sexual
15 predators, who are -- have, you know -- and I'm not talking
16 about Mr. Riviere or Ms. Thomas but what are their policies
17 and protocols related to people that have criminal
18 backgrounds and allowing them to rent these properties, and,
19 and what are they doing to protect the people that are
20 renting these properties.

21 These are all very logical questions when you're
22 talking about a case that involves somebody surreptitiously
23 taping our client while she undresses and goes to the
24 bathroom in the AIRBNB. And so I, I don't think it's
25 complicated at all, Your Honor.

1 The, the, the, the topics related to the other lawsuits
2 relate to what type of notice is AIRBNB been on for all
3 these years about people putting hidden cameras in their
4 properties and what have they done about it. I understand
5 that they settle a number of lawsuits related to these types
6 of allegations and these are the topics that relate to that.

7 what are, what are the lawsuits and what are the
8 settlements and what is the information related to the
9 training of these employees at -- as it relates -- of these
10 (indiscernible), what are they doing to ensure the safety of
11 them.

12 Your Honor, it's, it's not difficult to, to ascertain
13 but they have been sued on multiple occasions for the same
14 thing. The question is what have they done about it. And
15 if they've been on notice that these hidden cameras exist in
16 these properties, you know, what are they -- how are they --
17 how have they changed their policies, who have they employed
18 to help with these matters.

19 These are what the topics address. The topics are not
20 complicated. I'm, I'm quite sure that their lawyers
21 understand what the topics mean, and if they didn't, Your
22 Honor, they could of written a far better letter indicating
23 what their specific questions were.

24 Basically what their letter says is we object to every
25 single topic on every single matter and we are not gonna

1 produce a designee and we are not gonna give you a date.
2 And, and that's what I took from the letter, and, Your
3 Honor, this is seven months after we asked for the first
4 date of a Rule 30(b)(6) deposition. They've all -- they
5 then object to every other executive or any other, you know,
6 person that we've asked about at AIRBNB to take their
7 deposition.

8 As far as doing it by Zoom, Your Honor, I object to
9 that because I think that, that AIRBNB does such a
10 significant amount of business in South Carolina, they are
11 perfectly capable of using some of their billions of dollars
12 to bring their people to Aiken, South Carolina where this
13 case is pending, where they're doing business, to answer
14 some questions related to guest safety. I don't think
15 that's asking too much and I understand that we are all in
16 a, a digital world but I think it's far more difficult to
17 take a 30(b)(6) deposition particularly with the documents
18 we'll be using and, you know, the number of topics involved.

19 So, I would ask that Your Honor require that it be in
20 person. I would also ask that Your Honor keep the
21 July 12th date because you notice that these -- the, the,
22 the, the attorneys for AIRBNB have not indicated what would
23 be a good time now. They still haven't. Since December of
24 2021 haven't given us a good time that it would be to take
25 this deposition and I think that's because they don't want

1 to take this deposition.

2 But that's not, that's not how this works. You know,
3 they're subject to the same rules that the rest of us are
4 even though they're a global billion dollar company.

5 So, Your Honor, I would, I would simply submit to you
6 that they have not come close to meeting the standard under
7 Rule 26(c) which is what a protective order would have to
8 come -- you know, to, to be granted would -- they would have
9 to show that they would -- that they're being protected from
10 annoyance, embarrassment, oppression, and undue burden or
11 expense. They can't show any of that. And with the amount
12 of money that they're making in South Carolina, I think that
13 they can, they can fly a few people here to answer some
14 questions on these topics.

15 So, that's what I would submit, Your Honor. If you
16 have any questions about any specific topic or anything, I'd
17 be happy to answer them.

18 MR. WLODARCZYK: Your Honor, this is Damon Włodarczyk.
19 You're muted. But if I could add, add some additional
20 information before Mr. Watson replies.

21 THE COURT: Well, give me a second. I'm sorry. There
22 was so much noise outside the hallway I, I muted and I
23 forgot.

24 What is AirCover, Mrs. Barbier?

25 MS. BARBIER: Yes. AirCover, Your Honor, is an

1 insurance coverage that apparently is available to every
2 guest and that is also advertised on their website and in
3 their agreement.

4 And so our topics that relate to that are with respect
5 to what, what is it, you know, the -- what exactly it
6 applies to, and who's in charge of it, and when it can be
7 declined, and, and those sorts of things.

8 THE COURT: Number 12, all facts and information to
9 AIRBNB's notification of state statutes related to real
10 estate property management licensure to hosts and potential
11 hosts including links to outside sources for assistance.

12 Can you tell me what that means?

13 MS. BARBIER: I'm sorry.

14 which number are you looking at, Your Honor?

15 THE COURT: 12.

16 MS. BARBIER: Yes.

17 Your Honor, AIRBNB, there is some question, and we have
18 a cause of action in our complaint as to whether or not
19 they're even appropriately operating in South Carolina, and
20 whether they're in compliance with our state statute which
21 governments (sic) real estate property management. They're
22 not licensed in South Carolina as I understand it, and that
23 was part of their motion to dismiss and it was denied.

24 And so, it's a topic that's very relevant to one of the
25 causes of action in the complaint.

1 THE COURT: Twenty-two, the identity of all AIRBNB
2 employees involved in the vetting of AIRBNB hosts during the
3 time period of December 1, 2013, through the present.

4 You, you want to address that being overly broad?

5 MS. BARBIER: Your Honor, we are asking just for a list
6 of those employees, and if those employees are assigned to a
7 particular region of the country, then they could just give
8 us the employees that were assigned to the region of South
9 Carolina.

10 I, I don't think that, that is -- that's not something
11 they have indicated that we want them to memorize the names
12 of these employees. We just want to know which employees
13 were responsible for this area and what they did to vet Mr.
14 Riviere and Ms. Thomas as AIRBNB hosts, and I don't know how
15 many employees that would entail, Your Honor. I don't know
16 if it's 5, 10, 15, or a thousand. But (indiscernible) --.

17 THE COURT: You're breaking up.

18 MS. BARBIER: -- the name and people to explain how
19 that process works.

20 THE COURT: Say that again. You've been breaking up
21 from time to time.

22 MS. BARBIER: I'm sorry, Your Honor. I'm in the Aiken
23 County Courthouse for the next hearing.

24 Your Honor, all we would like is a person designated to
25 testify about the identity of those individuals and what

1 their responsibilities were in terms of vetting the hosts.
2 Did they do criminal background checks. Did they go inspect
3 any of the properties for video cameras. What did they do.

4 THE COURT: Well, what do you say to their argument
5 about guest safety being too broad?

6 MS. BARBIER: Your Honor, that -- that's the term that
7 they use on their website and that is a term that they
8 would -- I would imagine understand if -- because they're
9 out advertising to millions of people that guest safety is
10 their number one priority.

11 Obviously in this case, Your Honor, it is guest safety
12 from individuals being able to surreptitiously record
13 someone in a rental property while they're undressing, while
14 they're showering, while they're in bed. I mean, you know,
15 it's, it's just not very difficult. I mean you can imagine
16 that someone who's a sexual predator can just have a, a
17 field day hosting an AIRBNB and being allowed to do this.
18 So---

19 THE COURT: Well, you're missing my point.

20 MS. BARBIER: ---the issue---

21 THE COURT: You're missing my point.

22 MS. BARBIER: What's that?

23 THE COURT: They're -- my point is they didn't contest
24 the ability of you to ask questions, if I understood their
25 argument correctly, about those things you just argued to

1 me. what they said is that that could deal with any number
2 of issues related to safety of the property itself. Not any
3 video recording.

4 So, have you addressed everything you want to address
5 about their argument about guest safety being too broad a
6 topic?

7 MS. BARBIER: Well, I, I would agree, Your Honor, if
8 they need clarification on that, we can, we can narrow that
9 topic to mean guest safety from, you know, with issues
10 related to video recordings, with issues related to, you
11 know, people who are voyeuristic or sexual predators taping
12 people in their properties. We're not concerned about a
13 loose floorboard or a railing that might be loose.

14 THE COURT: Thank you.

15 Mr. Włodarczyk, did you want to say something?

16 (WHEREUPON, during the following speaking of Mr.
17 Włodarczyk, the audio continually broke up.)

18 MR. WŁODARCZYK: May it please, Damon Włodarczyk. Just
19 briefly.

20 Ms. Thomas has counsel from South Carolina in this, in
21 this lawsuit. Some time in February filed a motion to be
22 relieved as counsel due to a conflict of the way the case
23 should proceed and that case was (indiscernible) and Ms.
24 Thomas was given I believe 45 days, which the time to expire
25 was June 6th, to either get new counsel or to be deemed to

1 proceed pro se.

2 The carrier that hired me contacted me I believe on May
3 26th. It was a Wednesday before the May 31st hearing.
4 I filed a notice of appearance after reading the docket on
5 May 31st, the morning (indiscernible) know before the
6 motion hearing that was referenced before, before Judge
7 Dennis.

8 It appears that no deposition 30(b)(6) was served
9 during the interim period was Ms. or Mr. Thomas protected
10 from not appearing pro se and had not retained counsel.

11 During the May 31st conference that we had, the
12 July 12th deposition date had come up and there were some
13 motion for protective order. At that time I didn't notify
14 all the parties, including the plaintiffs, plaintiffs on
15 several occasions, that I have a date certain federal jury
16 trial with Judge Coggins that started on the 12th and that
17 I would not be available to defend that, and the response I
18 got was AIRBNB was filing a motion for protective order.

19 But I would simply ask for the Court's consideration
20 about moving that July 12th date because I don't have a
21 motion for protective order present and I never had filed
22 one to get a deposition moved for a federal trial or a state
23 trial that's been set. But, of course, if I got to do that
24 based on what I just (indiscernible).

25 THE COURT: All right. You broke up a lot but I think

1 I got the gist of it.

2 Mr. Harte, do you have anything?

3 MR. WLODARCZYK: Sorry, judge.

4 MR. HARTE: Only, only one or two points, Your Honor.

5 Just, first of all, when I go to these hearings and the
6 plaintiff's counsel makes statements as if they are proven
7 facts, and they are not proven facts, the statement that my
8 client is a known voyeuristic predator, that is not a proven
9 fact and that we have denied that.

10 Also, the allegation that she made that somebody could
11 be seen in the bathroom, as they well know because they have
12 the videos, that's not on those videos.

13 Our position is, in this case, that this was a badly
14 placed security camera that was left on at the wrong time
15 and if -- any filming of their client was, was inadvertent.
16 Those are our allegations.

17 I'm professional enough to make this statement that
18 they're allegations. I don't, I don't try to override the
19 rules and say that they're proven facts because it's a jury
20 question as to exactly what happened here. But I, I
21 don't -- the issue about that they have between themselves
22 and BN -- AIRBNB, I'm interested in seeing what AIRBNB has
23 to say about these things but I, I candidly thought the, the
24 demands made on AIRBNB seemed to be, to be -- would just --
25 I, I felt like they were extreme and not likely to produce

1 relevant testimony or evidence. But I would defer to AIRBNB
2 on that issue.

3 As far as July 12th is concerned, Your Honor, I'm --
4 I -- that's, that's a matter between them. I've marked off
5 July 12th to be available for -- actually there's two
6 depositions set that day I believe. One is AIRBNB and the
7 other is for a witness, Dan Cavanaugh. I think I'm correct
8 in that.

9 I don't know how we'd get to a second, second
10 witness -- second deposition on that day but that's the
11 plaintiff's call. Not mine. I'm, I'm not -- I don't have a
12 position on the date. I'm, I'm, I'm not offended by the
13 date. That's not my problem.

14 Thank you.

15 THE COURT: Yes, sir.

16 Anything, Mr.---

17 MS. BARBIER: Your, Your Honor, if I could?

18 THE COURT: I'm sorry.

19 who's talking?

20 MS. BARBIER: I'm sorry, Your Honor. I just wanted to
21 interject for a moment.

22 THE COURT: Ms. Barbier.

23 MS. BARBIER: We don't have an objection to the date
24 being moved a, a week or so. What we have an objection to
25 is, is AIRBNB perpetually not giving us a date, and, you

1 know, whatever is, is -- the Court deems is reasonable we'll
2 work with.

3 But in terms of just leaving it open ended so that they
4 can determine, you know, what they think may work best for
5 them, and never hearing back from them, we would ask the
6 Court to either set a date for the parties to adhere to or
7 leave it in July 12th.

8 THE COURT: I'm not gonna give them an option to extend
9 it beyond a certain date.

10 Mr. Watson.

11 MR. WATSON: Yes, Your Honor.

12 THE COURT: You have anything else?

13 MR. WATSON: The only thing I just want to point out is
14 it's telling that, that each time that Your Honor asked
15 questions about some of the overly broad topics, suddenly
16 Ms. Barbier then said well, all we would like is this, well
17 we're willing to narrow that.

18 well, that's what the meet and confer process was
19 suppose to result in and the fact that now concessions are
20 being made when Your Honor asked the questions, we just
21 point out that every over breadth and every objection that
22 we've made, if the counsel would simply have said what we
23 really meant is that, or what we really wanted is get at is
24 this, that just didn't happen and that's why we've filed the
25 motion when we did.

1 Lastly, as to the timing, what I would ask for, Your
2 Honor, is that when the Court has ruled that a sufficient
3 amount of time be given to AIRBNB to then identify the
4 witnesses to whatever narrowed topics there, there may be
5 after your ruling, and then we would prefer -- we can agree
6 to provide dates within a very short period of time after,
7 after that, whatever timeframe the Court would like to set
8 it on.

9 we're not trying to indefinitely delay this deposition,
10 postpone it in a ridiculous manner. We simply want to
11 produce a witness that only has to go through this once or
12 witnesses that only have to go through this once because we,
13 we also are fearful, fearful that counsel is gonna say well,
14 they weren't properly educated, they weren't properly
15 prepared.

16 well, when you give even a company such as AIRBNB a
17 very short amount of time to, to prepare, you know, what's
18 reasonable to do in that short amount of time. So, there's
19 got to be kind of a give and take there.

20 But that's all, Your Honor. I appreciate your time
21 today.

22 THE COURT: Thank you.

23 Ms. Barbier, do you have anything else?

24 MR. WLODARCZYK: Your Honor, if I might, just one -- if
25 I might just say one thing, Your Honor?

1 The week of August the 16th, if everybody -- if we're
2 gonna start talking dates, I have a, I have a surgical
3 procedure that has to be done to replace my left shoulder on
4 the 16th of August. I will be back in office the
5 following Monday. But the 16th through the end of that
6 week I'm not available. If everyone would keep that in mind
7 please.

8 THE COURT: Ms. Barbier, you have anything else?

9 MS. BARBIER: No, Your Honor. I thank you for your
10 time today and your consideration.

11 THE COURT: Here's what I want you to do.

12 First of all, I'm gonna rule that the
13 July 12th deposition is to be postponed. Then I want
14 AIRBNB and the plaintiffs each to send me a proposed order.
15 If the plaintiffs are going to narrow their requests, put it
16 in the proposed order that you distribute to the other side
17 and AIRBNB likewise. If you-all can confer in the interim,
18 that's fantastic.

19 Send that to me please by email as a word attachment
20 because what I generally do is take the two orders and then
21 cut and paste and move things around. Don't eFile them
22 please. It's just an extra step for me to have to go
23 through that. And if it's in PDF form I have even more
24 problems.

25 I'd like those within 20 days. If you need more time

1 you can tell me. I think, to just give you a little bit of
2 guidance, I think the, the safety question needs to be
3 narrowed somewhat. I think the territorial question needs
4 to be narrowed somewhat. And it sounds like the plaintiffs
5 are in agreement to do that.

6 The number of employees that might be involved in some
7 of these things on a, on a worldwide basis, I mean it could
8 be a few. It could be staggeringly -- staggering number of
9 people.

10 So, whatever you-all can do to tighten up the demands
11 that you put in your requests, if you put those in the
12 order, then they're more likely to be approved by the Court.
13 I intend to give sufficient time after that in which to
14 designate the 30(b)(6) representatives and then I'm just
15 gonna give you a deadline by which to complete the 30(b)(6)
16 deposition -- depositions. I'm not gonna pick a date for
17 you.

18 If you-all can not agree on a date before the deadline,
19 I want to instruct you that you have to contact the chief
20 judge for administrative purposes and she can tell you a
21 date.

22 All right. Thank y'all very much. The hearing is
23 concluded at 1:06PM. I'm sorry you were last. I didn't
24 expect it to go quite this long today. Thank you.

25 MR. WATSON: Thank you, Your Honor.

1 MS. BARBIER: Thank you, judge.

2 THE COURT: All right.

3 MR. WLODARCZYK: Thank you, Your Honor.

4 THE COURT: Good-bye, everybody.

5 Good luck with your surgery, Mr. Harte.

6 MR. HARTE: Thank you, sir.

7

8 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the State of South Carolina, 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 Court of Common Pleas Nonjury for Aiken County, South Carolina, on the 28th day of June, 2022.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

July 5th, 2022



PAMELA E. GREEN, Court Reporter

EXHIBIT B

From: "Keesley, William P." <WKeesleyj@sccourts.org>
Date: August 3, 2022 at 8:16:10 AM PDT
To: Wes Few <wes@wesleyfew.com>, "Keesley, William P. Law Clerk (Aaron McCall)" <wkeesleylc@sccourts.org>, "Keesley, William P. Secretary (Nancy C. Turner)" <WKeesleySC@sccourts.org>
Cc: "Sestito, Dawn" <dsestito@omm.com>, dbb@deborahbarbier.com, Ryan Lewis Beasley <rlb@ryanbeasleylaw.com>, John Harte <john@jwhartelaw.com>, Damon Wlodarczyk <damonw@rplfirm.com>, Beattie Ashmore <beattie@beattieashmore.com>
Subject: RE: Foster v. Riviere et al, 2021-CP-02-00889 - Plaintiff's proposed order and 30(b)(6) Notice

[EXTERNAL MESSAGE]

A slightly modified version of the proposed order has been submitted for e-filing. One of the changes is to extend the deadline to August 31. The attorneys are requested to let me know if anything further is needed. Thank you. [wpk]

From: Keesley, William P.
Sent: Tuesday, August 2, 2022 6:14 PM
To: Wes Few <wes@wesleyfew.com>; Keesley, William P. Law Clerk (Aaron McCall) <wkeesleylc@sccourts.org>; Keesley, William P. Secretary (Nancy C. Turner) <WKeesleySC@sccourts.org>
Cc: dsestito@omm.com; dbb@deborahbarbier.com; Ryan Lewis Beasley <rlb@ryanbeasleylaw.com>; John Harte <john@jwhartelaw.com>; Damon Wlodarczyk <damonw@rplfirm.com>; Beattie Ashmore <beattie@beattieashmore.com>
Subject: Re: Foster v. Riviere et al, 2021-CP-02-00889 - Plaintiff's proposed order and 30(b)(6) Notice

My apologies for the delay. We will plan to check on this and let you know.

Sent using OWA for iPhone

From: Wes Few <wes@wesleyfew.com>
Sent: Tuesday, August 2, 2022 6:07:54 PM
To: Keesley, William P.; Keesley, William P. Law Clerk (Aaron McCall); Keesley, William P. Secretary (Nancy C. Turner)
Cc: dsestito@omm.com; dbb@deborahbarbier.com; Ryan Lewis Beasley; John Harte; Damon Wlodarczyk; Beattie Ashmore
Subject: Re: Foster v. Riviere et al, 2021-CP-02-00889 - Plaintiff's proposed order and 30(b)(6) Notice

*** **EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Your Honor,

This email is to just follow up with your chambers to see if anything further is needed from counsel to resolve the motion for protective order by Airbnb.

Since we sent Plaintiff's proposed order (below) on July 18, 2022, a few counsel have been replaced, so I am also copying all active counsel on this email.

Thanks, -Wes

WES FEW | 864-527-5906 - phone | 864-404-7792 - mobile | wes @ wesleyfew com | Wesley D. Few, LLC | Mail: P.O. Box 9398, Greenville, SC 29604 | Deliveries: 416 East North Street, 2nd Floor, Greenville, SC 29601 -- This message and any attachments are confidential property of sender. The information is intended only for use by person(s) to whom it was addressed. Any other interception, copying, accessing, or disclosure of this message is prohibited. Forwarding or other use of this information without permission may result in liability on your behalf. If you received this message in error, please delete it and notify sender as soon as possible. 00305-001

On Mon, Jul 18, 2022 at 6:45 PM Wes Few <wes@wesleyfew.com> wrote:
Your Honor,

The attached order dated June 28, 2022, provided counsel would have 20 days to present proposed orders to your chambers. As counsel to Plaintiff, we sent our revised 30(b)(6) Notice of Deposition to counsel to Airbnb, Inc. on Friday, July 1, 2022, along with our attached proposed order. Plaintiff's list included twenty-four (24) 30(b)(6) topics / matters of examination. On Thursday, July 14, 2022, we received Airbnb's proposed / alternative list of only 14 topics. Today at 11 AM, we participated in a one-hour phone call with 3 of the attorneys for Airbnb regarding their proposed / alternative list of 14 topics. Essentially, Airbnb now wishes to rewrite Plaintiff's 24 topics into their own list of 14 topics.

As counsel to Plaintiff, we request the Court enter the attached order and set a deadline for the 30(b)(6) deposition to occur, which we have set in the order to be Friday, August 19, 2022. I have attached the Plaintiff's proposed order and revised 30(b)(6) Notice in MS Word, as requested (and also in PDF format), along with the Court's June 28, 2022 Order.

Please let me know if the Court has any questions or needs any further information from counsel to Plaintiff.

Most Respectfully,

-Wes

Text of Form 4 Order:

Airbnb moves for a protective order related to a Rule 30(b)(6) deposition that is scheduled for July 12, 2022. The court grants the portion of the request that postpones that deposition beyond the scheduled date. Attorneys for Airbnb and the plaintiff are to submit proposed orders for the remaining issues. The proposed orders are to be sent as Word attachments to an email addressed to wkeesleyj@sccourts.org and wkeesleylc@sccourts.org within 20 days.

WES FEW | 864-527-5906 - phone | 864-404-7792 - mobile | wes@wesleyfew.com | Wesley D. Few, LLC | Mail: P.O. Box 9398, Greenville, SC 29604 | Deliveries: 416 East North Street, 2nd Floor, Greenville, SC 29601 -- This message and any attachments are confidential property of sender. The information is intended only for use by person(s) to whom it was addressed. Any other interception, copying, accessing, or disclosure of this message is prohibited. Forwarding or other use of this information without permission may result in liability on your behalf. If you received this message in error, please delete it and notify sender as soon as possible. 00305-001

----- Forwarded message -----

From: **Deborah Barbier** <dbb@deborahbarbier.com>

Date: Fri, Jul 1, 2022 at 1:10 PM

Subject: RE: Foster v. Riviere et al, 2021-CP-02-00889 and Riviere v. Thomas, 2019-CP-02-02728 (Our File No.: 00305-001)

To: Andrew Watson <awatson@butler.legal>, Wes Few <wes@wesleyfew.com>, Ryan Duffy <rduffy@butler.legal>, dsestito@omm.com <dsestito@omm.com>

Cc: Cassy Young <cassy@wesleyfew.com>, Ryan Lewis Beasley <rlb@ryanbeasleylaw.com>, Whitney Hill <whill@butler.legal>, Zeina Hasbini <zhasbini@butler.legal>, Elizabeth Ross <elizabeth@ryanbeasleylaw.com>

Andy – Attached please find our proposed Order to Judge Keesley and a redlined version of our Rule 30(b)(6) Deposition Notice to Airbnb. Please let me know if you are satisfied with the changes made to the notice. Also, please provide us with three dates in August that your client is available for this deposition. Look forward to hearing from you –

Best regards,

Debbie

Deborah B. Barbier

Deborah B. Barbier, LLC

1811 Pickens Street

Columbia, South Carolina 29201

(803) 445-1032 (office)

(803) 445-1036 (fax)

(803) 730-6290 (cell)

www.deborahbarbier.com

[...]

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

# EXHIBIT C

|                                           |   |                                         |
|-------------------------------------------|---|-----------------------------------------|
| 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,                                | ) | <b>PLAINTIFF’S NOTICE OF DEPOSITION</b> |
| vs.                                       | ) | <b>OF DEFENDANT AIRBNB INC. UNDER</b>   |
| Rhett Riviere, Katherine A. Thomas,       | ) | <b>RULE 30(B)(6), SCRPC</b>             |
| Chase Enterprises, LLC of South Carolina, | ) |                                         |
| and 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 or via Zoom video conference beginning at 9:00 a.m. \_\_\_\_\_, 2022.

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, Inc. during the time period of January 1, 2019 through the present.



2. All information of Airbnb, Inc. 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 the AirCover protection, including all audiences to

which it is presented (i.e. limited to hosts, available to hosts and guests) and whether 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 to AIRBNB's notification of state statutes related to real estate property management licensure to hosts and potential hosts including links to outside sources for assistance.
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 safety of guests 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 vetting of 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. The employee training record(s) for all employees of Airbnb, Inc. that have responsibilities related to guest safety 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 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 relate to guest safety 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), SCRPC. 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), SCRPC would apply. (“Parties may object discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action”).

**Opinions**

Rule 30(b)(6) requires that an organization “must not only testify about facts within [its] knowledge, but also its subjective beliefs and opinions ... its interpretation of documents and events.” U.S. v. Taylor, 166 F.R.D. 356, 361-63 (M.D.N.C. 1996) affirmed, 166 F.R.D. 367 (M.D.N.C. 1996).

**Knowledge of Organization**

Rule 30(b)(6) is intended to prevent serial depositions of various organizational witnesses without the proper knowledge and to eliminate “bandying,” which is when several people are deposed but each disclaims knowledge of facts clearly known to persons in the organization and thereby known by the organization itself. FED. R. CIV. P. 30(b)(6), Advisory Committee Note: 1970 Amendment. “[T]he purpose of a Rule30(b)(6) deposition is to get answers on the subject matter described with reasonable particularity by the noticing party, not to simply get answers limited to what the deponent happens to know.” Alexander v. F.B.I., 186 F.R.D. 148, 152 (D.D.C. 1999). The testimony elicited at the Rule 30(b)(6) deposition represents the knowledge of the corporation, not the individual deponents. U.S. v. Taylor, 166. F.R.D. 356 (M.D.N.C. 1996). “[I]f

it becomes obvious during the course of a deposition that the designee is deficient, the [organization] is obligated to provide a substitute.” Prokosch v. Catalina Lighting, 193 F.R.D. 633 (D. Minn. 2000).

### **Duty to Prepare**

An organization cannot avoid its Rule30(b)(6) obligations by “sticking its head in the sand,” refusing to look for the answers, and then saying it does not know the answer. In re Independent Service Orgs Antitrust Litig., 168 F.R.D. 651, 653 (D. Kan.1996). If the representative(s) cannot testify as to the corporation’s collective information on the matters requested, then the corporation and/or its attorneys must collect the information and prepare the representative(s) so that the representative(s) can give complete, knowledgeable, and binding testimony. Starlight Int’l Inc. v. Herlihy, 186 F.R.D. 626, 638 (D. Kan. 1999). A thorough, “reasonable” investigation may require an organization to rely on business records, other documents, interviews with present and former employees. U.S. v. Taylor, 166 F.R.D. at 361.

Imposing a duty to prepare its representative(s) ensures that an organization will not ambush an opponent by conducting half-hearted inquiry before the deposition but a thorough and vigorous one before trial. Id. at 362. “If that preparation means tracking much the same investigative ground that counsel and the risk management / peer review committee have already traversed, but independently of that investigation, so be it.” Wilson v. Lakner, 228 F.R.D. 524 (D. Md. 2005). The company must produce, a knowledgeable deponent competently prepared to fully 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 (11<sup>th</sup> 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,  
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ATTORNEYS FOR PLAINTIFF JULIANNE FOSTER

March 20, 2022  
Greenville, South Carolina

FILED ELECTRONICALLY FILED - 2022 AUG 04 10:05 AM - Aiken - COMMON PLEAS - CASE# 2021 CP00208839

# EXHIBIT D

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS  
2<sup>ND</sup> 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 AIRBNB'S MOTION  
FOR A PROTECTIVE ORDER**

Defendant Airbnb Inc. moved for a Protective Order under South Carolina Rule of Civil Procedure 26(c). The matter has been fully briefed, and a hearing was held via WebEx on June 28, 2022. It is hereby **ORDERED** that Airbnb's Motion for a Protective Order is **GRANTED**.

**BACKGROUND**

Plaintiff Julianne Foster has sued Defendants Rhett Riviere and Katherine Thomas, alleging that she was secretly recorded on May 17, 2019 at a property owned by Riviere that a non-party booked from Thomas through Airbnb's web platform. She does not allege that Airbnb actually knew about the recording, but includes claims against Airbnb for negligence based in part on Airbnb's background checks of Riviere and Thomas and negligence *per se* based on alleged violations of S.C. Code 40-57-20.

On March 20, 2022, Plaintiff sent to Airbnb a draft deposition notice under Rule 30(b)(6) that sought testimony by an Airbnb corporate designee on twenty-four topics. On April 13, Airbnb objected to each of Plaintiff's proposed topics and offered to make a corporate designee available

for a more narrow set of four topics. On May 26, Plaintiff served a final deposition notice under Rule 30(b)(6) that made minor modifications to the draft twenty-four topics and set a July 12 deposition date in Aiken, South Carolina without conferring with Airbnb. Airbnb now seeks a protective order from this Court postponing or cancelling the scheduled July 12 deposition, permitting a deposition to take place either via videoconference technology or where the corporate designee is located, and narrowing the deposition topics.

A hearing on Airbnb’s motion was held on June 28 at which the Court found that the topics needed narrowing, including requests seeking information about “safety,” requests seeking information outside of South Carolina, and a request that sought information about Airbnb’s “employees”—which the Court found could involve a “staggering number of people.” A copy of the transcript for the June 28, 2022 hearing was submitted by Airbnb and is incorporated by reference herein. The July 12th deposition date was taken off calendar and Foster and Airbnb were instructed to each submit by July 18 proposed orders with their proposed, narrowed, topics.

After considering those proposed orders, as well as the parties’ briefing and argument, it is ordered:

- A. The noticed Rule 30(b)(6) deposition of Airbnb shall be held within 60 days of the date of this order at a date and time agreeable to all parties. Should the parties be unable to agree on a date and time within 14 days of the date of this order, the parties will contact the chief judge for administrative purposes, who will set a date and time.
- B. The deposition shall take place via videoconference technology or where the corporate designee is located.

C. Testimony at the deposition shall be limited to the following topics, proposed by Airbnb:

1. All non-privileged information of AIRBNB concerning any knowledge of concealed video-cameras at 115 Third Ave., Aiken, South Carolina from 2016 through May 2019 (the "Property") before May 2019 and the background checks conducted on Rhett Riviere and Katherine Thomas before May 2019.
2. The existence of agreements and/or contracts between Rhett Riviere, Chase Enterprises, LLC of South Carolina, and/or Katherine Thomas with AIRBNB between 2016 and May 2019.
3. Documents produced in this action that concern, reference or relate to any of the following: Rhett Riviere, Chase Enterprises, LLC of South Carolina, Katherine Thomas and/or Julianne Foster.
4. Information available to hosts regarding background check policies and procedures from 2016 through May 2019, including information regarding background check policies and procedures available on AIRBNB's website.
5. The process by which AIRBNB generally conducted background checks of potential hosts from 2016 through May 2019, and what information and records AIRBNB understood the vendors it used for those background checks to generally consult in that timeframe.
6. AIRBNB's policy addressing what information that, if received through AIRBNB's background check practices in South Carolina from 2016 through May 2019, could cause a host to face adverse action from AIRBNB.
7. AIRBNB's policies regarding the use of surveillance devices by AIRBNB hosts in South Carolina from 2016 through May 2019, including outcomes for violating those policies.
8. Information provided to hosts through AIRBNB's website (if any) related to host's responsibilities to comply with U.S. local laws from 2016 through May 2019.
9. For the time period 2016 through May 2019 and applicable in South Carolina, (i) Airbnb's policies regarding surveillance devices, (ii) the process by which Airbnb generally conducted background checks of potential hosts, (iii) the information that, if received through Airbnb's background check practices, could cause a host to face adverse action from Airbnb; and (iv) provisions in the Terms of Service that address the use of concealed surveillance devices by hosts.

10. Information hosts and prospective hosts generally provided to AIRBNB when registering as a host and listing a property in South Carolina on Airbnb's website from 2016 through May 2019.
11. Whether and if so, to what extent, AIRBNB conducted inspections of the Property from 2016 through May 2019.
12. Any non-privileged reports and complaints from 2016 through May 2019 made to AIRBNB of guests being secretly videotaped while staying at the Property.
13. AIRBNB's policies regarding the use of surveillance devices by Airbnb hosts in South Carolina from 2016 through May 2019.
14. The process by which Airbnb generally conducted background checks of potential hosts in South Carolina from 2016 through May 2019, including the lack of involvement of any Airbnb employees in connection with the background checks of Riviere and Thomas.

Attached as **Exhibit A** is a chart comparing the topics proposed by Foster, the topics proposed by Airbnb, and the rationale for adopting Airbnb's proposal, which is incorporated by reference into this Order.

### CONCLUSION

For the reasons explained above, the Court GRANTS Airbnb's Motion for a Protective Order.

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The Honorable William P. Keesley  
Presiding Circuit Court Judge, 2<sup>nd</sup> Circuit

July \_\_, 2022  
Columbia, South Carolina

**Exhibit A**

| <b>Plaintiff's Proposed Topic</b>                                                                                                              | <b>Airbnb's Proposed Topic</b>                                                                                                                                                                                                                                                                  | <b>Rationale for Selecting Airbnb's Proposed Topic</b>                                                                                                                |
|------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. The organizational, leadership and management structure of AIRBNB during the time period of January 1, 2013 through the present.            | 1. None.                                                                                                                                                                                                                                                                                        | Plaintiff's topic as proposed is irrelevant and overbroad.                                                                                                            |
| 2. All non-privileged information of AIRBNB regarding the factual allegations in the case of Foster v. Riviere, et al – 2021-CP-02-00889.      | 2. All non-privileged information of AIRBNB concerning any knowledge of concealed video-cameras at 115 Third Ave., Aiken, South Carolina from 2016 through May 2019 (the "Property") before May 2019 and the background checks conducted on Rhett Riviere and Katherine Thomas before May 2019. | Plaintiff's topic as proposed is vague; Airbnb's proposed topic provides appropriate specificity based on the allegations of the complaint.                           |
| 3. All agreements and/or contracts between Rhett Riviere, Chase Enterprises, LLC of South Carolina, and/or Katherine Thomas with Airbnb.       | 3. The existence of agreements and/or contracts between Rhett Riviere, Chase Enterprises, LLC of South Carolina, and/or Katherine Thomas with AIRBNB between 2016 and May 2019.                                                                                                                 | Plaintiff's topic as proposed requires testimony about portions of contracts that are unrelated to Plaintiff's lawsuit, and any contracts' content speaks for itself. |
| 4. All records, reports, documents, correspondence, handwritten notes or otherwise, materials of any kind that concern, reference or relate to | 4. Documents produced in this action that concern, reference or relate to any of the following: Rhett Riviere, Chase Enterprises, LLC of                                                                                                                                                        | Plaintiff's topic as proposed is overly broad; Airbnb's proposed topic is appropriately limited.                                                                      |

|                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                 |
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| <p>any of the following:<br/>Rhett Riviere, Chase Enterprises, LLC of South Carolina, Katherine Thomas and/or Julianne Foster.</p>                                                                                                                                                                                      | <p>South Carolina, Katherine Thomas and/or Julianne Foster.</p>                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                 |
| <p>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.</p>                                                                                            | <p>5. Information available to hosts regarding background check policies and procedures from 2016 through May 2019, including information regarding background check policies and procedures available on AIRBNB’s website.</p>                                       | <p>Plaintiff’s topic as proposed is overly broad, vague, and unintelligible. Airbnb’s proposed topic appropriately provides information regarding the policies available to hosts related to background checks, which appears to be the information sought by plaintiffs.</p>   |
| <p>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.</p> | <p>6. The process by which AIRBNB generally conducted background checks of potential hosts from 2016 through May 2019, and what information and records AIRBNB understood the vendors it used for those background checks to generally consult in that timeframe.</p> | <p>Plaintiff’s topic as proposed is overly broad, vague, and unintelligible. Airbnb’s proposed topic provides information about the general process by which background checks were conducted and the records Airbnb understood were checked during the relevant timeframe.</p> |
| <p>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</p>                                                                                                              | <p>7. AIRBNB’s policy addressing what information that, if received through AIRBNB’s background check practices in South Carolina from 2016 through May 2019, could cause a host to</p>                                                                               | <p>Plaintiff’s topic as proposed is vague and unintelligible. Airbnb’s proposed topic addresses the information received from a background check that could result in adverse action for a user, as set forth in Airbnb’s policy during the relevant timeframe.</p>             |

|                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
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| background check findings.                                                                                                                                                                                                  | face adverse action from AIRBNB.                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| 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).  | 8. The process by which AIRBNB generally conducted background checks of potential hosts from 2016 through May 2019 and what information and records AIRBNB understood the vendors it used for those background checks to generally consult in that timeframe. | Plaintiff's topic as proposed is overly broad, vague, and unintelligible. Airbnb's proposed topic provides information about the general process by which background checks were conducted and the records Airbnb understood were checked during the relevant timeframe.                                                                                                                                                                                                         |
| 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. | 9. AIRBNB's policy addressing what information that, if received through Airbnb's background check practices in South Carolina from 2016 through May 2019, could cause a host to face adverse action from AIRBNB.                                             | Plaintiff's topic as proposed is overly broad, vague, and unintelligible. It is also irrelevant as there is no allegation that the host in this matter was removed from Airbnb's platform, or participated in or was reinstated after an appeal of any removal, prior to the alleged incident in May 2019. Airbnb's proposed topic addresses the adverse actions that could be taken following a background check as set forth in Airbnb's policy during the relevant timeframe. |
| 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.                                                | 10. None.                                                                                                                                                                                                                                                     | Plaintiff's topic as proposed is not relevant to this litigation.                                                                                                                                                                                                                                                                                                                                                                                                                |
| 11. All facts and information related to AIRBNB's governance of their privacy policies as they relate to disclosed or concealed                                                                                             | 11. AIRBNB's policies regarding the use of surveillance devices by AIRBNB hosts in South Carolina from 2016 through May 2019, including                                                                                                                       | Plaintiff's topic as proposed is overly broad, vague, and unintelligible. It is also irrelevant as there is no allegation that the host in this matter was removed from Airbnb's platform, or participated in or was reinstated after an appeal of                                                                                                                                                                                                                               |

|                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                        |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>monitoring devices including data supporting removal, reinstatement, and appeals of hosts who violate the policy.</p>                                                                                                                                                                                                                                             | <p>outcomes for violating those policies.</p>                                                                                                                                                                                                                                                                                                                                                                                                           | <p>any removal, prior to the alleged incident in May 2019. Airbnb’s proposed topic addresses the surveillance devices policy and outcomes when that policy was violated during the relevant timeframe.</p>                                             |
| <p>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.</p>                                                                                                                                                                              | <p>12. Information provided to hosts through AIRBNB’s website (if any) related to host’s responsibilities to comply with U.S. local laws from 2016 through May 2019.</p>                                                                                                                                                                                                                                                                                | <p>Plaintiff’s topic as proposed is overly broad. The Complaint alleges non-compliance with only S.C. Code 40-57-20, not all real estate property management licensure states in all 50 states. Airbnb’s proposed topic is appropriately tailored.</p> |
| <p>13. All communications between “Michele” and Defendant Katherine Thomas via AIRBNB’s online booking program since April 12, 2019.</p>                                                                                                                                                                                                                             | <p>13. None.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                        | <p>Plaintiff’s topic as proposed calls for information that the Stored Communications Act prevents Airbnb from disclosing without user consent.</p>                                                                                                    |
| <p>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.</p> | <p>14. For the time period 2016 through May 2019 and applicable in South Carolina, (i) Airbnb’s policies regarding surveillance devices, (ii) the process by which Airbnb generally conducted background checks of potential hosts, (iii) the information that, if received through Airbnb’s background check practices, could cause a host to face adverse action from Airbnb; and (iv) provisions in the Terms of Service that address the use of</p> | <p>Plaintiff’s topic as proposed is vague and overbroad. Airbnb’s proposed topic is focused on surveillance devices and specifies the relevant categories of policies.</p>                                                                             |

|                                                                                                                                                                                                                                                                       |                                                                                                                                                                                              |                                                                                                                                                                                                     |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                                                                                                                                       | concealed surveillance devices by hosts.                                                                                                                                                     |                                                                                                                                                                                                     |
| 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. | 15. Information hosts and prospective hosts generally provided to AIRBNB when registering as a host and listing a property in South Carolina on Airbnb's website from 2016 through May 2019. | Plaintiff's topic as proposed is overly broad, vague, and unintelligible. Airbnb's proposed topic identifies the information provided by hosts and prospective hosts during the relevant timeframe. |
| 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.                                       | 16. Whether and if so, to what extent, AIRBNB conducted inspections of the Property from 2016 through May 2019.                                                                              | Plaintiff's topic as proposed is overly broad. The only relevant inspections are those that may have taken place at the Property during the relevant timeframe.                                     |
| 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.                                          | 17. AIRBNB's policies regarding the use of surveillance devices by Airbnb hosts in South Carolina from 2016 through May 2019, including outcomes for violating those policies.               | Plaintiff's topic as proposed is overly broad. Airbnb's topic is appropriately limited by time and geography.                                                                                       |
| 18. All reports and/or complaints made to AIRBNB of guests being secretly videotaped while staying in an Airbnb                                                                                                                                                       | 18. Any non-privileged reports and complaints from 2016 through May 2019 made to AIRBNB of guests being secretly                                                                             | Plaintiff's topic as proposed is overly broad, seeks irrelevant information, and implicates the privacy rights of non-parties. Airbnb's topic is appropriately                                      |

|                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                         |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| during the time period of December 1, 2013 through the present.                                                                                                                                                                                                                                       | videotaped while staying at the Property.                                                                                                                                                           | limited to complaints related to the property at issue.                                                                                                                                                                                                                                                 |
| 19. All lawsuits filed against AIRBNB related to guests being secretly videotaped during the time period of December 1, 2013 through the present.                                                                                                                                                     | 19. None.                                                                                                                                                                                           | Plaintiff's topic as proposed is overly broad, seeks irrelevant information, and implicates the privacy rights of non-parties. Moreover, this is not an appropriate topic for deposition testimony as the information regarding public lawsuits could be obtained by plaintiff and/or by interrogatory. |
| 20. All settlements entered into by AIRBNB related to guests being secretly videotaped during the time period of December 1, 2013 through the present.                                                                                                                                                | 20. None.                                                                                                                                                                                           | Plaintiff's topic as proposed is overly broad, seeks irrelevant and confidential information, and implicates the privacy rights of non-parties. These issues are adequately covered by Airbnb's Topic 18.                                                                                               |
| 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. | 21. Airbnb's policies regarding the use of surveillance devices by Airbnb hosts in South Carolina from 2016 through May 2019.                                                                       | Plaintiff's topic as proposed is vague and overbroad. Airbnb does not know "the employee training program" to which Plaintiff refers. Airbnb's proposed topic identifies the relevant policies during the relevant timeframe and in the relevant geography.                                             |
| 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.                                                                                                                                  | 22. The process by which Airbnb generally conducted background checks of potential hosts in South Carolina from 2016 through May 2019, including the lack of involvement of any Airbnb employees in | Plaintiff's topic as proposed is overly broad and irrelevant. No Airbnb employee was involved in the background checks of Riviere and Thomas. Airbnb's proposed topic will generally explain the background check process during the relevant timeframe and explain why no Airbnb employees were        |

|                                                                                                                                                                                                                                          |                                                                                                                                                            |                                                                                                                                                                                                                        |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                                                                                                          | connection with the background checks of Riviere and Thomas.                                                                                               | involved in the background checks of Riviere and Thomas.                                                                                                                                                               |
| 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. | 23. Any non-privileged reports and complaints from 2016 through May 2019 made to AIRBNB of guests being secretly videotaped while staying at the Property. | Plaintiff's topic as proposed is overly broad, seeks irrelevant information, and implicates the privacy rights of non-parties. Airbnb's topic is appropriately limited to complaints related to the property at issue. |
| 24. The assets and liabilities of Airbnb, Inc.                                                                                                                                                                                           | 24. None.                                                                                                                                                  | Plaintiff's topic as proposed is overly broad and not relevant. Public financial information is available through Airbnb's SEC filings.                                                                                |

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS  
2<sup>ND</sup> JUDICIAL CIRCUIT

JULIANNE FOSTER,  
Plaintiff,

v.

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

Defendants.

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

**PLAINTIFF'S RESPONSE  
TO DEFENDANT AIRBNB'S MOTION  
FOR RECONSIDERATION**

Plaintiff Julianne Foster, by and through her undersigned attorneys, files this response opposing Defendant Airbnb Inc.'s ("Airbnb") Motion for Reconsideration ("Motion") of the Court's August 3, 2022 Order ("Order"). Although Airbnb insinuates that the Court failed to consider its argument, the Court affirmatively and unequivocally dispelled that argument prior to Airbnb filing this Motion. The Order states the Court "considered the matter, including the motion, the parties' briefs and memoranda, exhibits, and oral arguments." *Id.* at 1 of 16. As if that were not sufficient, in an email dated August 4, 2022, the Court stated, *inter alia*, to counsel, "To clear up any misunderstanding, I read the materials submitted by both sides." (**Ex. 1**, at p. 1 of 3)

Moreover, Airbnb does not set forth any other meritorious grounds for relief. This Motion is yet another stall tactic by Airbnb to delay a 30(b)(6) deposition that was first discussed eight months ago in December 2021 and first noticed five months ago in March 2022. Accordingly, Plaintiff asks the Court to quickly deny Airbnb's meritless motion and retain the deadlines the

Court set in its Order. Delaying the deposition any further incentivizes Airbnb's continued stonewalling.

## I. DISCUSSION

### A. Because Airbnb has not established any error or that the Court failed to consider its arguments, the Court should deny Airbnb's Motion for Reconsideration.

Airbnb has not, and cannot, show that the Court erred in its Order. Airbnb is merely unhappy with the Court's ruling, which is an insufficient ground for relief under Rule 59(e). Rather than cite Rule 59 of the South Carolina Rules of Civil Procedure or to a case addressing motions for reconsideration, Airbnb cites solely to *Ex parte Dibble*, 279 S.C. 592, 595, 310 S.E.2d 440, 442 (Ct. App. 1983), for the proposition "that courts have the inherent power to insure that just results are reached to the fullest extent possible." In *Dibble*, the Court addressed whether a court had the power to appoint lawyers to serve without compensation. This case has nothing to do with motions for reconsideration and is inapplicable here.

Consistent with inherent powers, however, the Court has discretion to decide discovery related matters. *CEL Prods., L.L.C. v. Rozelle*, 357 S.C. 125, 130, 591 S.E.2d 643, 646 (Ct. App. 2004) (noting, "[w]hen a trial judge is vested with discretion but his ruling reveals no discretion was in fact exercised, an error of law has occurred."). There is not a shred of evidence in the record to even begin to boot-strap an argument that the Court failed to exercise its discretion in a proper manner in its order dated August 3, 2022. As noted above, the Order states the Court "considered the matter, including the motion, the parties' briefs and memoranda, exhibits, and oral arguments." *Id.* at 1. Apparently, Airbnb disputes this statement.

The South Carolina Supreme Court has recognized "two basic situations in which a party

should consider filing a Rule 59(e)[,SCRCP,] motion.” *Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). First, “[a] party may wish to file such a motion when [he] believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it.” *Id.* Second, “[a] party must file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.” *Id.*

Airbnb argues that its proposed order is “more reasonable” and the Court should adopt its proposed deposition topics. (Mot. at 4). First, even assuming Airbnb’s proposed topics are “more reasonable” (which they are not), the standard is not whether the opposing party can draft more reasonable topics. Rule 30(b)(6) requires only that Plaintiff describe “with reasonable particularity the matters on which examination is requested.” Rule 30(b)(6), SCRCP. Moreover, the Court should not lose sight of the fact that Airbnb was seeking a protective order from the Court to prevent annoyance, embarrassment, oppression, and undue burden or expense under Rule 26, SCRCP. Airbnb fails to argue in its Motion for Reconsideration that it is entitled to a protective order because of annoyance, embarrassment, oppression or undue burden or expense; instead, it now contends its version of the topics are “more reasonable.”

Further, Airbnb contends that Plaintiff’s proposed order and notice of deposition did not tighten up the topics. First, Airbnb is not addressing a proposed order and notice; the Court has made its decision and filed *its* Order. While the Court suggested Plaintiff might tighten up a few of the topics in submitting a proposed order, the Court did not limit itself.

While Airbnb argues that the Court stated at the hearing that it would cut and paste from the parties’ proposed orders (Motion at 2), the Court stated that “generally” it followed that procedure (Mot. Ex. A at 32:20-21) (“because what I generally do is take the two [proposed] orders

and then cut and paste and move things around.”). Moreover, even if the Court had stated that it would apply that procedure at the hearing, the Court is free to change its mind and employ any procedure it deems appropriate when ruling on a pending motion. *Bayview Loan Servicing, LLC v. Murray*, 2021 WL 2947797, \*2 (Ct. App. July 14, 2021) (unpublished) (holding that the master was not bound by his prior statement indicating he intended to hold a hearing) (citing *First Union Nat. Bank of S.C. v. Hitman, Inc.*, 308 S.C. 421, 422, 418 S.E.2d 545, 545 (1992) (“[A] judge is not bound by the prior oral ruling and may issue a written order which is in conflict with the oral ruling.”)). *See also Bowman v. Richland Mem’l Hosp.*, 335 S.C. 88, 91, 515 S.E.2d 259, 260 (Ct. App. 1999) (“An order is not final until it is written and entered by the clerk of court.”); *id.* (“Until an order is written and entered by the clerk of court, the judge retains discretion to change his mind and amend his ruling accordingly.”).

**B. The language in the Notice of the Deposition is an accurate statement of the law and not unnecessary posturing.**

Airbnb argues that certain language in the Notice that Plaintiff “can force an Airbnb corporate witness into Court on a Rule to Show Cause if Plaintiff believes that the witness did not respond to questions properly” is unnecessary posturing. (Motion at 5). However, because this is the first time Airbnb has raised this argument, it is not before the Court. *See Eaddy v. Oliver*, 345 S.C. 39, 44, 545 S.E.2d 830, 833 (Ct.App.2001) (holding party cannot for the first time raise an issue by way of a Rule 59(e) motion which could have been raised at trial). Moreover, Plaintiff is not posturing; she can file a motion for a rule to show cause, if further delay necessitates.

**C. As this motion is Airbnb’s latest effort to delay discovery, the Court should also deny Airbnb’s request to delay the deposition deadline.**

Airbnb next argues that the deadline should be extended to September 30, 2022, because the August 31, 2022, deadline is not enough time to prepare corporate witnesses who live in

California for a deposition of this breadth. (Motion at 5). Plaintiff is unsure as to how a witness living in California would prevent that witness from preparing for a deposition, and further the topics have been known to Airbnb for five months now. Travel time to South Carolina would at best take a day. The weakness of Airbnb's arguments illustrate the actual intent of its request—delaying the deposition.

This Motion is the latest in Airbnb's attempts to stonewall the discovery process in this action. For example, in response to the Court's June 6, 2022 Order granting Plaintiff's motion to compel Airbnb to respond to Plaintiff's Requests for Production, Airbnb repeatedly stated that it does not understand the Court's order to require it to produce certain documents. (Ex. 2, at pp. 3 and 5) (stating, "Airbnb does not understand the Court's order to require it to produce any communications Thomas may have had with third parties, the production of which would violate the federal Stored Communications Act."). Plaintiff will be forced to file a second motion to eventually obtain complete answers from Airbnb. Likewise through the filing of the instant motion, Airbnb is continuing its pattern of delaying discovery, and thus Plaintiff requests that the Court deny Airbnb's request to extend the deadline for the 30(b)(6) depositions to prevent any further delays and deter any future abuses.

### **Conclusion**

Because the Court properly considered all the arguments and proposed orders from parties prior to entering its Order and Airbnb has failed to articulate any grounds warranting reconsideration, Plaintiff respectfully requests this Court deny Airbnb's Motion for Reconsideration. Further, Plaintiff requests that the Court deny any extension to Airbnb and keep in place the Order requiring Airbnb to prepare and designate its witnesses a Rule 30(b)(6) deposition before August 31, 2022.

Respectfully submitted,

/s/Wesley D. Few

Wesley D. Few, S.C. Bar No. 15565

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ATTORNEYS FOR PLAINTIFF

August 9, 2022  
Greenville, South Carolina

From: "Beattie B. Ashmore, P.A." <[beattie@beattieashmore.com](mailto:beattie@beattieashmore.com)>  
 Date: 8/4/22 3:23 PM (GMT-05:00)  
 To: "Keesley, William P." <[WKeesleyj@sccourts.org](mailto:WKeesleyj@sccourts.org)>, "Keesley, William P. Secretary (Nancy C. Turner)" <[WKeesleySC@sccourts.org](mailto:WKeesleySC@sccourts.org)>, "Keesley, William P. Law Clerk (Aaron McCall)" <[wkeesleylc@sccourts.org](mailto:wkeesleylc@sccourts.org)>, "Sestito, Dawn" <[dsestito@omm.com](mailto:dsestito@omm.com)>, Debbie Barbier <[dbb@deborahbarbier.com](mailto:dbb@deborahbarbier.com)>, Ryan Beasley <[rlb@ryanbeasleylaw.com](mailto:rlb@ryanbeasleylaw.com)>, John Harte <[john@jwhartelaw.com](mailto:john@jwhartelaw.com)>, [damonw@rplfirm.com](mailto:damonw@rplfirm.com), Wes Few <[wes@wesleyfew.com](mailto:wes@wesleyfew.com)>  
 Subject: RE: June 28, 2022 Transcript #2022-CP-02-889

Thank you Your Honor. Attached please find the Motion to Reconsider we filed this morning. I realize how busy you are but it would be greatly appreciated if you could set a hearing at your earliest convenience given the deadlines contained in the Order.

Respectfully,

Beattie

-----Original Message-----

From: Keesley, William P. <[WKeesleyj@sccourts.org](mailto:WKeesleyj@sccourts.org)>  
 Sent: Thursday, August 4, 2022 10:22 AM  
 To: Beattie B. Ashmore, P.A. <[beattie@beattieashmore.com](mailto:beattie@beattieashmore.com)>; Keesley, William P. Secretary (Nancy C. Turner) <[WKeesleySC@sccourts.org](mailto:WKeesleySC@sccourts.org)>; Keesley, William P. Law Clerk (Aaron McCall) <[wkeesleylc@sccourts.org](mailto:wkeesleylc@sccourts.org)>; Sestito, Dawn <[dsestito@omm.com](mailto:dsestito@omm.com)>; Debbie Barbier <[dbb@deborahbarbier.com](mailto:dbb@deborahbarbier.com)>; Ryan Beasley <[rlb@ryanbeasleylaw.com](mailto:rlb@ryanbeasleylaw.com)>; John Harte <[john@jwhartelaw.com](mailto:john@jwhartelaw.com)>; [damonw@rplfirm.com](mailto:damonw@rplfirm.com)  
 Subject: Re: June 28, 2022 Transcript #2022-CP-02-889

To clear up any misunderstanding, **I read the materials submitted by both sides**. However, I am happy to entertain any reconsideration motion. I will be away from the office this afternoon and tomorrow. Thank you.

Sent using OWA for iPhone

From: Beattie B. Ashmore, P.A. <[beattie@beattieashmore.com](mailto:beattie@beattieashmore.com)>  
 Sent: Wednesday, August 3, 2022 5:01:17 PM  
 To: Keesley, William P.; Keesley, William P. Secretary (Nancy C. Turner); Keesley, William P. Law Clerk (Aaron McCall); Sestito, Dawn; Debbie Barbier; Ryan Beasley; John Harte; [damonw@rplfirm.com](mailto:damonw@rplfirm.com)  
 Subject: RE: June 28, 2022 Transcript #2022-CP-02-889

\*\*\* EXTERNAL EMAIL: This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. \*\*\* Understood Your Honor. We'll file a motion first thing in the morning. In light of the pending August 31 deadline I hope we can get a hearing at your earliest convenience.

Respectfully,  
 Beattie

From: Keesley, William P. <[WKeesleyj@sccourts.org](mailto:WKeesleyj@sccourts.org)>  
 Sent: Wednesday, August 3, 2022 4:21 PM  
 To: Beattie B. Ashmore, P.A. <[beattie@beattieashmore.com](mailto:beattie@beattieashmore.com)>; Keesley, William P. Secretary

(Nancy C. Turner) <[WKeesleySC@sccourts.org](mailto:WKeesleySC@sccourts.org)>; Keesley, William P. Law Clerk (Aaron McCall) <[wkeesleylc@sccourts.org](mailto:wkeesleylc@sccourts.org)>; Sestito, Dawn <[dsestito@omm.com](mailto:dsestito@omm.com)>; Debbie Barbier <[dbb@deborahbarbier.com](mailto:dbb@deborahbarbier.com)>; Ryan Beasley <[rlb@ryanbeasleylaw.com](mailto:rlb@ryanbeasleylaw.com)>; John Harte <[john@jwhartelaw.com](mailto:john@jwhartelaw.com)>; [damonw@rplfirm.com](mailto:damonw@rplfirm.com)  
 Subject: RE: June 28, 2022 Transcript #2022-CP-02-889

Thank you for your email, but you will need to file a motion to alter or amend since I have already filed the order. [wpk]

From: Beattie B. Ashmore, P.A. [<mailto:beattie@beattieashmore.com>]  
 Sent: Wednesday, August 3, 2022 4:12 PM  
 To: Keesley, William P. <[WKeesleyj@sccourts.org](mailto:WKeesleyj@sccourts.org)<<mailto:WKeesleyj@sccourts.org>>>; Keesley, William P. Secretary (Nancy C. Turner) <[WKeesleySC@sccourts.org](mailto:WKeesleySC@sccourts.org)<<mailto:WKeesleySC@sccourts.org>>>; Keesley, William P. Law Clerk (Aaron McCall) <[wkeesleylc@sccourts.org](mailto:wkeesleylc@sccourts.org)<<mailto:wkeesleylc@sccourts.org>>>; Sestito, Dawn <[dsestito@omm.com](mailto:dsestito@omm.com)<<mailto:dsestito@omm.com>>>; Debbie Barbier <[dbb@deborahbarbier.com](mailto:dbb@deborahbarbier.com)<<mailto:dbb@deborahbarbier.com>>>; Ryan Beasley <[rlb@ryanbeasleylaw.com](mailto:rlb@ryanbeasleylaw.com)<<mailto:rlb@ryanbeasleylaw.com>>>; John Harte <[john@jwhartelaw.com](mailto:john@jwhartelaw.com)<<mailto:john@jwhartelaw.com>>>; [damonw@rplfirm.com](mailto:damonw@rplfirm.com)<<mailto:damonw@rplfirm.com>>>  
 Subject: June 28, 2022 Transcript #2022-CP-02-889

\*\*\* EXTERNAL EMAIL: This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. \*\*\* Dear Judge Keesley,

By way of follow up from my earlier email today, I've attached the transcript of the June 28, 2022 hearing which I did not attend as I was not yet involved in this case.

As you can see from the attached transcript, Your Honor asked that Airbnb and the plaintiffs "each [ ]send me a proposed order" so that the Court could "take the two orders and then cut and paste and move things around." Transcript at 32:13-14, 19-21. Yesterday, the plaintiff referenced their proposed order without referencing or attaching our competing order or the hearing transcript with the Court's directives. We want to make sure you have the complete record to take into account. Also, Your Honor indicated during the hearing that plaintiff's "safety question" and "the territorial question" need to be "narrowed somewhat," and noted that the topic about employees could be a "staggering number of people." Your Honor also recommended that the parties "tighten up the demands." Transcript at 33:1-4, 6-12. Plaintiff has not sufficiently tightened up the demands, and their incredibly broad 24 deposition topics remain unchanged. For example, in Topic 15, plaintiff changed "vetting of hosts by Airbnb" to "gathering of information related to the suitability of AIRBNB hosts by AIRBNB"; it is the exact same request using slightly different words without any actual narrowing. Plaintiff's modification to proposed topic 14 (and relatedly in topics 21 and 23) still seeks information well beyond the facts alleged in this case. Plaintiff's proposed deposition notice still seeks a staggeringly broad 24 deposition topics (many covering information more than a decade old) for an incident that occurred on two days in May 2019. Airbnb's competing proposed order presents topics reasonably relevant to the litigation.

Finally, Your Honor said that you "intend to give sufficient time after that in which to designate the 30(b)(6) representatives" - we asked for 60 days in our proposed order, and we think that is a more appropriate amount of time to prepare the witness, who would need to travel from San

Francisco to South Carolina. Transcript at 33:13-14. In light of the statements at the hearing, we want to be sure that Airbnb's proposed order was considered since it was not attached to Mr. Few's email to you yesterday.

Beattie

Beattie B. Ashmore, P.A.  
650 East Washington Street  
Greenville, South Carolina 29601  
Office: (864) 467-1001

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[cid:image003.png@01D8A75A.9232D610]

[cid:image002.png@01D8A75A.9232D610]

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STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

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

JULIANNE FOSTER,

Plaintiff,

v.

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

Defendants.

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

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

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

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

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

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

RESPONSE: See Response to No. 1 above for information regarding background checks run on Katherine Thomas. After a reasonable search, Airbnb has identified no employees who have knowledge of facts related to Katherine Thomas serving as an Airbnb host through May 2019. Again, should the topic be within the scope of a deposition under SCRPA Rule 30(b)(6), Airbnb can on request identify a corporate representative who is knowledgeable about the background check process in effect at the time background checks were run on Rhett Riviere and Katherine Thomas through May 2019. Airbnb already produced in April user information from Thomas' Airbnb account. Airbnb now produces a copy of the screen that Airbnb used to request information from users on July 17, 2016, as captured by the Wayback Machine. Thomas signed up using the "continue with Facebook option," and therefore Airbnb did not request additional information from her through the sign-up screen. Airbnb is also producing the following

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

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

RESPONSE: After a reasonable search, Airbnb has not identified any Airbnb employee who reviewed information submitted by Katherine Thomas to serve as an Airbnb host. Airbnb does not perform a manual review of information for every user who creates an account. Airbnb produced on April 8 the background checks Airbnb ran on Thomas through May 2019 and that it located after a reasonable search, and after a further reasonable search has not identified any additional documents related to any review of the information submitted by Thomas to be an Airbnb host. Nevertheless, should the topic be within the scope of a deposition under SCRPA Rule 30(b)(6), Airbnb can on request identify a

corporate representative who is knowledgeable about the background check process in effect at the time background checks were run on Rhett Riviere and Katherine Thomas through May 2019.

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

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

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

RESPONSE: After a reasonable search, Airbnb has identified no employees who, as of May 2019, had knowledge of facts related to Michelle Jain being an Airbnb guest. Along with this response, Airbnb is producing (i) the information

Michelle Jain provided at sign-up; and (ii) information related to Jain's reservation with Thomas and associated payment data. Airbnb does not have any records of any communications between Airbnb and Jain. **Airbnb does not understand this request to require it to produce any communications Jain may have had with third parties, the production of which would violate the federal Stored Communications Act.**

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

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

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

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

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

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

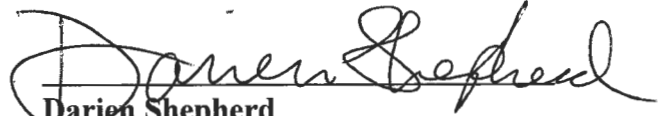
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Attorneys for Airbnb, Inc.

Affidavit

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

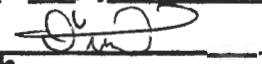


Darien Shepherd
Legal Investigations Supervisor
Airbnb, Inc.

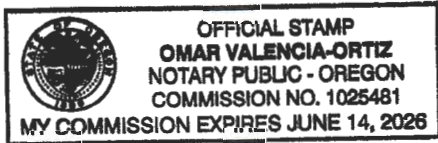
Sworn to before me this
6th day of July 2022

State of Oregon
County of Multnomah

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



Notary Public



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.

**DEFENDANT AIRBNB, INC.'S
SUPPLEMENTAL MEMORANDUM
IN SUPPORT OF MOTION TO
RECONSIDER THE COURT'S
AUGUST 3, 2022 ORDER GRANTING
IN PART AND DENYING IN PART
AIRBNB'S MOTION FOR A
PROTECTIVE ORDER**

INTRODUCTION

There is no case in *any* jurisdiction holding Airbnb liable for a hidden camera recording perpetrated by a third party, and the narrow claims against Airbnb do not justify the overbroad and unduly burdensome discovery Plaintiff seeks here. Plaintiff alleges that two individuals—Katherine Thomas and Rhett Riviere—secretly recorded her on a single night at a single property in Aiken, South Carolina, which her friend booked through Airbnb's platform. She claims that Airbnb failed to protect her against Thomas's and Riviere's criminal misconduct. Notwithstanding this narrow set of alleged facts, Plaintiff seeks to depose Airbnb's designee across 24 broad deposition topics in a nearly limitless manner about any policy or procedure, any host or property, and any incident at any property listed on Airbnb's online platform—no matter how far logically, temporally, or geographically removed from Riviere's alleged criminal recording of Plaintiff in Aiken in May 2019.

The uncontroverted evidence shows that Airbnb had zero notice of Riviere's (or Thomas's) alleged criminal history and that the background checks Airbnb conducted on them reflected no such history or red flags. Airbnb had no knowledge that Riviere illegally filmed anyone, and

Airbnb quickly banned him and Thomas from the platform upon learning of his crimes. Airbnb will, of course, meet its discovery obligations. It has already produced more than 1,300 pages from Airbnb's files, including confidential policies and procedures regarding background checks and surveillance devices and robust information about Plaintiff's reservation, about Thomas and Riviere, and the results of the background checks conducted for them. In fact, Airbnb has produced more than the law requires and even broadened certain of its proposed topics, despite its valid stated objections thereto. The Court should not reward Plaintiff for what appears to be an attempt to dig around for new causes of actions involving different plaintiffs for future lawsuits stemming from stays at the millions of properties listed on Airbnb's platform every day. The law rightly prohibits these kinds of fishing expeditions into irrelevant information, especially where it would place undue burden on the defendant to be deposed. Plaintiff's deposition topics for Airbnb's 30(b)(6) designee should be narrowed to target the claims at issue.

STATEMENT OF FACTS

Plaintiff alleges that she stayed at 115 Third Ave SW, Aiken, South Carolina (the "Property"), booked by her friend via Airbnb's platform, for a single night in May 2019. Compl. ¶ 12. The Property was owned by Rhett Riviere through Chase Enterprises, LLC, while Katherine Thomas "held herself out to be the 'host' and / or property manager" of the Property via Airbnb's platform. *Id.* ¶¶ 14, 18. Thomas, who has been in a romantic relationship with Riviere, listed three properties on Airbnb between late 2016 and 2019; every one of the properties was located in Aiken. Not limited to Airbnb, Thomas and Riviere also offered their properties for rent through realtors, their website, and word of mouth. *See* Exhibit A, Thomas Dep. 256:1-257:16

As an initial matter, Plaintiff acknowledges that Airbnb is simply an "internet platform" that connects individuals who wish to offer accommodations, known as hosts, with those seeking to book accommodations. Compl. ¶¶ 16, 18, 20. She alleges that Riviere secretly recorded her

using video surveillance equipment set up in the Property’s bedroom. *Id.* ¶¶ 27, 46. She claims that Airbnb is liable based on the allegations that Airbnb failed to conduct background checks of Riviere and Thomas—and maintains this allegation even though it has been categorically disproven by evidence produced in discovery. Airbnb’s background checks on both Thomas (who acted as a host) and Riviere (whose background check was conducted after he joined Airbnb in a guest capacity) showed zero criminal history. *See* Exhibit B, Thomas Background Check; Exhibit C, Riviere Background Check. She also alleges that Airbnb failed to have or enforce “reasonable policies or procedures in place to protect” guests, even though there is no allegation by anyone—even Plaintiff—that Airbnb knew about Riviere’s criminal proclivities. *Id.* ¶¶ 40, 78-80.

PROCEDURAL HISTORY

Plaintiff insists on imposing unreasonable discovery demands, even though Airbnb’s document productions have already refuted her core allegations against Airbnb.

On May 26, 2022, Plaintiff served a notice of deposition of Airbnb under Rule 30(b)(6), designating 24 broad topics of inquiry that purport to cover *all* policies, *all* properties, *all* hosts, and *all* incidents reported to Airbnb, even though Plaintiff’s alleged incident occurred on one night at one property, and by individuals who manage their few properties exclusively within Aiken. The timeframe designated by these topics is equally overbroad; the topics either do not limit the timeframe at all or they request information spanning nearly a decade—including three years before Thomas joined Airbnb and three years after the alleged incident. Information from these periods of time has no bearing on Plaintiff’s claims against Airbnb.

On June 14, Airbnb moved for a protective order, and Plaintiff opposed. At the hearing on June 28, the Court requested that Airbnb and Plaintiff each submit a proposed order containing deposition topics and discussed its process for issuing its order. The Court advised it would “take the two [competing] orders and then cut and paste and move things around.” On July 18, the

parties submitted their competing proposed orders. Two weeks later, on August 2, Plaintiff's counsel reminded the Court via email that *her* proposed order was still pending, failing to mention that Airbnb had submitted its own competing proposal. The next morning, the Court adopted Plaintiff's proposed topics—noting that a “slightly modified version of *the* proposed order ha[d] been submitted for e-filing” (emphasis added).

On August 4, the day after it adopted Plaintiff's topics, the Court indicated that it would be “happy to entertain any reconsideration motion.” Airbnb moved for reconsideration the same day, and Plaintiff filed her opposition on August 9. The Court's August 26 Scheduling Order took the 30(b)(6) deposition off the calendar and set a schedule for additional briefing on the pending motion.

Airbnb submits this supplemental memorandum, pursuant to the Court's Scheduling Order, to explain why the Court should adopt its version of the 30(b)(6) topics, which are appropriately narrowed to target evidence relevant to the claims in this case and avoid the undue burden, annoyance, and expense associated with Plaintiff's topics.

ARGUMENT

The Court should grant Airbnb's motion for reconsideration because the 30(b)(6) topics authorized on August 3, 2022 would embolden Plaintiff to engage in a vast fishing expedition of information wholly irrelevant to her claims. For the following reasons that apply to all of Plaintiff's topics, as well as the individual topic-specific reasons discussed below, *see infra* at 8-27, the Court should adopt Airbnb's proposals.

As an initial matter, Plaintiff's argument that Airbnb's Rule 59(e) motion is procedurally inappropriate fails. “[I]t is proper to view a Rule 59(e) motion not only as a vehicle to request the trial court “alter or amend the judgment,” but also as a vehicle to seek “reconsideration” of issues

and arguments.” *Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 21 (2004). Accordingly, “a party usually is allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented.” *Id.* In fact, it is “inherently unfair to disallow” “a party one final chance not only to call the court’s attention to a possible misapprehension of an earlier argument, but also to revisit a previously raised argument.” *Id.* at 22. Indeed, South Carolina courts have often recognized their authority to reconsider interlocutory decisions. *See PPG Indus., Inc. v. Orangeburg Paint & Decorating Ctr., Inc.*, 297 S.C. 176, 183 (Ct. App. 1988) (“A trial judge, until final judgment, controls the trial of the case before him, and as a general rule may amend, correct, modify, or otherwise change its findings of fact and conclusions of law before entry of judgment or decree.”); *id.* at 183-84 (listing some of the “many opportunities” a trial court judge has “to change his mind”); *Johnston v. Bowen*, 313 S.C. 61, 63 (1993) (“The trial court interlocutory orders are amendable.”). The Court here, in welcoming motions for reconsideration and inviting supplemental briefing, appears to be exercising this authority. The motion for reconsideration is warranted so that the Court can more fully consider Airbnb’s arguments regarding the overbroad scope and unduly burdensome nature of Plaintiff’s topics.

Rule 26(a) prohibits discovery requests that are “unreasonably burdensome or expensive taking into account the needs of the case” or seek information “obtainable from some other source that is more convenient, less burdensome, or less expensive.” *Accord* SCRCP 26(c). Although Plaintiff is entitled to discover evidence relevant to her claims, SCRCP 26(b)(1) (“Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action”), the Court should limit the topics to exclude the vast amount of irrelevant or minimally relevant information they currently cover. *Oncology & Hematology Assocs. of S.C., LLC v. S.C. Dep’t of Health & Env’t Control*, 387 S.C. 380, 389 (2010) (vacating

discovery requests that took “scorched-earth approach” seeking information “not remotely relevant to a resolution of the issue” in the case). For example, Plaintiff seeks to examine Airbnb’s designee about *all* policies and *all* incidents, without tailoring the topic to the timeframe and location at issue. These topics run far afield of Plaintiff’s case, which is about two individuals who recorded her on a single day in 2019 at a single property in Aiken, South Carolina. *Hollman v. Woolfson*, 384 S.C. 571, 579 (2009) (“[I]nformation must be specifically relevant to the issues involved in the litigation, not merely relevant to the subject matter of the litigation.”)

Because Plaintiff’s overbroad deposition topics create a particularized harm of undue burden to Airbnb, *see generally* Mot. for Protective Order, it is *Plaintiff* who “has the burden of showing the information sought is ‘relevant and necessary’ to the case.” *Hollman*, 384 S.C. at 578. Moreover, she must “demonstrate with specificity exactly how the lack of information will impair the presentation of the case on the merits to the point that an unjust result is a real, rather than a merely possible, threat.” *Id.* Plaintiff has not done so—nor could she. Nothing justifies asking Airbnb’s designee about policies and procedures that were long-outdated by the time Thomas created her Airbnb account in July 2016 or that did not yet exist at the time of the alleged incident in May 2019 (*see, e.g.*, Topics 5-12, 14-18, 21). *See, e.g., United States ex rel. Adams v. Remain at Home Senior Care, LLC*, No. 1:17-CV-01493-JMC, 2021 WL 3285300, at *6 (D.S.C. Aug. 2, 2021) (limiting discovery requests to relevant time periods after finding “the undefined temporal and subject-matter scope of many of these requests [to be] overbroad”); *Wellin v. Wellin*, No. 2:13-CV-1831-DCN, 2015 WL 5785709, at *13-14 (D.S.C. July 31, 2015), *report and recommendation adopted as modified*, 2015 WL 5781383 (D.S.C. Sept. 30, 2015) (finding interrogatory to be “clearly overbroad on its face” because “virtually boundless as to time and subject matter”). Nor would a complaint made by a guest staying at a host’s property in Tacoma,

Washington, in 2014, for example (*see, e.g.*, Topics 18-20), relate to the only issue in this case: whether the crime Riviere and Thomas committed at the Property was foreseeable to Airbnb. This is especially true in light of the undisputed fact that Riviere’s and Thomas’s background checks produced no reason for concern, *see* Exhibits B-C; that fact forecloses any such relevancy here.

Narrowing the topics to what is relevant to Plaintiff’s legal claims is both necessary under South Carolina law and in the interest of judicial economy. *See Palmer v. Standard Fire Ins. Co.*, No. 3:14-CV-4713-TLW, 2016 WL 7839135, at *2–3 (D.S.C. Apr. 12, 2016) (granting motion for protective order against overbroad deposition topics). The topics that Airbnb has proposed eliminate the undue burden that would otherwise occur if Airbnb had to attempt to prepare its designee for any conceivable question under the current overbroad topics. South Carolina law does not require corporate defendants to shoulder the burden of vastly overbroad requests that seek far more than what is relevant to the case. *See* SCRCP 26(a), (c), 30(b)(6); *see also Zahariev v. Hartford Life & Accident Ins. Co.*, No. 9:20-CV-1072-RMG-MHC, 2020 WL 12783951, at *6 (D.S.C. Aug. 11, 2020) (holding, under Federal rules, discovery requests for “all” documents, invoices, and agreements overly broad); *Sandlapper Sec., LLC v. Green & Co., CPAs*, No. 6:18-CV-1280-TMC, 2018 WL 7318243, at *2 (D.S.C. Oct. 12, 2018) (similar). Airbnb should not have to anticipate the vast array of inconsequential information that Plaintiff could ask about under the current topics that do not bear on her case. Additionally, narrowing the unduly burdensome topics will also let Airbnb *better* prepare its designee to answer *relevant* questions—letting the parties better elicit and provide testimony about what is actually discoverable and avoid endless relevancy disputes both during and after the deposition.

For these reasons, the Court should select Airbnb's proposed deposition topics. The topic-specific reasons described in detail below provide additional, independent bases.¹

1. Topic No. 1

| Plaintiff's Topic | Airbnb's Initial Proposed Topic | Airbnb's Revised Proposal |
|--|--|--|
| The organizational, leadership and management structure of AIRBNB during the time period of January 1, 2013 through the present. | None. | None, or in the alternative:

The group or groups responsible for creating background check policies and processes during July 2016 and/or surveillance device policy in May 2019, and a description of where those group(s) fell within Airbnb's corporate structure. |

Plaintiff's topic is so overbroad as to necessarily include irrelevant information. Plaintiff seeks to depose an Airbnb deponent about its organizational structure starting nearly 6.5 years before the May 2019 incident at issue in this case, more than three years before Thomas joined the Airbnb platform as a host, and six years before the property at issue was listed on Airbnb's website. To make matters worse, the timeframe of this request ends in the "present," more than three years after the alleged videorecording.

Airbnb currently has over 6,000 employees and numerous former employees, especially given the nearly decade-long timeframe in Plaintiff's topic. Even memorizing the details of all organizational changes, which can be frequent, for the three-year period between July 2016 and May 2019 would be burdensome. And to do so is unnecessary, as the organizational structure of

¹ Airbnb proposes compromises throughout. In doing so, Airbnb does not concede any of its positions previously asserted, including that Plaintiff's topics are overbroad, vague and ambiguous, irrelevant, and unduly burdensome, and that Airbnb's initial proposed topics are appropriate.

all these employees, spanning various departments, locations, and years, is irrelevant to Plaintiff's claims.

Plaintiff does not pretend to tailor the topic to the only relevant question in this case: whether Thomas and Riviere's alleged criminal videorecording in May 2019 was foreseeable to Airbnb. While Airbnb asserts that this topic is irrelevant in every way, it proposes an alternative that tailors Plaintiff's topic to groups responsible for background check policies and processes in July 2016 and/or surveillance device policy in May 2019, and a description of where those group(s) fell within Airbnb's corporate structure.

2. Topic No. 2

| Plaintiff's Topic | Airbnb's Initial Proposed Topic | Airbnb's Revised Proposal |
|---|--|---|
| All non-privileged information of AIRBNB regarding the factual allegations in the case of <i>Foster v. Riviere, et al</i> – 2021-CP-02-00889. | All non-privileged information of AIRBNB concerning any knowledge of concealed video-cameras at 115 Third Ave., Aiken, South Carolina from 2016 through May 2019 (the "Property") before May 2019 and the background checks conducted on Rhett Riviere and Katherine Thomas before May 2019. | All non-privileged information of AIRBNB concerning (i) any knowledge of concealed video-cameras at <i>any property listed on Airbnb's platform by Thomas or Riviere</i> from July 2016 through May 2019, (ii) the background checks conducted on Riviere and Thomas, and (iii) guest reviews of Thomas (or Riviere, if any) as an Airbnb host. |

Plaintiff's topic is vague and overbroad. Plaintiff is not entitled to depose Airbnb about legally irrelevant topics simply because she included an allegation in the complaint. For example, the fact that the Complaint alleges that "homeowners pay a fee to advertise the renting of their homes" on Airbnb's website does not give Plaintiffs the right to demand information about every homeowner who has done so. By contrast, Airbnb's proposed topic provides appropriate specificity based on the allegations of the complaint that could bear on liability.

Airbnb has produced hundreds of pages of records pertaining to Riviere’s and Thomas’s user information and background checks, reservation information and guest reviews for their properties listed on Airbnb, and information related to their removal from the Airbnb platform. Airbnb’s designee can be prepared to explain and discuss this information, but it is unduly burdensome to prepare him or her to discuss all facts and allegations, given that Plaintiff’s topic is too vague and broad to place Airbnb on notice of what “information . . . regarding the factual allegations” encompasses.

3. Topic No. 3

| Plaintiff’s Topic | Airbnb’s Proposed Topic |
|---|--|
| All agreements and/or contracts between Rhett Riviere, Chase Enterprises, LLC of South Carolina, and/or Katherine Thomas with Airbnb. | The existence of agreements and/or contracts between Rhett Riviere, Chase Enterprises, LLC of South Carolina, and/or Katherine Thomas with AIRBNB between 2016 and May 2019. |

This topic is overbroad. First, it requires testimony about contracts or portions of contracts that are unrelated to Plaintiff’s lawsuit. And although Airbnb’s designee can testify as to Airbnb’s agreements, if any, with those parties, he or she cannot interpret the contract or otherwise provide legal conclusions. Airbnb’s proposal alleviates the burden imposed by Plaintiff’s overbroad designation and clarifies the scope of permissible testimony about the relevant contracts. This proposal also narrows the topic to the appropriate timeframe: 2016 (when Thomas joined Airbnb) to May 2019 (when the incident allegedly occurred).

4. Topic No. 4

| Plaintiff's Topic | Airbnb's Proposed Topic |
|---|--|
| 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. | Documents produced in this action that concern, reference or relate to any of the following: Rhett Riviere, Chase Enterprises, LLC of South Carolina, Katherine Thomas and/or Julianne Foster. |

Plaintiff's topic is overly broad. As noted under Topic No. 2, Airbnb has produced hundreds of pages of records pertaining to Riviere's and Thomas's user information and background checks, reservation information and guest reviews for properties they listed on Airbnb, and information related to their permanent suspensions from Airbnb. Airbnb's designee can be prepared to explain and discuss this information.

5. Topic No. 5

| Plaintiff's Topic | Airbnb's Proposed Topic |
|--|---|
| 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. | Information available to hosts regarding background check policies and procedures from 2016 through May 2019, including information regarding background check policies and procedures available on AIRBNB's website. |

Plaintiff's topic is overly broad, vague, and unintelligible. The designation of "all" facts, information, and opinions on this topic purports to include a staggering amount of detail, about which Airbnb's designee would have to be prepared for examination. Airbnb cannot—and should not have to attempt to—meet this burden; Airbnb's proposal alleviates the burden imposed by Plaintiff's overbroad designation.

Airbnb's proposed topic appropriately allows Plaintiff to examine its designee about the policies available to hosts regarding background checks, which appears to be the information she seeks. Airbnb's proposal also narrows the topic to the appropriate timeframe: 2016 (when Thomas

joined Airbnb) to May 2019 (when the incident allegedly occurred). Policies and records that existed before Thomas joined Airbnb or after the alleged incident are irrelevant.

Airbnb has already produced relevant internal background check policies, and its designee can be prepared to discuss them at the deposition.

6. Topic No. 6

| Plaintiff's Topic | Airbnb's Proposed Topic |
|---|---|
| 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. | The process by which AIRBNB generally conducted background checks of potential hosts from 2016 through May 2019, and what information and records AIRBNB understood the vendors it used for those background checks to generally consult in that timeframe. |

Plaintiff's topic is overly broad, vague, and unintelligible. Airbnb's proposed topic provides information about the general process by which background checks were conducted and the records Airbnb understood were checked during the relevant timeframe, as described under Topic No. 5. Airbnb has already produced relevant internal background check policies, and its designee can be prepared to discuss them at the deposition.

Plaintiff's designation of "all" facts and information on this topic is overly broad and unduly burdensome for the same reasons described under Topic No. 5. For example, it purports to cover every type of background check in any location regarding any type of crime. Information about how Airbnb might "process[]" findings that a host in Louisiana got a DUI or other vehicle violations, for example, has nothing to do with Plaintiff's claims here.

Airbnb's proposal alleviates the burden imposed on Airbnb by Plaintiff's overbroad designation.

7. Topic No. 7

| Plaintiff's Topic | Airbnb's Proposed Topic |
|---|--|
| 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. | AIRBNB's policy addressing what information that, if received through AIRBNB's background check practices in South Carolina from 2016 through May 2019, could cause a host to face adverse action from AIRBNB. |

Plaintiff's topic is overly broad, vague, and unintelligible. As the background check policies produced by Airbnb make clear, there are multiple reasons why a user could be removed from the Airbnb platform that have no bearing on this case. Plaintiff can provide no valid basis to justify this dizzying demand for facts and information regarding every host who has ever been rejected from Airbnb's platform.

By contrast, Airbnb's proposed topic addresses the information received from a background check that could result in adverse action for a user, as set forth in Airbnb's policy during the relevant timeframe, as described under Topic No. 5. Airbnb's proposed topic also limits the policy to South Carolina; because Thomas and Riviere operated solely in South Carolina, Airbnb's policies in other states or countries have no bearing on Plaintiff's claims.

Plaintiff's designation of "all" facts and information on this topic is overly broad and unduly burdensome for the same reasons described under Topics No. 5 and 6. Airbnb's proposal alleviates the burden imposed on Airbnb by Plaintiff's overbroad designation.

8. Topic No. 8

| Plaintiff's Topic | Airbnb's Proposed Topic |
|---|--|
| 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). | The process by which AIRBNB generally conducted background checks of potential hosts from 2016 through May 2019 and what information and records AIRBNB understood the vendors it used for those background checks to generally consult in that timeframe. |

Plaintiff's topic is overly broad, vague, and unintelligible. Plaintiff can offer no valid basis to seek "all facts and information" about every filter for a background check, without limitation.

Airbnb's proposed topic provides information about the general process by which background checks were conducted and the records Airbnb understood were checked during the relevant timeframe, as described under Topic No. 5.

Plaintiff's designation of "all" facts and information on this topic is overly broad and unduly burdensome for the same reasons described under Topic No. 5. For example, it could sweep in the identity of every employee involved in any purported "filter[ing]" decisions and the conversations and reasons that went into any such "agree[ments]." Further, "information upon which AIRBNB agrees to filters for background checks" is vague and ambiguous, which makes it even more burdensome to Airbnb to attempt to prepare.

Airbnb's proposal alleviates the burden imposed on Airbnb by Plaintiff's overbroad designation.

9. Topic No. 9

| Plaintiff's Topic | Airbnb's Proposed Topic |
|--|--|
| 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. | AIRBNB's policy addressing what information that, if received through Airbnb's background check practices in South Carolina from 2016 through May 2019, could cause a host to face adverse action from AIRBNB. |

Plaintiff's topic is overly broad, vague, and unintelligible. Plaintiff is simply not entitled to such a sweeping array of information about Airbnb's hosts and guests. This topic is particularly irrelevant because the facts do not show (and Plaintiff did not even allege) that Airbnb knew about any criminal proclivities of Thomas or Riviere prior to the May 2019 incident, after which Airbnb quickly suspended their accounts. In fact, Airbnb's background checks for both individuals, which

have been produced during discovery, came back with no hits. *See* Exhibit B, Thomas Background Check; Exhibit C, Riviere Background Check.

Further, there is no allegation in the Complaint that any host or guest in this case participated in or was reinstated after an appeal of any removal, prior to the alleged incident in May 2019 (or, for that matter, subsequently). Airbnb should not be forced to prepare a witness on this topic that has no connection to the instant matter.

Airbnb’s proposed topic addresses the adverse actions that could be taken following a background check as set forth in Airbnb’s policy during the relevant timeframe, as described under Topic No. 5. It also limits the policy to South Carolina; because Thomas and Riviere operated solely in South Carolina, policies in other states or countries have no bearing on Plaintiff’s claims.

Plaintiff’s designation of “all” facts, information, and opinions on this topic is overly broad and unduly burdensome for the same reasons described under Topic No. 5. For example, it purports to cover every removal of any host by any employee for any reason—as well as the employees’ subjective “opinions” about those particular hosts or removals. Airbnb’s proposal alleviates the burden imposed on Airbnb by Plaintiff’s overbroad designation.

10. Topic No. 10

| Plaintiff’s Topic | Airbnb’s Proposed Topic |
|--|--------------------------------|
| 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. | None. |

Plaintiff’s topic is not relevant to this litigation. AirCover first became available to hosts in November 2021, *2.5 years after the alleged incident*. *See Introducing the Airbnb 2021 Winter Release: 50+ Upgrades and Innovations Across Our Entire Service*, AIRBNB (Nov. 9, 2021), <https://news.airbnb.com/2021-winter-release/> (introducing AirCover for hosts); Jordan Crook,

Airbnb Boosts Host Protection, Adds WiFi Speed Verification, TECHCRUNCH (Nov. 9, 2021), <https://techcrunch.com/2021/11/09/airbnb-boosts-host-protection-adds-wifi-speed-verification/>

(same). There is no legal basis on which Airbnb should have to prepare a corporate representative to testify about AirCover. And even if there were such a basis, Plaintiff's designation of "all" facts and information on this topic would be overly broad and unduly burdensome for the same reasons described under Topic No. 2.

11. Topic No. 11

| Plaintiff's Topic | Airbnb's Proposed Topic |
|---|--|
| 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. | AIRBNB's policies regarding the use of surveillance devices by AIRBNB hosts in South Carolina from 2016 through May 2019, including outcomes for violating those policies. |

Plaintiff's topic is overly broad, vague, and unintelligible. This topic is also irrelevant to the extent that it covers "removal, reinstatement, and appeals of hosts who violate the policy." As discussed under Topic 9, the facts do not show (and Plaintiff did not even allege) that Airbnb knew about any criminal proclivities of Thomas or Riviere prior to the May 2019 incident, after which Airbnb quickly suspended their accounts. In fact, Airbnb's background checks for both individuals, which have been produced during discovery, revealed no criminal history. *See* Exhibit B, Thomas Background Check; Exhibit C, Riviere Background Check.

Further, there is no allegation in the Complaint that any host or guest in this case participated in or was reinstated after an appeal of any removal, prior to the alleged incident in May 2019 (or, for that matter, subsequently). Airbnb should not be forced to prepare a witness on a topic that has no connection to the instant matter.

Airbnb’s proposed topic addresses the surveillance devices policy and outcomes when that policy was violated during the relevant timeframe, as described under Topic No. 5. Airbnb’s proposed topic also limits the policy to South Carolina; because Thomas and Riviere operated solely in South Carolina, policies in other states or countries have no bearing on Plaintiff’s claims.

Airbnb already produced information about its internal surveillance device policy and can prepare its designee to discuss it at the deposition.

Plaintiff’s designation of “all” facts, information, and opinions on this topic is overly broad and unduly burdensome for the same reasons described under Topic No. 5. Airbnb’s proposal alleviates the burden imposed on Airbnb by Plaintiff’s overbroad designation.

12. Topic No. 12

| Plaintiff’s Topic | Airbnb’s Proposed Topic |
|--|---|
| 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. | Information provided to hosts through AIRBNB’s website (if any) related to host’s responsibilities to comply with U.S. local laws from 2016 through May 2019. |

Plaintiff’s topic is improper for multiple reasons. The topic it is irrelevant because Airbnb’s Terms of Service—which Airbnb has produced and which are publicly available—make clear that compliance with local laws is the responsibility of the *hosts*. The topic is also irrelevant to any legally cognizable claim in the Complaint. The topic is obviously aimed at Plaintiff’s allegation of non-compliance with S.C. Code § 40-57-20 (“Valid Licensure Requirement for Real Estate Brokers, Salespersons, and Property Managers”), but Airbnb is not subject to that statute because it is not a real estate broker and does not sell or manage property. No court has ever found otherwise. The Court should not require Airbnb to provide and prepare a witness to testify to its compliance with a statute that has nothing to do with Airbnb. Airbnb’s proposed topic reflects

these realities and properly limits the topic to the information Airbnb provided to hosts regarding *their* obligation to apply with U.S. local laws.

Further, Plaintiff’s designation of “all” facts and information on this topic is overly broad and unduly burdensome for the same reasons described under Topic No. 5. As noted, the Complaint alleges non-compliance with only S.C. Code § 40-57-20, not all real estate property management licensure statutes in all 50 states. And preparing information about Joe Smith’s compliance with his local real estate licensing laws in Gary, Indiana—which Plaintiff’s topic purports to reach, along with every other host’s compliance—is both unduly burdensome to Airbnb and wholly irrelevant to Plaintiff’s claims.

13. Topic No. 13

| Plaintiff’s Topic | Airbnb’s Proposed Topic |
|---|--------------------------------|
| All communications between “Michele” and Defendant Katherine Thomas via AIRBNB’s online booking program since April 12, 2019. | None. |

Plaintiff’s topic calls for information about communications that took place *exclusively* between Katherine Thomas and the guest who booked Plaintiff’s stay. Airbnb cannot prepare a deponent to testify about a conversation in which it played no part. And while the Stored Communications Act prevents Airbnb from disclosing without user consent the contents of the communications, defendant Thomas already produced the responsive communications.

14. Topic No. 14

| Plaintiff’s Topic | Airbnb’s Proposed Topic |
|--|--|
| 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 | For the time period 2016 through May 2019 and applicable in South Carolina, (i) Airbnb’s policies regarding surveillance devices, (ii) the process by which Airbnb generally conducted background checks of potential hosts, (iii) the information that, if received through Airbnb’s background check practices, could cause a host to face adverse action from |

| | |
|--|--|
| time period of December 1, 2013 through the present. | Airbnb; and (iv) provisions in the Terms of Service that address the use of concealed surveillance devices by hosts. |
|--|--|

Plaintiff's topic is vague and overbroad. It reaches policies that are wholly irrelevant to Plaintiff's lawsuit. Further, the reference to "sexual predators" is not only vague and undefined, but it has the potential to sweep in irrelevant conduct to Plaintiff's allegation of being secretly videotaped, which is already explicitly covered by Plaintiff's topic.

Airbnb's proposed topic appropriately focuses on policies about surveillance devices and other relevant policies. Airbnb already produced information about these policies and can prepare its designee to discuss them at the deposition. Plaintiff's topic spans nearly a decade, including more than three years before Thomas joined Airbnb and more than three years after the alleged incident. Airbnb's proposed topic is limited to the relevant timeframe, as described under Topic No. 5, and in the relevant state, as described under Topic No. 7.

15. Topic No. 15

| Plaintiff's Topic | Airbnb's Proposed Topic |
|---|--|
| 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. | Information hosts and prospective hosts generally provided to AIRBNB when registering as a host and listing a property in South Carolina on Airbnb's website from 2016 through May 2019. |

Plaintiff's topic is overly broad, vague, and unintelligible. Plaintiff cannot justify her request for all information regarding the suitability of all of the millions of hosts on Airbnb's platform over a nine-year period. Airbnb's proposed topic identifies the information provided by hosts and prospective hosts during the relevant timeframe, as described under Topic No. 5, and in the relevant state, as described under Topic No. 7. This proposal alleviates the burden imposed on Airbnb by Plaintiff's overbroad designation.

Airbnb already produced information about its background check policies (as well as the policies themselves) and can prepare its designee to discuss them at the deposition.

16. Topic No. 16

| Plaintiff's Topic | Airbnb's Initial Proposed Topic | Airbnb's Revised Proposal |
|---|---|---|
| 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. | Whether and if so, to what extent, AIRBNB conducted inspections of the Property from 2016 through May 2019. | <p>Whether and if so, to what extent, AIRBNB conducted inspections of any property Katherine Thomas listed on Airbnb's platform by Thomas, from July 2016 through May 2019.</p> <p>Whether and if so, to what extent, AIRBNB conducted inspections in May 2019 of any property in Aiken County, South Carolina, listed on Airbnb's platform</p> |

Plaintiff's topic is overly broad as to both subject matter and timeframe. The only relevant inspections are any that may have taken place at the Property during the relevant timeframe, as described under Topic No. 5.

Although Airbnb's initially proposed topic is therefore appropriately tailored to avoid undue burden, Airbnb is willing to expand its proposed topic to include inspections of other properties listed by Thomas on Airbnb's platform during the relevant timeframe.² Further, although information about any inspections of Thomas's properties is all that is relevant to Plaintiff's claims, Airbnb is also willing to expand the topic to include any inspections of any property in Aiken County, South Carolina in May 2019—the month of Plaintiff's alleged incident. This proposal alleviates the burden imposed on Airbnb by Plaintiff's overbroad designation.

² Although Riviere owned and was involved in managing the properties, only Thomas listed them as a host on Airbnb's platform.

17. Topic No. 17

| Plaintiff's Topic | Airbnb's Proposed Topic |
|--|--|
| All Protocols, manuals, memoranda, or other written standards of care or instructions that reference or concern the use of video cameras by AIRBNB hosts during the time period of December 1, 2013 through the present. | AIRBNB's policies regarding the use of surveillance devices by Airbnb hosts in South Carolina from 2016 through May 2019, including outcomes for violating those policies. |

Plaintiff's topic is overly broad and unduly burdensome. Airbnb's topic is appropriately limited to the relevant timeframe, as described under Topic No. 5, and to the relevant state, as described under Topic No. 7. Airbnb already produced information about its internal surveillance device policy and can prepare its designee to discuss it at the deposition. This proposal alleviates the burden imposed on Airbnb by Plaintiff's overbroad designation.

18. Topic No. 18

| Plaintiff's Topic | Airbnb's Initial Proposed Topic | Airbnb's Revised Proposal |
|---|--|---|
| 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. | Any non-privileged reports and complaints from 2016 through May 2019 made to AIRBNB of guests being secretly videotaped while staying at the Property. | Any non-privileged reports and complaints from July 2016 through May 2019 made to AIRBNB of guests being secretly videotaped while staying at the Property or at any property listed by Thomas.

Additionally, any non-privileged reports and complaints to Airbnb Customer Service regarding alleged violations of Airbnb's Surveillance Devices Policy through secretly videotaping guest(s) at listings located in Aiken County, South Carolina, between July 2016 and May 17, 2019. |

Plaintiff's topic is overly broad, seeks irrelevant information, and implicates the privacy rights of non-parties. Her designation of "all" reports and complaints on this topic is overly broad and unduly burdensome for the same reasons described under Topic No. 5. Isolated complaints about properties located hundreds or thousands of miles away have no relevance to the foreseeability of Thomas and Riviere's criminal conduct at the Property in Aiken, South Carolina.

Airbnb's topic is appropriately limited to complaints related to the property at issue. However, Airbnb is willing to expand the topic to cover non-privileged complaints regarding any property listed by Thomas (who listed the relevant properties as the Airbnb host). Airbnb is also willing to expand the topic to cover non-privileged complaints in Aiken County, South Carolina, between July 2016 and May 17, 2019. This proposal is limited to the relevant timeframe, as described under Topic No. 5; the relevant geographic scope, as described under Topic No. 7; and the relevant surveillance device policy, which Airbnb has produced in discovery and which covers the misconduct alleged in the complaint. This proposal alleviates the burden imposed on Airbnb by Plaintiff's overbroad designation.

19. Topic No. 19

| Plaintiff's Topic | Airbnb's Initial Proposed Topic | Airbnb's Revised Proposal |
|---|--|--|
| All lawsuits filed against AIRBNB related to guests being secretly videotaped during the time period of December 1, 2013 through the present. | None. | Lawsuits filed against Airbnb regarding guests being secretly videotaped at Airbnb listings located in Aiken County, South Carolina, between July 2016 and May 17, 2019. |

Plaintiff's topic is overly broad; seeks irrelevant, confidential, and/or privileged information; and implicates the privacy rights of non-parties. For the reasons discussed under Topic No. 18, the geographic and temporal scope of this topic is far too broad. Lawsuits filed by

individuals who booked reservations via Airbnb at any location across the country or the world are not relevant to this case. Moreover, this is not an appropriate topic for deposition testimony as the information regarding public lawsuits could be obtained by Plaintiff and/or by interrogatory.

However, Airbnb is willing to propose a topic that would cover lawsuits filed against Airbnb regarding guests being secretly videotaped at Airbnb listings in Aiken County, South Carolina, between July 2016 and May 17, 2019. This proposal is limited to the relevant timeframe, as described under Topic No. 5, and the relevant geographic scope, as described under Topic No. 7.

Finally, insofar as Plaintiff seeks to discover or examine Airbnb's designee about privileged information, she of course is not entitled to such privileged information.

20. Topic No. 20

| Plaintiff's Topic | Airbnb's Initial Proposed Topic |
|--|--|
| All settlements entered into by AIRBNB related to guests being secretly videotaped during the time period of December 1, 2013 through the present. | None. |

Plaintiff's topic is overly broad; seeks irrelevant, confidential, and/or privileged information; and implicates the privacy rights of non-parties. For the reasons discussed under Topics No. 5, 7, and 18, the geographic and temporal scope of this topic is far too broad. Settlements entered into by individuals who booked reservations via Airbnb at any random location across the country or world are not relevant to this case.

Further, insofar as Plaintiff seeks to discover or examine Airbnb's designee about privileged information or information subject to a court order, she is not entitled to such information.

Finally, these issues are adequately covered by Airbnb's proposed Topic No. 18.

21. Topic No. 21

| Plaintiff's Topic | Airbnb's Initial Proposed Topic |
|---|---|
| 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. | Airbnb's policies regarding the use of surveillance devices by Airbnb hosts in South Carolina from 2016 through May 2019. |

Plaintiff's topic is vague and overbroad. Airbnb does not know "the employee training program" to which Plaintiff refers. Further, Plaintiff's designation of "all" information on this topic is overly broad and unduly burdensome for the same reasons described under Topic No. 5. For example, "all" information about employee training programs touching on guest security purports to cover the identity of each of the thousands of Airbnb employees over nearly a decade whose training has touched on guest safety, including all training logs, all trainers, and all questions asked during a training session. Requiring Airbnb to prepare to discuss such irrelevant information is unnecessary and unduly burdensome.

Airbnb's proposed topic identifies the relevant policies during the relevant timeframe, as described under Topic No. 5, and in the relevant geographic scope, as described under Topic No. 7. This proposal alleviates the burden imposed on Airbnb by Plaintiff's overbroad designation.

Airbnb already produced discovery about internal policies regarding the use of surveillance devices and can prepare its designee to discuss them during the deposition.

22. Topic No. 22

| Plaintiff's Topic | Airbnb's Proposed Topic |
|--|--|
| 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. | The process by which Airbnb generally conducted background checks of potential hosts in South Carolina from 2016 through May 2019, including the lack of involvement of any Airbnb employees in connection with the background checks of Riviere and Thomas. |

Plaintiff's topic is overly broad and irrelevant. Airbnb has already explained to Plaintiff that this was an automated process that did not involve Airbnb employees. Because the background checks for Thomas and Riviere identified no record of any criminal offense, no Airbnb employee needed to vet the results. *See* Exhibit B, Thomas Background Check; Exhibit C, Riviere Background Check.

But even if that were not the case, it is unclear to Airbnb what Plaintiff means by "involved in the vetting." It is impossible for Airbnb to prepare its designee about a topic that is described with such vague and ambiguous language, and it would be unduly burdensome to require Airbnb to attempt to do so. This burden is compounded by the overbroad timeframe that Plaintiff seeks in this topic.

Under Airbnb's proposed topic, Airbnb's designee can generally explain the background check process during the relevant timeframe, as described under Topic No. 5, and explain why no Airbnb employees were involved in the background checks of Riviere and Thomas. This proposal alleviates the burden imposed on Airbnb by Plaintiff's overbroad designation and adds clarity to Plaintiff's vague and ambiguous language.

23. Topic No. 23

| Plaintiff's Topic | Airbnb's Initial Proposed Topic | Airbnb's Revised Proposal |
|--|--|---|
| 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. | Any non-privileged reports and complaints from 2016 through May 2019 made to AIRBNB of guests being secretly videotaped while staying at the Property. | Any non-privileged reports and complaints from July 2016 through May 2019 made to AIRBNB of guests being secretly videotaped while staying at the Property or at any property listed by Thomas.

Additionally, any non-privileged reports and complaints to Airbnb Customer Service regarding alleged violations of Airbnb's Surveillance Devices Policy through secretly videotaping guest(s) at listings located in Aiken County, South Carolina, between July 2016 and May 17, 2019. |

Plaintiff's topic is overly broad, seeks irrelevant information, and implicates the privacy rights of non-parties. Airbnb's topic is appropriately limited to complaints related to the property at issue. Reports about secret video recordings at other properties and by other hosts do not bear on the question of whether it was foreseeable to Airbnb that Thomas or Riviere would engage in the conduct alleged in this case at this Property. Airbnb's proposal alleviates the burden imposed on Airbnb by Plaintiff's overbroad designation.

Airbnb's topic is appropriately limited to complaints related to the property at issue. However, Airbnb is willing to expand the topic to cover non-privileged complaints regarding any property listed by Thomas (who listed the relevant properties as the Airbnb host). Airbnb is also willing to expand the topic to cover non-privileged complaints in Aiken County, South Carolina, between July 2016 and May 17, 2019—as it proposed under Topic 18. This

proposal is limited to the relevant timeframe, as described under Topic No. 5; the relevant geographic scope, as described under Topic No. 7; and the relevant surveillance device policy, which Airbnb has produced in discovery and which covers the misconduct alleged in the complaint.

24. Topic No. 24

| Plaintiff's Topic | Airbnb's Initial Proposed Topic | Airbnb's Revised Proposal |
|--|---------------------------------|---|
| The assets and liabilities of Airbnb, Inc. | None | None, or in the alternative:

Where, in Airbnb's annual reports for 2021 and 2022; August 3, 2022 10-K; and prospectus, information regarding Airbnb, Inc.'s assets and liabilities is located. |

Plaintiff's topic as proposed is overly broad and not relevant. Airbnb is a public company. Its SEC filings contain ample information about its assets and liabilities—indeed several dozen pages worth of information—and the proposed topic provides zero limitation. It serves no purpose for Airbnb to prepare a witness on that broad swath of financial data—particularly when it is equally accessible to Plaintiff. In any event, Airbnb has already produced its annual reports for 2021 and 2022; its August 3, 2022 10-K, and its prospectus, which includes balance sheet information from 2015, 2016, 2017, 2018, and 2019. Airbnb's designee can be prepared to direct Plaintiff to the relevant portions of those filings.

CONCLUSION

The Court should grant Airbnb's motion for reconsideration because the topics of Plaintiff's current Rule 30(b)(6) deposition notice are overly broad and unduly burdensome. The Court should adopt Airbnb's proposed topics instead.

Dated this 2nd day of September, 2022.

Respectfully submitted
/s/Beattie B. Ashmore
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Attorney for Defendant Airbnb, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Supplemental Memorandum in Support of Motion to Reconsider the Court's August 3, 2022 Order Granting in Part and Denying in Part Airbnb's Motion for a Protective Order has been served by electronic filing on the 2nd day of September, 2022 to the following:

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Beattie B. Ashmore

EXHIBIT A

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
 2 COUNTY OF AIKEN) 2nd JUDICIAL CIRCUIT
)
 3 JULIANNE FOSTER,)
) Case No: 2021-CP-02-00889
 4)
) Plaintiff,)
 5)
) vs.)
 6)
 7 RHETT RIVIERE, KATHERINE)
 A. THOMAS, CHASE)
 ENTERPRISES, LLC OF)
 8 SOUTH CAROLINA AND)
 AIRBNB, INC.,)
 9)
) Defendants.)
 10 _____)
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 25)

DEPOSITION OF

KATHERINE A. THOMAS

January 6, 2022
10:03 a.m.

121 Richland Avenue E
Chamber of Commerce Conference Room
Aiken, South Carolina

Noelani J. Fehr, CCR-B-2829, RPR

EVERYWORD, INC.
P.O. Box 1459
Columbia, South Carolina 29202
803-212-0012

1 Q. So if you had rented one of the three
2 properties that were in your names using the Airbnb
3 platform you informed Mr. Riviere in some form which
4 property and for what dates and he would note it on
5 that system?

6 A. Yes.

7 Q. As of May of 2019 had you stopped using VRBO
8 as a platform to list properties?

9 A. Yes.

10 Q. Were you using any other digital platforms
11 to list your properties as of 2019 other than your
12 Airbnb?

13 A. No.

14 Q. You were using real estate agents to list
15 the properties?

16 A. Yes.

17 Q. And how many different agents were you using
18 to list properties at the time?

19 A. They would go directly through Rhett. They
20 could check the Airbnb site to see availability, but
21 they would go through him.

22 Q. How many different agents had that ability?
23 Are you saying it was on the MLS system or a master
24 system of some kind?

25 A. I do not believe it was on the MLS.

1 Q. Are there particular agents that Mr. Riviere
2 used to list properties for rental?

3 A. I do not believe they were listed, but word
4 of mouth, so Deirdre, Suzy Haslup, but it's people
5 would call him to see what he had available.

6 Q. So there may have been more agents besides
7 Deirdre and Suzy Haslup that would contact Mr. Riviere
8 about listing the properties' --

9 A. Yes.

10 Q. -- availabilities?

11 A. And other people in town, not just agents.

12 Q. And of the properties where other real
13 estate agents or other citizens in the area would
14 contact Rhett about listings did that include the
15 Third Avenue property that Ms. Jain rented?

16 A. Yes.

17 Q. You chose what photos to provide to Airbnb
18 for the listing of the Stirrup Cup cottage?

19 A. Yes.

20 Q. And you chose what information to fill out
21 within the listing as far as what the different
22 features and amenities of the property were?

23 A. Yes.

24 Q. You understood when you agreed to use the
25 Airbnb platform that the information you put in your

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CERTIFICATE OF REPORTER

I, Noelani J. Fehr, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify:

That the foregoing deposition was taken before me on the date and at the time and location stated on page 1 of this transcript; that the deponent was duly sworn to testify to the truth, the whole truth and nothing but the truth; that the testimony of the deponent and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed: that the foregoing deposition as typed is a true, accurate and complete record of the testimony of the deponent and of all objections made at the time of the examination to the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 20th day of January, 2020, at Aiken, Aiken County, South Carolina.



Noelani J. Fehr, RPR, CCR
Notary Public, State of South
Carolina at Large.
My Commission expires:
November 9, 2027

EXHIBIT B

Thomas Background Check

Submitted for *in camera* review pursuant to
Paragraph 6.(2) of the Court's
September 16, 2021 Confidentiality Order

EXHIBIT C

Riviere Background Check

Submitted for *in camera* review pursuant to
Paragraph 6.(2) of the Court's
September 16, 2021 Confidentiality Order

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.

**DEFENDANT AIRBNB, INC.’S
SUPPLEMENTAL REPLY IN
SUPPORT OF ITS MOTION TO
RECONSIDER THE COURT’S
AUGUST 3, 2022 ORDER GRANTING
IN PART AND DENYING IN PART
AIRBNB’S MOTION FOR A
PROTECTIVE ORDER**

INTRODUCTION

Plaintiff’s proposed 30(b)(6) deposition topics target information that far exceeds the temporal, geographic, and logical scope of the injury she alleged in her complaint—that Airbnb hosts Rhett Riviere and Katherine Thomas secretly recorded her on a single night in May 2019 at a rental property in Aiken, South Carolina. Despite these limited allegations, Plaintiff attempts to justify a vast temporal and limitless geographic scope of discovery based on her view that her injury was foreseeable if Airbnb was aware that any host, at any property—of the millions of properties across the world listed on its online platform daily—had secretly recorded a guest at any point in time. However, the very precedent on which she relies restricts the foreseeability analysis both temporally and geographically—*i.e.*, to the subject property and, at most, its immediate surroundings. Airbnb’s proposed topics abide by these limitations and, in many cases, go further than the caselaw requires (for example, offering to provide information from all of Aiken County). By contrast, no law supports Plaintiff’s unbounded topics.

Plaintiff’s Response also acknowledges that many of her topics explicitly target information that has no relevance to her claims. For example, she does not dispute that Riviere

and Thomas were never reinstated after Airbnb removed them from its platform after the alleged incident, nor that an Airbnb insurance program that was introduced years after her alleged injury (AirCover) had nothing to do with the facts of her case. Yet she claims that Airbnb must provide a witness to testify about its host reinstatement policies and AirCover because those topics could be relevant to “any host”—despite the fact that they are not relevant to these hosts or their properties. (Response at 16.) Many of her other topics target similarly irrelevant information or are so overbroad that they reach large amounts of information that have no connection to her claims.

For these reasons, and for the reasons discussed in more detail below, Airbnb respectfully requests that the Court adopt Airbnb’s proposed deposition topics.

ARGUMENT

I. Plaintiff’s Procedural Arguments Should Be Rejected.

On August 4, 2022, the Court invited Airbnb to file a motion for reconsideration and set a supplemental briefing schedule for the parties. Plaintiff’s argument that Airbnb has improperly made “new” arguments in its reconsideration briefing is wrong. *See* Response at 5-6. Airbnb has always maintained that Plaintiff’s topics are unduly burdensome and cover irrelevant matter. *See* Memo. in Support of Mot. for Protective Order at 2, 5-10 (noting that “[e]ach of Plaintiff’s Topics is overbroad and imposes undue burden and expense upon Airbnb,” and objecting to the geographic and temporal scope of Plaintiff’s topics). What Plaintiff claims are “new” *arguments* are actually new *proposals*—in which Airbnb has scaled back its initial objections in an attempt to compromise with Plaintiff and offer the Court a middle ground. They are not new objections or arguments.

Plaintiff’s argument that Airbnb does not meet the legal standard for a protective order is also wrong. Airbnb has already explained the specific and particularized harms that would result

if Plaintiff is permitted to proceed under the current topics, providing in detail why each individual topic is overbroad or irrelevant. In short, no procedural barrier prevents this Court from reconsidering any of Plaintiff's 24 30(b)(6) deposition topics.

II. Plaintiff Fails to Rebut Airbnb's Objections.¹

A. The Geographic and Temporal Scope of the Topics Must Be Limited.

Geographic Scope. A year of discovery has failed to produce any evidence that Airbnb had any knowledge of, or any reason to know, that Riviere was likely to secretly record anyone at any of his three Aiken properties, or that Airbnb had any reason to be aware of the purportedly "common knowledge"—*in Aiken*—that "Riviere was a 'Peeping Tom.'" Response at 3. Plaintiff nevertheless argues that a limitless geographic scope is appropriate for many of her topics because, in her view, foreseeability extends to whether Airbnb could foresee that *any* host at *any* property across the globe could surreptitiously record a guest. *See, e.g.*, Topics 2, 7, 9, 11, 14-23. Her request for a fishing expedition is refuted by the very caselaw she cites.

In support of her argument, Plaintiff points to the fact that the Court denied Airbnb's motion to dismiss a year ago, and she quotes from the final order signed by the Court in December 2021. Response at 3 (quoting Order Denying MTD (Dec. 30, 2021) ("MTD Order") at 4); Form 4 Order (Sept. 16, 2021). But reciting a year-old ruling that Plaintiff met bare-minimum *pleading* requirements is unresponsive to Airbnb's assertions about what the past year of discovery has actually shown. Moreover, the MTD Order does not support her position.

Plaintiff relies on the MTD Order's citation to *Easterling v. Burger King Corp.*, for the proposition that "the focus is not on whether the defendant knew or should have known the

¹ Airbnb provided specific objections and proposals to each of the contested topics in its supplemental briefing, *see* Supp. Memo. (Sept. 2, 2022) at 8-27, and therefore does not repeat each of those objections and proposals here.

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.’” MTD Order at 4 (quoting 416 S.C. 437, 448 n.2 (Ct. App. 2016)). *Easterling* concerns only *premises liability*, which imposes on the property owner—or someone who, at minimum, controls the property—a duty to protect invitees from foreseeable injuries.² See *Easterling*, 416 S.C. at 446 (collecting cases and relying on *Bass v. Gopal, Inc.*, 395 S.C. 129 (2011)); *Bass*, 395 S.C. at 142 (“[W]e adopt the balancing approach to determining foreseeability in the context of whether a business owner has a duty to protect its invitees from criminal acts of third parties.”) (emphases added); *Fagnant v. Johnson*, No. 4:11-CV-00302-RBH, 2013 WL 3354580, at *7 (D.S.C. July 3, 2013) (*Bass v. Gopal* balancing test only applies to incident that occurred in a parking lot outside Kmart if “Kmart asserted control over the parking lot”) (emphasis added).

These cases militate against the expansive geographic discovery Plaintiff seeks because they analyze foreseeability of an injury by looking only to the subject property and its immediate surroundings (including at any prior incidents that may have occurred on the property). *E.g.*, *Easterling*, 416 S.C. at 448-49 (analyzing whether restaurant had “notice of prior criminal incidents *on its premises*” at that “*particular location*”) (emphases added); *id.* at 451 (rejecting evidence about a “string of armed robberies *in the area*” that were “not on [the restaurant’s] premises”) (emphasis added); *cf. Beach v. Costco Wholesale Corp.*, No. 5:18-CV-00092, 2019 WL 1495296, at *3 (W.D. Va. Apr. 4, 2019) (narrowing deposition topic for policies, practices, and procedures concerning Costco’s premises as a whole to just those policies that apply to the

² Because Airbnb does not own or control any property listed on its website, premises liability principles cannot establish that Airbnb owed any duty to Plaintiff, let alone whether the events giving rise to her complaint were foreseeable.

Costco parking lot where the injury allegedly occurred). They provide no basis for expanding the scope beyond that.

The MTD Order is also consistent with imposing geographic limitations because it makes no mention of any allegations about other hidden camera recordings beyond the one incident at issue in this case. The Court ruled that Plaintiff had sufficiently alleged foreseeability because she alleged that “Defendants” (as an unspecified group) leased properties, Compl. ¶ 36, and that “Airbnb conducted no background investigation of the Defendants Riviere and Thomas” and did not “engage in any reasonable evaluation of *these hosts* or the property,” *id.* ¶ 40 (emphasis added). *See* MTD Order at 4 (citing Compl. ¶¶ 36, 40). Notwithstanding that those allegations have since been disproved in discovery, Plaintiff cannot reasonably rely on the MTD Order as a basis to broaden the geographic expanse of discovery when the MTD Order itself did not extend beyond the subject property. *Id.*

Airbnb’s originally proposed topics were reasonably limited to the property where the incident occurred. Nevertheless, in its revised proposal, Airbnb offered to go beyond the scope of premises liability law to include (i) any of Thomas’s listed properties and (ii) listings (by any host) anywhere in Aiken County. *See* Topics 16, 18, 19, 23. There is no viable basis in law or fact for including an even wider geography within these topics.

Temporal Scope. Plaintiff also fails to defend the overbroad temporal scope of her topics. *See* Topics 1-3, 5-9, 11-12, 14-19, 21-24. For most of the topics, she provides no reason why she needs to depose Airbnb’s designee about information from over six years before the May 2019 incident in question. Of the two occasions she attempts to make an argument, one argument was conclusory, *see* Response at 14 (Topic 7) (arguing only that Airbnb’s proposed timeframe would “improperly limit relevant information”), and the other unpersuasive, *see id.* at 25 (Topic 19)

(arguing the timeframe (December 2013 to the present) is “relevant to whether the crime was foreseeable to Airbnb”). In all instances, the law is against her. *See Easterling*, 416 S.C. at 450 (evidence of armed robbery occurring four years before the incident—even occurring on the premises—cannot establish foreseeability). Further, she makes no effort under *any* topic to explain why information about unrelated hidden camera incidents *after* the alleged incident in May 2019 (occurring anywhere on the planet) could possibly go to the foreseeability of the incident here.

B. Plaintiff Acknowledges That Her Topics Encompass “Outlandish” Examples.

Plaintiff calls “outlandish” or “absurd” some of Airbnb’s examples of questions that are plainly within the literal bounds of her own requests. *See* Topics 2, 6, 21. Plaintiff’s arguments prove Airbnb’s point: the topics lack “reasonable particularity” and should be narrowed. For example, under Topic 6, which demands “[a]ll facts and information upon which AIRBNB, through approved background check providers, checks databases of public state and county criminal records . . . , including specific detail regarding how AIRBNB processes findings from these third-party checks,” Airbnb correctly noted that, as written, the topic could include information as broad as how Airbnb processes background checks for a “host in Louisiana [who] got a DUI or other vehicle violations.” Plaintiff calls this assertion “outlandish” without further analysis or explanation. Response at 13. But how Airbnb may “process[]” that record (or any other record that has nothing to do with the voyeurism alleged here) and could “cause[] a host to be rejected” from Airbnb falls squarely within the literal bounds of Topics 6 and 7. This is especially true given Plaintiff’s position that “[h]ow Airbnb applies its policies”—without limitation—is “clearly relevant.” *Id.* at 14. She cannot have it both ways.

In preparing its witness, Airbnb can reference only the topics themselves. It cannot simply hope that Plaintiff will interpret the noticed topics to exclude “absurd” examples—when those topics plainly permit large swaths of irrelevant information. Given that Plaintiff implicitly agrees

that her topics reach “outlandish” examples, the Court should adopt Airbnb’s proposals, which offer clear alternatives that fit the needs of this case.

C. Plaintiff Repeatedly Requests, Without Justification, “All” Information or Documents.

Plaintiff also tries to defend her requests to depose Airbnb’s designee about “all” information or documents on many of her topics. *See, e.g.*, Topics 1, 2, 5-6, 8-11, 15, 18, 21. But the sole authority she provides, *Burrow v. Forjas Taurus, S.A.*, is inapposite. *See* Response at 12, 14, 15, 17, 23, 28. In *Burrow*, a district court in Florida held that it was “standard” in *products liability* cases for “requests to include the phrases ‘any and all documents relating to’ when the subject matter is on design, manufacturing, safety manuals, etc.” 2017 WL 2620067, at *6 (S.D. Fla. June 16, 2017). The court explicitly relied on the products liability cause of action for its reasoning, distinguishing a trademark case that held the opposite with respect to similarly overbroad language. *Id.* That reasoning in no way supports Plaintiff’s position here.

On the contrary, requests for “all” documents or information over the course of multiple years have been rejected as “overly broad and not proportional to the needs of the case,” given that “the burden outweighs the likely benefit of this information.” *Zahariev v. Hartford Life & Accident Ins. Co.*, No. 9:20-CV-1072-RMG-MHC, 2020 WL 12783951, at *6 (D.S.C. Aug. 11, 2020) (rejecting request for “‘all’ documents, invoices, and agreements over a four-year period”); *see also Palmer v. Standard Fire Ins. Co.*, No. 3:14-CV-4713-TLW, 2016 WL 7839135, at *3 (D.S.C. Apr. 12, 2016) (limiting discovery requests to company procedures “related to *this* claim” because procedures related to other claims were “neither relevant nor proportional to the needs of this case”). The Court should follow suit here.

D. Plaintiff's Arguments for Irrelevant Discovery Are Unsuccessful.

Plaintiff also tries to defend topics that seek irrelevant information by pointing only to hypothetical—and counterfactual—scenarios in which that information might be relevant.

For example, Topics 9 and 11 demand information about removal, appeals of removal, and reinstatements of Airbnb hosts. Plaintiff acknowledges that she has not alleged that Thomas or Riviere ever appealed their terminations from the Airbnb platform after Riviere's crime was discovered, nor does she allege that they were ever reinstated. Yet she still argues that, "even without such a specific allegation, *if any host were ever reinstated* after removal and how Airbnb handles reinstatement and appeals *would be relevant* to Ms. Foster's claims that Airbnb did not vet its hosts properly." Response at 16-17 (Topics 9, 11) (emphasis added). In other words, she argues that if things that *did not happen* in this case *had* happened, then such information could be relevant. Discovery is not a vehicle to search for information that has nothing to do with the facts and claims at issue.

Similarly, in Topic 10, Plaintiff seeks volumes of information about an insurance program called AirCover, even though Airbnb released AirCover years *after* the alleged incident and has nothing to do with these parties, this property, or this incident. She argues that AirCover is relevant because "it is included for free with every booking and is advertised as an initiative to keep guests safe, which goes directly to the facts of this case and establishing negligence and that Airbnb failed to keep a guest safe." Response at 16. But a program that did not exist at the time of the incident in question and does not apply to any of the parties is simply not relevant. Any relevance an insurance program could possibly have to the safety of some other unspecified "guest" having nothing to do with these hosts or this listing does not make it relevant here.

Under Topic 12, Plaintiff unpersuasively argues that Airbnb's compliance with local real estate laws is relevant, even though she does not dispute that such compliance is each *host's*—not

Airbnb’s—responsibility. In support of this position, she asserts that, according to Airbnb’s website, Airbnb may suspend or remove hosts who fail to satisfy their responsibilities with respect to “Business Licensing *for Experiences*.” Response at 18 (emphasis added). But Airbnb “Experiences” are an entirely different type of offering listed on Airbnb’s website that do not involve real estate in any capacity.³ And there is no allegation that the incident at issue in this case was an Experience, or that Thomas or Riviere offered Experiences.

And with respect to Topic 14, Plaintiff unsuccessfully argues that Airbnb’s manuals and standards related to “sexual predators” are relevant because “[v]oyeurism is a sexual offense in South Carolina.” Response at 20. But the topic requests both information about “hidden cameras” (the alleged misconduct here) *and* information about sexual predators and so the additional language is unnecessary. Such information regarding hidden cameras is relevant, but Plaintiff does not address why she is entitled to discovery about *other* types of sexual offenses that have never been alleged in this case.

E. Plaintiff Cannot Support Her Remaining Arguments.

In addition to the foregoing categories, Plaintiff makes a number of other topic-specific arguments she cannot support.

- **Topic 17:** Plaintiff objects to any limitation of this topic (which demands policies regarding “the use of videocameras”) to policies applicable in South Carolina as “mak[ing] little sense,” and she questions whether “Airbnb [has] different policies for the use of surveillance devices depending on the city.” Response at 22. Indeed, Airbnb does have

³ Airbnb Experiences are in-person or online *activities* hosted by inspiring local experts. See *An Introduction to Airbnb Experiences*, <https://www.airbnb.com/help/article/1581/an-introduction-to-airbnb-experiences> (last visited Sept. 11, 2022).

different policies in certain geographic regions,⁴ and only the policies that apply to South Carolina properties could possibly be relevant here. Moreover, under Airbnb’s Terms of Service, it is the host’s responsibility—not Airbnb’s—to comply with local laws (*see* Ex. A § 2.2), including those regarding videocameras, which can vary across jurisdictions. Airbnb’s reasonable geographic limitation eliminates any need to prepare a witness on irrelevant policies.

- **Topic 19:** The sole case Plaintiff cites in support of her argument for geographically limitless discovery about other hidden-camera lawsuits provides no basis for her expansive request. *See* Response at 25. In *Crosby v. Brock & Scott, PLLC*, a district court in Georgia permitted discovery about previous litigation because the federal statute at issue (the Fair Credit Reporting Act) specifically authorizes consideration of the “frequency and persistence of noncompliance” with the statute. 2019 WL 96309, at *3 n.2 (M.D. Ga. Jan. 3, 2019) (citing 15 U.S.C. § 1692k(b)(1)). That is not true of Plaintiff’s claims here. Airbnb’s offer to provide information about lawsuits filed against Airbnb for alleged hidden-camera incidents in Aiken County, South Carolina is more than sufficient under the law. *See also* Topic 18 (same for “reports and complaints” of alleged hidden-camera incidents in Aiken County). Plaintiff is not entitled to more.
- **Topic 20:** Plaintiff’s request for discovery about Airbnb settlements related to alleged hidden-camera incidents occurring anywhere in the world at any point in time fails for the same reasons discussed *supra* at 3-6: the precedent on which she relies limits the temporal and geographic scope of prior incidents that can be considered. There is no basis for

⁴ *See, e.g., Cameras and Recording Devices in Mainland China*, <https://www.airbnb.com/help/article/2723/cameras-and-recording-devices-in-mainland-china> (last visited Sept. 11, 2022).

discovery of information beyond the property at issue or, at most, Aiken County. Further, Plaintiff acknowledges she is not entitled to confidential or privileged information. Response at 26.

- **Topic 22:** Plaintiff's response does not address the limitless scope of her request for identification of every single Airbnb employee "involved in" the "vetting" of every single host in South Carolina across nearly nine years. The request ignores what Airbnb has made clear to Plaintiff in discovery: Airbnb's background checks do not require employee involvement when, as happened here, no prior criminal offenses are detected. Plaintiff does not explain why she can force Airbnb to prepare a witness to learn the identity of or information about any employee that could be tangentially "involved" in processes that had no bearing on the alleged injury here. For example, information about employees who reviewed the background checks only of individuals *other than Riviere and Thomas* falls within Plaintiff's topic but has nothing to do with this case.
- **Topic 24:** Plaintiff argues that she must be allowed to depose Airbnb's designee to the full extent of Airbnb's assets and liabilities. Response at 30-31. For this proposition, she cites to another case that does not support her. In *Bauer v. Wyndham Vacation Resorts, Inc.*, the district court in Tennessee permitted a 30(b)(6) deposition about a defendant's "net worth and general financial circumstances." 2021 WL 2472899, at *2, 8 (E.D. Tenn. Mar. 18, 2021). That would be far less burdensome than requiring Airbnb's deponent here to discuss every "asset" and "liability" of the company over an unlimited time frame. *Bauer* therefore does not control here.

F. Airbnb Has No Issue Testifying About Discovery Already Produced.

Plaintiff argues that Airbnb is attempting to limit her ability to depose Airbnb's designee about the documents Airbnb has already produced. See Topics 2, 4, 6, 15. Not so. Airbnb agrees

that its designee *can* discuss the relevant records and documents it has produced; it has never suggested otherwise.

III. The Court Should Order a Single 30(b)(6) Deposition Within 30 Days of Its Order.

Plaintiff requests that the Court order Airbnb to prepare and designate its witnesses for the Rule 30(b)(6) deposition before October 1, 2022. Response at 32. Even if the Court rules on this matter immediately, Plaintiff's requested deadline does not provide sufficient time: Airbnb's counsel and 30(b)(6) designee will need to schedule travel to Aiken, and Airbnb will need to prepare its designee based on the topics the Court ultimately authorizes. Airbnb therefore requests that the Court provide 30 days from the date of its order on this motion so that Airbnb can prepare its witness and schedule travel.

Airbnb also requests that the Court permit only one 30(b)(6) deposition. On September 2, 2022—while this motion was pending—Plaintiff filed a motion for leave to amend her complaint. Plaintiff did not mention her proposed amendment in her September 9 response, presumably because the 30(b)(6) topics under dispute already encompass the proposed additional allegations. Inconsistent with her Rule 11, SCRPC obligations, Plaintiff never conferred with Airbnb before seeking leave to file this proposed amended complaint.⁵ The proposed amendment does not identify any new claims or allegations that the currently disputed topics do not cover. Airbnb therefore wishes to preclude any attempt to seek a second 30(b)(6) deposition based on this proposed amended complaint, if Plaintiff is permitted to file it. There is no basis to force the witness to fly across the country to Aiken a second time.

⁵ Plaintiff previously shared a different proposed amended complaint with Airbnb—not the one she filed as an exhibit to her Motion to Amend.

CONCLUSION

The topics of Plaintiff's current Rule 30(b)(6) deposition notice are overly broad and unduly burdensome. The Court should grant Airbnb's motion for reconsideration and adopt Airbnb's proposed topics instead.

Dated this 14th day of September, 2022.

Respectfully submitted
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Attorney for Defendant Airbnb, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Supplemental Reply in Support of Airbnb's Motion to Reconsider the Court's August 3, 2022 Order Granting in Part and Denying in Part Airbnb's Motion for a Protective Order has been served by electronic filing on the 14th day of September, 2022 to the following:

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EXHIBIT A



Terms of Service

Updated Terms of Service

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

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

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

Terms of Service

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

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

Last Updated: January 21, 2019

Thank you for using Airbnb!

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

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

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

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

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

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

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

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

Table of Contents

1. Scope of Airbnb Services
2. Eligibility, Using the Airbnb Platform, Member Verification
3. Modification of these Terms
4. Account Registration
5. Content
6. Service Fees
7. Terms specific for Hosts
8. Terms specific for Guests
9. Booking Modifications, Cancellations and Refunds, Resolution Center
10. Ratings and Reviews
11. Damage to Accommodations, Disputes between Members
12. Rounding off, Currency conversion
13. Taxes
14. Prohibited Activities
15. Term and Termination, Suspension and other Measures
16. Disclaimers
17. Liability
18. Indemnification
19. Dispute Resolution
20. Feedback
21. Applicable Law and Jurisdiction
22. General Provisions

1. Scope of Airbnb Services

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

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

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

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

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

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

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

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

2. Eligibility, Using the Airbnb Platform, Member Verification

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

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

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

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

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

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

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

3. Modification of these Terms

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

4. Account Registration

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

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

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

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

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

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

5. Content

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

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

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

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

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

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

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

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

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

6. Service Fees

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

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

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

7. Terms specific for Hosts

7.1 Terms applicable to all Listings

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

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

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

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

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

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

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

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

7.2 Listing Accommodations

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

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

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

7.3 Listing Experiences, Events and other Host Services

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

7.4 Co-Hosts

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

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

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

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

8. Terms specific for Guests

8.1 Terms applicable to all bookings

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

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

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

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

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

8.2 Booking Accommodations

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

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

8.3 Booking Experiences, Events and other Host Services

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

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

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

8.4 Airbnb Travel Credits

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

9. Booking Modifications, Cancellations and Refunds, Resolution Center

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

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

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

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

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

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

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

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

10. Ratings and Reviews

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

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

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

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

11. Damage to Accommodations, Disputes between Members

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

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

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

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

12. Rounding off

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

13. Taxes

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

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

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

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

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

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

14. Prohibited Activities

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

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

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

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

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

15. Term and Termination, Suspension and other Measures

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

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

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

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

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

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

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

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

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

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

16. Disclaimers

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

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

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

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

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

17. Liability

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

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

18. Indemnification

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

19. Dispute Resolution and Arbitration Agreement

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20. Feedback

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

21. Applicable Law and Jurisdiction

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

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

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

22. General Provisions

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

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

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

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

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

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

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

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

Terms of Service for European Users

Download version

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

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

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

Last Updated: January 21, 2019

Thank you for using Airbnb!

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

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

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

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

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

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

Table of Contents

1. Scope of Airbnb Services
2. Eligibility, Using the Airbnb Platform, Member Verification
3. Modification of these Terms
4. Account Registration
5. Content
6. Service Fees
7. Terms specific for Hosts
8. Terms specific for Guests
9. Booking Modifications, Cancellations and Refunds, Resolution Center
10. Ratings and Reviews
11. Damage to Accommodations, Disputes between Members

12. Rounding off, Currency conversion
13. Taxes
14. Prohibited Activities
15. Term and Termination, Suspension and other Measures
16. Disclaimers
17. Liability
18. Indemnification
19. Dispute Resolution
20. Feedback
21. Applicable Law and Jurisdiction
22. General Provisions

1. Scope of Airbnb Services

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

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

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

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

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

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

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

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

2. Eligibility, Using the Airbnb Platform, Member Verification

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

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

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

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

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

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

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

3. Modification of these Terms

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

4. Account Registration

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

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

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

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

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

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

5. Content

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

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

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

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

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

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

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

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

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

6. Service Fees

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

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

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

7. Terms specific for Hosts

7.1 Terms applicable to all Listings

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

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

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

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

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

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

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

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

7.2 Listing Accommodations

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

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

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

7.3 Listing Experiences, Events and other Host Services

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

7.4 Co-Hosts

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

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

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

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

8. Terms specific for Guests

8.1 Terms applicable to all bookings

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

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

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

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

8.2 Booking Accommodations

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

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

8.3 Booking Experiences, Events and other Host Services

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

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

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

8.4 Airbnb Travel Credits

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

9. Booking Modifications, Cancellations and Refunds, Resolution Center

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

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

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

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

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

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

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

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

10. Ratings and Reviews

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

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

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

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

11. Damage to Accommodations, Disputes between Members

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

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

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

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

12. Rounding off

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

13. Taxes

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

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

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

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

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

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

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

14. Prohibited Activities

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

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

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

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

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

15. Term and Termination, Suspension and other Measures

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

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

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

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

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

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

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

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

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

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

16. Disclaimers

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17. Liability

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

18. Indemnification

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

19. Dispute Resolution and Arbitration Agreement

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20. Feedback

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

21. Applicable Law and Jurisdiction

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

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

22. General Provisions

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

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

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

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

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

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

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

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

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
2ND JUDICIAL CIRCUIT

JULIANNE FOSTER,
Plaintiff,

v.

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

Defendants.

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

**PLAINTIFF'S MOTION TO AMEND
COMPLAINT**

NOW COMES the plaintiff, Julianne Foster (herein after “Ms. Foster”), by and through her undersigned attorneys, and hereby files a motion pursuant to Rule 15 of the South Carolina Rules of Civil Procedure to amend her Complaint to allow her to add allegations and claims against Defendants. The Plaintiff’s proposed Amended Complaint is attached hereto as Exhibit A.

Rule 15(a), SCRPC, provides that “a party may amend his pleading only by leave of court or by written consent of the adverse party; . . . leave shall be freely given when justice so requires and does not prejudice any other party.” Rule 15(a), SCRPC. Rule 15 strongly favors amendments and the court is encouraged to freely grant leave to amend. *Jarrell v. Seaboard Sys. R.R.*, 294 S.C. 183, 363 S.E.2d 398 (Ct. App. 1987). Leave to amend pleadings pursuant to Rule 15 shall be liberally and freely given when justice so requires and does not prejudice any other party. *Crestwood Golf Club, Inc. v. Potter*, 328 S.C. 201, 493 S.E.2d 826 (1997). Leave to amend is often granted immediately preceding, and even during, trial. *See Parker*, 262 S.C. at 287, 607 S.E.2d at 717. “The prejudice Rule 15 envisions is a lack of notice that the new issue is going to be tried,

and a lack of opportunity to refute it.” *Pool v. Pool*, 329 S.C. 324, 328-29, 494 S.E.2d 820, 823 (1998). The party opposing the amendment has the burden of establishing prejudice. *Foggie v. CSX Transp., Inc.*, 315 S.C. 17, 431 S.E.2d 587 (1993).

In the original complaint filed on April 28, 2021, Ms. Foster alleged that the defendant had surreptitiously recorded her using a secret hidden camera. Ms. Foster seeks to add news allegations and claims arising out of this incident. This motion is made in good faith and not for the purpose of delay. The prejudice Rule 15 envisions is a lack of notice that the new issue is going to be tried, and a lack of opportunity to refute it. *Pool*, 329 S.C. at 328-29, 494 S.E.2d at 823. Because this case is still in the discovery phase, Defendants cannot show any prejudice due to a lack of opportunity to refute the claims raised in the proposed Amended Complaint. Furthermore, the applicable statute of limitations for the claims has not expired. Because there is no evidence of bad faith or prejudice, Ms. Foster respectfully requests that the Court grant her leave to file the proposed amended complaint.

Defendants were consulted regarding this motion and did not affirmatively respond as to whether they consented or objected to the motion to amend.

Respectfully Submitted,

Deborah B. Barbier, S.C. Bar No. 6920
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s/Wes Few/
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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.: 2020-CP-02-00889 |
| |) | |
| PLAINTIFF, |) | |
| v. |) | [PROPOSED] AMENDED SUMMONS |
| |) | (Jury Trial Requested) |
| |) | |
| 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.

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

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ATTORNEYS FOR PLAINTIFF

September 2, 2022
Greenville, South Carolina

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|--------------------------------|---|-------------------------------------|
| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF AIKEN |) | |
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| JULIANNE FOSTER |) | |
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| |) | C/A No.: 2020-CP-02-00889 |
| PLAINTIFF, |) | |
| v. |) | [PROPOSED] 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 Sherriff'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 SCR 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://rolfshenry.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 polices.

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 polices.

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' 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.

PRAAYER 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,

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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
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.

**AIRBNB, INC.’S OBJECTION TO
PLAINTIFF’S MOTION TO AMEND
HER COMPLAINT**

(Hearing Requested)

NOW COMES the Defendant Airbnb, Inc. (“Airbnb”) and hereby opposes the Plaintiff’s Motion to Amend her Complaint and requests a hearing thereon. Although Rule 15, SCRPC provides that leave should be freely granted when justice requires it, it is within the Court’s discretion “to deny a motion to amend if the party opposing the amendment can show a valid reason for denying the motion.” *Skydive Myrtle Beach, Inc. v. Horry Cnty.*, 426 S.C. 175, 182, 826 S.E.2d 585, 588 (2019); *see also Forrester v. Smith & Steele Builders, Inc.*, 295 S.C. 504, 507, 369 S.E.2d 156, 158 (Ct. App. 1988) (the Court may deny leave to amend where there is bad faith, undue delay, or prejudice); *Patton v. Miller*, 420 S.C. 471, 490, 804 S.E.2d 252, 262 (2017) (Court may deny leave to amend where there is “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.”) (quoting *Foman v. Davis*, 371 U.S. 178, 182, 83 S.Ct. 227, 230, 9 L.Ed.2d 222, 226 (1962)). Here, there is ample reason to deny Plaintiff’s motion.

First, the proposed amended complaint relies solely on facts concerning Airbnb that were known to Plaintiff before she filed the original complaint on April 28, 2021. There is no valid

justification for her undue delay in asserting those allegations, which have been known to her for a year and a half. Next, Plaintiff's proposed amended complaint fails to state a cause of action against Airbnb. The uncontroverted evidence here shows that Airbnb had zero notice of Defendant Rhett Riviere's (or Defendant Katherine Thomas's) alleged criminal history. Airbnb had no knowledge that Riviere illegally filmed anyone and Airbnb quickly banned Riviere and Thomas from the platform upon learning of the crimes. Plaintiff's Motion to Amend attaching her new proposed complaint was filed only after the Court ordered the parties to submit briefing so that the Court could reconsider its August 3, 2022 Order granting Plaintiff overbroad 30(b)(6) deposition discovery. Plaintiff never conferred with Airbnb before seeking leave to file this proposed amended complaint. Plaintiff previously shared only a completely different proposed amended complaint with Airbnb—not the one she filed as an exhibit to her Motion to Amend.

For these reasons, and for those that may be stated in a supplemental memorandum and at a hearing on this matter, Airbnb respectfully requests that this Court deny plaintiff's motion to amend her complaint.

Dated this 13th day of September, 2022.

Respectfully submitted,

/s/ Beattie B. Ashmore
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STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT
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JULIANNE FOSTER,

Plaintiff,

v.

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

Defendants.

**DEFENDANT AIRBNB, INC.’S
MEMORANDUM OF LAW IN
OPPOSITION TO PLAINTIFF’S
MOTION TO AMEND COMPLAINT**

INTRODUCTION

It has been 18 months since Plaintiff filed her initial Complaint. A year of discovery has not uncovered any evidence supporting Plaintiff’s claims for relief against Airbnb, Inc.—which Plaintiff concedes merely provides an online platform on which millions of users (rather than Airbnb itself) list and reserve properties worldwide.¹ The harm alleged in this case, surreptitiously videorecording Plaintiff during her one-night stay at the property in Aiken in May 2019, was caused by Thomas Riviere and Katherine Thomas—and them alone, according to Plaintiff. And Plaintiff has not learned anything in the year of discovery that would prompt or even support the new claims she now seeks to add against Airbnb.

The Court should deny Plaintiff’s motion because each of her new claims could have been brought when she first filed suit. Discovery did not prompt any of her new claims; on the contrary,

¹ Contrary to Plaintiff’s assertion in her motion, Mot. at 2, Plaintiff did *not* previously share with Airbnb the proposed amended complaint attached as Exhibit A to her motion. Plaintiff had previously shared a *different* proposed amended complaint with Airbnb.

her new claims are *refuted* by the evidence. Plaintiff's choice not to bring these claims until now does not justify her 18-month delay in asserting them.

The motion should also be denied because the delay in asserting these claims will prejudice Airbnb. The parties have already engaged in extensive discovery, and six witnesses have been deposed. Airbnb will be prejudiced to the extent the parties need to re-depose the same witnesses to target the new claims, which could have been asserted from the start. Further, the deposition of Airbnb's 30(b)(6) designee will take place by November 30, 2022. Any attempt by Plaintiff to circumvent the Court's recent ruling on the 30(b)(6) deposition topics—which were authorized after multiple rounds of briefing by the parties—by noticing a second 30(b)(6) deposition with topics that exceed the scope authorized by the Court would unduly prejudice Airbnb.

For these reasons, Airbnb respectfully requests that the Court deny Plaintiff's motion to amend her complaint. If the Court permits amendment, Airbnb requests that the Court order that (1) Plaintiff may depose Airbnb's 30(b)(6) designee only once and should not be permitted to reopen the issue of these deposition topics in light of her new claims, and (2) Airbnb may file its answer within 15 days after any denial of a motion to dismiss the amended complaint that Airbnb may file.

STATEMENT OF FACTS

Plaintiff filed her initial complaint in April 2021. In this complaint, she alleged that Rhett Riviere and Katherine Thomas, who listed properties on Airbnb's platform, secretly recorded her in May 2019 while she was staying at the subject property in Aiken, South Carolina. Compl. ¶¶ 12, 16, 27-29. Plaintiff claimed that Airbnb was liable based on theories of negligence and negligence per se. *Id.* ¶¶ 35-44, 71-83.

Since then, the parties have engaged in discovery for over a year. Plaintiff has deposed six

witnesses and Airbnb has produced more than 1,300 pages of discovery. None of this discovery has produced any evidence to support her original claims (or the new claims that she seeks to assert in an amended complaint). The evidence has instead shown that Airbnb had no knowledge of Thomas or Riviere’s alleged lurid pasts, that Airbnb conducted background checks on both Thomas and Riviere but no red flags regarding criminal behavior were uncovered for either, and that Airbnb does not control the conduct of hosts or the properties themselves.

On September 2, 2022, while the parties were briefing the scope of Airbnb’s 30(b)(6) deposition topics, Plaintiff filed the instant motion to amend her complaint. The proposed amended complaint reasserts the same original causes of action (with additional allegations) and adds six new causes of action (based on five new theories of liability) against Airbnb—based on the exact same incident alleged in the initial complaint. *See* Mot. Ex. A (“FAC”). Airbnb opposes this amendment.

LEGAL STANDARD

Although Rule 15, SCRCP, provides that leave to amend should be freely granted when justice requires it, the Court has “discretion to deny a motion to amend if the party opposing the amendment can show a valid reason for denying the motion.” *Skydive Myrtle Beach, Inc. v. Horry Cnty.*, 426 S.C. 175, 182 (2019). Such reasons may include prejudice and undue delay. *Forrester v. Smith & Steele Builders, Inc.*, 295 S.C. 504, 507 (Ct. App. 1988); *Patton v. Miller*, 420 S.C. 471, 490 (2017).

ARGUMENT

I. Plaintiff’s Motion to Amend Her Complaint Should Be Denied for Undue Delay.

Plaintiff’s proposed amendment brings no new allegations or claims against Airbnb that she could not have included in her original complaint, which she filed almost 1.5 years ago.

Discovery has not yielded any new evidence on which these new claims are based. This undue delay warrants denial of her motion to amend. *See Health Promotion Specialists, LLC v. S.C. Bd. of Dentistry*, 403 S.C. 623, 632 (2013) (affirming trial court’s denial of motion to amend complaint after long delay where “there were no significant factual developments that warranted the untimely amendment”); *Reed v. S.C. Nat’l Bank*, 293 S.C. 357, 360 (Ct. App. 1987) (holding that trial judge acted within his discretion to find that plaintiff’s “motion to amend, filed almost a year after commencement of the suit, was unduly late”); *Holland ex rel. Knox v. Morbark, Inc.*, 407 S.C. 227, 235 (Ct. App. 2014) (upholding trial court’s denial of motion to amend where plaintiff had long been in possession of information necessary to bring newly proposed theory of liability).

Negligent Hiring, Supervision, and Retention and Vicarious Liability Claims. Plaintiff seeks to bring these claims based on allegations that Airbnb negligently hired, supervised, and retained Thomas and Riviere by allowing them to act as hosts on Airbnb’s platform despite their alleged voyeuristic tendencies. FAC ¶¶ 156-58, 177-81. Similarly, she claims Airbnb is vicariously liable for Thomas and Riviere’s invasion into Plaintiff’s private affairs because, she asserts, they secretly recorded her during the scope of their purported employment. FAC ¶¶ 203, 207, 209-10.

Plaintiff attempts to plead the requisite employment relationship for these claims in her proposed amended complaint by alleging that Airbnb controls its hosts by requiring them to register through Airbnb’s platform, controlling the content and format of their listings, and requiring hosts to abide by certain policies in order to use its website. *See, e.g.*, FAC ¶¶ 62-69, 141-47. None of these allegations are based on new information previously unavailable to Plaintiff. She has always had access to Airbnb’s Terms of Service, which lays out all host-related rules and policies; it is available to the public online. In fact, Plaintiff had already alleged certain Airbnb policies that govern hosts in her original complaint, including policies about undisclosed recording devices,

Compl. ¶ 21, and that Airbnb hosts are “establish[ed] ... within the Airbnb system,” *id.* ¶ 22.² She therefore could have and should have asserted this theory of liability back in April 2021.

Constructive Fraud. In support of her newly proposed constructive-fraud claim, Plaintiff seeks to allege that Defendants, including Airbnb, failed to disclose recording devices at the Property, and that Plaintiff relied on this omission. FAC ¶¶ 223-28. By the time she filed her lawsuit in April 2021, Plaintiff was certainly aware of the alleged surreptitious recording device; she had accused Airbnb in her initial complaint of failing to inform her that there was a recording device on the property. *See, e.g.*, Compl. ¶ 28. Information about Plaintiff’s alleged reliance on Airbnb’s alleged omission was uniquely in her own possession and could not have been discovered externally during the discovery process. She therefore could have asserted this claim when she filed the original complaint in this action.

Premises Liability. Similarly, the allegations on which Plaintiff’s premises liability claim is based—that she was “invited ... to the Airbnb property for the benefit of Defendants,”³ who she claims “owed [] a duty of care to protect her and keep her safe from unknown or undisclosed hazards while at the property,” FAC ¶¶ 183-84—were known to Plaintiff when she sued Airbnb in April 2021. In fact, all of these allegations are in her initial complaint: that she was a guest of the property, that the property was listed and reserved via Airbnb’s platform, and even that Airbnb was a real estate broker that failed to “protect lessees.” Compl. ¶¶ 16-19, 24-27, 72, 76, 79. Because Plaintiff was cognizant of the alleged bases underlying this theory of liability at the time

² Plaintiff also alleged in the initial complaint that Airbnb failed to properly vet and conduct background checks on hosts like Thomas and Riviere, Compl. ¶¶ 22, 40, which likewise relates to her newly proposed negligent hiring claim.

³ As Plaintiff well knows, there is no “Airbnb property.” *See, e.g.*, FAC ¶ 89. Plaintiff employs this misleading locution despite admitting that Riviere/Thomas and their LLC own and control the property. FAC ¶¶ 18, 20-21, 89-92.

she filed her initial complaint, she should have included this claim there.

South Carolina Unfair Trade Practices Act. Plaintiff bases her SCUTPA claim on (1) purported misrepresentations by Airbnb that the property would be safe and free of hidden recording devices and (2) Airbnb’s purported failure to obtain a real estate broker’s license. FAC ¶¶ 248-50, 254. Plaintiff made nearly identical allegations about misrepresentations in her initial complaint. *See, e.g.*, Compl. ¶ 17 (alleging Plaintiff relied on Airbnb’s “claims” it would provide safe properties), ¶ 20 (alleging Airbnb held itself out as safe), ¶ 21 (alleging Airbnb states its hosts must disclose recording devices to guests). Likewise, the initial complaint alleges that Airbnb failed to obtain a real estate broker’s license as part of Plaintiff’s negligence per se cause of action. *Id.* ¶¶ 72-76. This is all information that was available to her a year and a half ago—similar allegations are found throughout her original complaint.

II. Permitting Plaintiff to Amend Her Complaint Now Would Prejudice Airbnb.

Airbnb has been defending against Plaintiff’s claims for over a year, and the parties have already engaged in extensive discovery. Airbnb has produced more than 1,300 pages of discovery, and six depositions have been taken thus far, with several more to commence in the coming weeks. Permitting Plaintiff to allege five new theories of liability 18 months after she filed suit, with substantial discovery already completed, would unduly prejudice Airbnb. *Patton*, 420 S.C. at 490 (court should “consider[] whether the defendants [are] prejudiced by the amendment”). This is especially true since there is no reason she did not assert or could not have asserted those claims from the outset of this litigation. *See supra* at Section I.

It is almost certain that Plaintiff will attempt to propound new discovery along with the proposed amendment. For example, if Plaintiff is permitted to amend her complaint to add causes of action based on a purported employer-employee relationship with Defendant Thomas, she will

likely attempt to use that as a basis to re-depose Thomas related to her new claims.⁴ This would be a needless duplication of time, resources, and efforts—especially given that Plaintiff could have brought these claims from the start—and would be prejudicial to Airbnb, which may need to seek additional discovery to defend itself against these additional, baseless claims. *Holland*, 407 S.C. at 235 (“Prejudice occurs when the amendment states a new claim or defense that would require the opposing party to introduce additional or different evidence to prevail in the amended action.”).

Amendment would also prejudice Airbnb to the extent Plaintiff will attempt to use it to depose Airbnb’s 30(b)(6) designee a second time based on “new” claims she could have brought 18 months ago. The Court authorized Plaintiff’s requested topics on October 11 after multiple rounds of briefing by the parties. This ruling should have the benefit of finality, and Plaintiff should not be permitted to circumvent the Court’s ruling by attempting to depose Airbnb’s designee *a second time* about new topics or otherwise attempt to depose Airbnb’s designee outside the scope of the authorized topics. Plaintiff moved to amend her complaint while briefing on the 30(b)(6) topics was still pending—in fact, a full week *before* she filed her September 9 brief regarding the scope of the deposition topics—and did not mention her new claims within the 30(b)(6) briefing. Permitting her to depose Airbnb’s designee a second time or on matters outside the scope of her 24 broad topics would unduly prejudice Airbnb.

Further, South Carolina’s Rules of Civil Procedure make clear that the deposition of Airbnb’s designee, like any other witness, “*may only be taken one time ... except by agreement of the parties through their counsel or by order of the court for good cause shown.*” Rule 30(a)(2),

⁴ Defendant Thomas has already been deposed in this case and denied that she was Airbnb’s employee. Plaintiff has also been provided all agreements between Airbnb and Thomas or Riviere—which clearly show that there was no employer-employee relationship. Yet Plaintiff now alleges in the proposed amended complaint—based on no facts whatsoever—that Airbnb was Thomas’s and Riviere’s employer and that Airbnb was vicariously liable for their actions.

SCRCP (emphasis added). Plaintiff's undue delay in seeking to amend her complaint does not constitute good cause. Accordingly, if the Court grants Plaintiff's motion to amend, Airbnb respectfully requests an order permitting Plaintiff to conduct only one 30(b)(6) deposition of Airbnb's designee and prohibiting Plaintiff from reopening disputes about proposed deposition topics once the Court makes its ruling.

III. If Amendment Is Permitted, Airbnb Requests an Order Clarifying Its Deadline to Answer.

If Plaintiff is permitted to amend her complaint, Airbnb intends to file a motion to dismiss under Rule 12. The South Carolina Rules of Civil Procedure appear to be ambiguous regarding whether a defendant who moves to dismiss an *amended* complaint must answer before a motion to dismiss the amended complaint is decided. Of course, a defendant who moves to dismiss an *original* complaint need not answer the complaint before its motion to dismiss is decided. Rule 12(b), SCRCP. In any event, Rule 15(a) permits the Court to set the deadline for any pleading in response to an amended complaint. *See* Rule 15(a), SCRCP (“A party shall plead in response to an amended pleading ... within fifteen days after service of the named amended pleading, ... *unless the court otherwise orders.*” (emphasis added)). Accordingly, Airbnb respectfully requests that—if the Court grants Plaintiff's motion to amend—the Court also confirm that Airbnb need not answer before a ruling on its motion to dismiss. Airbnb requests an order directing Airbnb to file its answer within 15 days of any denial (in whole or in part) of its motion to dismiss the amended complaint.

CONCLUSION

For these reasons, Airbnb respectfully requests that this Court deny Plaintiff's motion to amend her complaint. If the Court is inclined to allow Plaintiff to amend her complaint, however, Airbnb respectfully requests that the Court order that (1) Plaintiff is not permitted to conduct a

second deposition of Airbnb's designee under Rule 30(b)(6) or to depose Airbnb's designee on topics outside those authorized by the Court on October 11, 2022, and (2) Airbnb may file its answer within 15 days after the Court denies any motion to dismiss that Airbnb files, if applicable.

Dated this 13th day of October, 2022.

Respectfully submitted,

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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.

**DEFENDANT AIRBNB, INC.’S
NOTICE OF MOTION AND MOTION
TO QUASH PLAINTIFF’S
SUBPOENA TO DEPOSE RICH
BAER, AND FOR A PROTECTIVE
ORDER**

TO: THE HONORABLE COURT AND ALL COUNSEL OF RECORD

PLEASE TAKE NOTICE that Defendant Airbnb, Inc. (“Airbnb”), by and through its undersigned counsel, moves this Honorable Court, under Rules 26(c) and 45(c) of the South Carolina Rules of Civil Procedure, to quash Plaintiff’s subpoena to depose non-party and Airbnb’s Chief Legal Officer Richard Baer and for a protective order. As explained more fully below, Plaintiff has no basis upon which to depose Mr. Baer.

INTRODUCTION

Four days before Christmas, with no prior warning, Plaintiff noticed Airbnb’s Chief Legal Officer, Rich Baer, for a January 18, 2023 deposition—a date Plaintiff unilaterally chose without input from Airbnb or Mr. Baer,¹ and on which Mr. Baer is unavailable. This was Plaintiff’s very first 30(b)(1) deposition notice to Airbnb. As Chief Legal Officer, Mr. Baer is Airbnb’s most senior in-house attorney and a high-ranking corporate officer. His thoughts, mental impressions, and discussions about Airbnb’s policies and compliance are undoubtedly protected by the attorney

¹ Plaintiff emailed Airbnb’s counsel a subpoena for Mr. Baer’s deposition on January 10, 2023.

client privilege and work product doctrine. Mr. Baer did not join Airbnb until almost five months after the alleged incident. Ex. 1 (*Rich Baer Joins Airbnb as Chief Legal Officer*, Airbnb (September 24, 2019) (announcing that Mr. Baer “will start at Airbnb in early October” of 2019); Ex. 3 (R. Baer Decl. ¶ 3). Plaintiff is aware of Mr. Baer’s role at Airbnb and the privilege that accompanies his duties. She is also aware that Mr. Baer has no personal knowledge of the incident that forms the basis of this lawsuit and no involvement with the facts of the case. Airbnb has made all of this information clear to Plaintiff, yet she still insists on deposing him and refuses to voluntarily withdraw the subpoena. Ex. 2 (Jan. 9, 2023 B. Ashmore Email to D. Barbier). She has further made no attempt to pursue the information she may seek from him via other, less intrusive sources, as the law requires.

The notice came just days after a failed mediation between Plaintiff and Airbnb. The subpoena—Plaintiff’s very first for an individual Airbnb witness—is no more than a tactic designed to harass Airbnb and Mr. Baer. Airbnb is therefore forced to seek Court intervention via the instant motion, which is made pursuant to Rules 26(c) and 45(c) of the South Carolina Rules of Civil Procedure, and this Court’s inherent authority. For all of the reasons herein, the Court should grant Airbnb’s motion and deny Plaintiff’s attempt to depose Airbnb’s counsel.

BACKGROUND

Plaintiff’s claims arise from an incident that occurred during a one-night stay at a property in Aiken owned by defendant Rhett Riviere and managed by his then-girlfriend, defendant Katherine Thomas. FAC ¶ 1, 89-92. Plaintiff’s Amended Complaint alleges that Riviere secretly recorded her during her May 17-18, 2019 stay, which Plaintiff’s friend reserved via Airbnb’s platform. FAC ¶¶ 89, 93, 95, 103-04. Plaintiff brings causes of action against Airbnb for negligence, premises liability, negligence per se based on an alleged violation of a real-estate

licensure statute, fraudulent misrepresentation, negligent hiring and supervision, vicarious liability for invasion of privacy, and under South Carolina's Unfair Trade Practices Act. Airbnb has filed proposed cross-claims against Riviere, the individual with whom liability actually lies, and Thomas, who controlled the property along with Riviere. Airbnb's Motion for Leave to file cross-claims is currently pending.

Rich Baer, Airbnb's Chief Legal Officer, began working at Airbnb in October 2019—approximately five months after Riviere allegedly recorded Plaintiff. Exs. 1 & 3. Plaintiff does not dispute this. Discovery has been ongoing for more than a year-and-a-half. Airbnb has produced more than 1,300 pages of documents and made its Rule 30(b)(6) corporate representative available for a deposition that lasted approximately 10 hours on October 26, 2022. Airbnb has agreed to make her available for another full day on January 25, 2023. Nothing in this 30(b)(6) deposition, the 1,300+ pages of Airbnb discovery, or any other evidence produced by any party in more than a year-and-a-half of discovery, has indicated that Mr. Baer had any involvement with or firsthand knowledge of the alleged incident, the Plaintiff, Riviere, Thomas or the subject property. Ex. 3 (Decl. of R. Baer ¶ 3).

Plaintiff does not dispute that Mr. Baer's role as Airbnb's in-house counsel is to provide legal advice to Airbnb. She has claimed, without support, that Mr. Baer has "many other" non-privileged functions as part of his role at Airbnb. Mr. Baer's role is undeniably a legal one. Ex. 3 (Decl. of R. Baer ¶¶ 1, 3, 4-6). Plaintiff has also claimed that she intends to examine Mr. Baer regarding his knowledge of Airbnb's policies on complying with South Carolina's Real Estate Licensing statute. The Chief Legal Officer's thoughts and mental impressions about the company's policies necessarily invoke the privilege. Furthermore, Plaintiff admitted in her discovery responses that the statute she wants to question Mr. Baer about only applies to

individuals, and not to corporations such as Airbnb. Ex. 4 (Plaintiff's Dec. 28, 2022 Responses to Interrogatory Nos. 19 & 27). In other words, Plaintiff seeks to examine Airbnb's most senior attorney about his views on Airbnb's compliance with a statute she admits does not apply to Airbnb. Finally, Plaintiff has made no attempt to show that the information she seeks from Mr. Baer cannot be obtained from other, less intrusive, sources, nor has she demonstrated that Mr. Baer has evidence that is crucial to Plaintiff's case.

LEGAL STANDARD

“If the discovery process threatens to become abusive or create a particularized harm to a litigant or third party, the trial judge may issue an order ‘to protect a party or person from annoyance, embarrassment, oppression, or undue burden by expense.’” *Hollman v. Woolfson*, 384 S.C. 571, 578, 384 S.C. 571, 578 (2009) (quoting Rule 26(c), SCRCP).

Courts “are particularly apt to issue protective orders where one party seeks to depose another party’s counsel.” *Pure Fishing, Inc. v. Redwing Tackle, Ltd.*, 2012 U.S. Dist. LEXIS 52724, *2 (D.S.C. April 16, 2012) (attached as Ex. 5). Courts are loathe to permit such examinations and do so only in the “limited circumstances”—none of which are applicable here—where the party seeking the deposition has demonstrated that “(1) no other means exist to obtain the information than to depose opposing counsel, (2) the information sought is relevant and nonprivileged; and (3) the information is crucial to the preparation of the case.” *Id. at* *2 (D.S.C. April 16, 2012) (citation omitted).

Plaintiff has the additional burden under the apex doctrine of showing that the deposition of this high-ranking corporate officer should proceed because: (1) he has “unique or special knowledge of the facts at issue and (2) other less burdensome avenues for obtaining the information sought have been exhausted.” *See Cross v. XPO Express, Inc.*, 2017 WL 10544634,

at *1 (D.S.C. May 8, 2017) (citations omitted).

Finally, if the Court declines to apply the apex doctrine,² Plaintiff still must show that deposing Airbnb’s attorney is necessary. “If a [party] requesting a protective order shows a particularized harm which will be caused by allowing the discovery, the opposing party has the burden of showing the information sought is ‘relevant and necessary’ to the case.” *Hollman*, 384 S.C. at 578. Specifically, it is Plaintiff’s burden under South Carolina law to “demonstrate with specificity exactly how the lack of information will impair the presentation of the case on the merits to the point that an unjust result is a real, rather than a merely possible, threat.” *Id.*

ARGUMENT

Mr. Baer is Airbnb’s Chief Legal Officer (“CLO”); he reports directly to Airbnb’s CEO. Ex. 3 (Decl. of R. Baer ¶ 4). As CLO, Mr. Baer supervises the Legal and Ethics function for Airbnb—a global, public corporation that employs more than 6,000 people worldwide. *See id.* ¶ 5. In addition to supervising Airbnb’s entire legal function, Mr. Baer is responsible for all legal affairs of the corporation. *See id.* There can be no dispute that Mr. Baer serves a legal role and is at the apex of Airbnb’s management structure.

I. Plaintiff Cannot Overcome The Strong Presumption Against Deposing Airbnb’s Counsel.

Plaintiff’s insistence on deposing Mr. Baer is without merit. The explanations she has offered cannot overcome the strong presumption against deposing a party’s attorney. South

² Rule 26(c), SCRPC (“Protective Orders”), contains the same substantive standard for protective orders relied on by federal and other state courts applying the apex doctrine. *Compare* Rule 26(c), SCRPC (“the court . . . may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden by expense”) *with* Fed. R. Civ. P. 26(c) (“The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense”); *see also* *Roberts v. Peterson*, 292 S.C. 149 (Ct. App. 1987) (where a state rule has adopted the language of a federal rule, federal cases interpreting the federal rule are persuasive in the absence of prior state law).

Carolina courts bestow significant weight to the attorney-client privilege, recognizing that the privilege is “rooted in the imperative need for confidence and trust” between attorneys and their clients. *Hartsock v. Goodyear Dunlop Tires N. Am. Ltd.*, 422 S.C. 643, 647 n.1 (2018) (quoting *Jaffee v. Redmond*, 518 U.S. 1, 10 (1996)). It is for this reason that courts disfavor deposing an opponent’s attorney, considering it to be “a drastic measure” that is “infrequently proper.” *Hughes v. Sears, Roebuck & Co.*, 2011 WL 2671230, at *4 (N.D.W. Va. July 7, 2011); *see also Invesco Institutional (N.A.), Inc. v. Paas*, 244 F.R.D. 374, 393 (W.D. Ky. 2007) (“To say that the federal courts discourage the taking of an opposing counsel’s deposition is to put the matter rather mildly.”).

In fact, “[c]ourts are particularly apt to issue protective orders where one party seeks to depose another party’s counsel.” *Pure Fishing, Inc.*, 2012 U.S. Dist. LEXIS 52724 at *2; *Theriot v. Parish of Jefferson*, 185 F.3d 477, 491 (5th Cir. 1999) (“Generally, federal courts have disfavored the practice of taking the deposition of a party’s attorney; instead, the practice should be employed only in limited circumstances.”).³ This is because deposing opposing counsel “disrupts the adversarial system[,] [] lowers the standards of the profession[,]” “adds to the already burdensome time and cost of litigation[,]” and “detracts from the quality of client representation.” *Shelton*, 805 F.2d at 1327.

Such a deposition will only be tolerated “in limited circumstances,” which are not met here. Plaintiff must show that (1) no other means exist to obtain the information than to depose opposing counsel, (2) the information sought is relevant and nonprivileged; and (3) the information is crucial

³ Although *Pure Fishing*, *Invesco*, and *Theriot* are decisions from the federal courts, South Carolina law accords the attorney-client privilege with the same high respect. *See, e.g.*, Rule 26(b)(1), SCRCF (permitting parties to only obtain discovery of relevant information that is “not privileged.”).

to the preparation of the case.” *Pure Fishing, Inc.*, 2012 U.S. Dist. LEXIS 52724 at *2-3 (citing *Shelton*, 805 F.2d at 1327). Plaintiff can establish none of these things.

First, she cannot show that the information she seeks is unique to Mr. Baer, nor can she show that there are no other means of obtaining the information except via the apex deposition of Airbnb’s Chief Legal Officer. Plaintiff has never served an interrogatory or document request seeking Airbnb’s policies for complying with the South Carolina real estate statute in question, or the identity of an Airbnb employee knowledgeable about Airbnb’s policies. Because Mr. Baer did not work at Airbnb at the time of the alleged incident, whatever knowledge he may have about the facts or policies in place at that time necessarily would have to have come from alternative sources.

Next, Mr. Baer’s thoughts, impressions, and discussions concerning “Airbnb’s policies on complying with South Carolina real estate laws,” if any, or about Airbnb’s compliance procedures more generally, are quintessentially privileged and/or attorney work product and not subject to discovery. *See, e.g., Upjohn Co. v. United States*, 449 U.S. 383, 393, 101 S. Ct. 677, 684, 66 L. Ed. 2d 584 (1981) (corporate counsel advice concerning compliance subject to attorney-client privilege); Rule 26(b)(1), SCRPC (Parties may only obtain discovery of information “relevant to the subject matter” of the litigation that is “not privileged.”); *see also Bryant v. Trucking*, 2012 WL 162409, at *2 (D.S.C. Jan. 18, 2012) (an attorney’s opinion work product “insofar as it involves ‘mental impressions, conclusions, opinions or legal theories . . . concerning the litigation’ is immune [from discovery] to the same extent as an attorney-client communication.”).

Finally, the information Plaintiff claims she wants—regarding “Airbnb’s policies on [Airbnb] complying with South Carolina real estate laws”—is far from “crucial” to Plaintiff’s case. This is particularly true since she has already admitted in her written discovery responses that the

South Carolina Real Estate Licensing statute (*i.e.*, S.C. Code Ann. § 40-57-20⁴) applies only to “individuals,” and *not* to corporate entities like Airbnb. *See* Ex. 4 (Plaintiff’s Responses to Interrogatory Nos. 19 & 27). The subpoena can serve no legitimate purpose.

II. The Court Should Grant Airbnb’s Motion For Protective Order Under the Apex Doctrine.

Courts are also skeptical of deposition notices directed at the highest levels of a corporation, recognizing that they “create[] a tremendous potential for abuse or harassment.” *In re Lipitor (Atorvastatin Calcium) Mktg.*, No. 2:14-MN-02502-RMG, 2014 WL 12621613, at *2 (D.S.C. Nov. 13, 2014) (cleaned up); *see also Celerity, Inc. v. Ultra Clean Holding, Inc.*, 2007 WL 205067, at *3 (N.D. Cal. Jan. 25, 2007) (“Virtually every court that has addressed deposition notices directed at an official at the highest level or ‘apex’ of corporate management has observed that such discovery creates a tremendous potential for abuse or harassment.”); *Brown v. Branch Banking & Tr. Co.*, 2014 WL 235455, at *2 (S.D. Fla. Jan. 22, 2014) (“Courts have generally restricted parties from deposing high-ranking officials because (by virtue of their position) they ‘are vulnerable to numerous, repetitive, harassing, and abusive depositions, and therefore need some measure of protection from the courts.’”).

To prevent such discovery abuses, the apex doctrine requires that “before deposing a corporate defendant’s high-ranking officer, ‘the plaintiff must show (1) the executive has unique or special knowledge of the facts at issue and (2) other less burdensome avenues for obtaining the information sought have been exhausted.’” *Cross*, 2017 WL 10544634, at *1. “Unique or special knowledge” means just that—general knowledge does not suffice. For example, in *Cross*, a plaintiff argued that an officer “in charge of ‘risk management’ . . . may have personal knowledge”

⁴ S.C. Code § 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.” (emphasis added).

of the case, which included claims of wrongful death, negligence, and negligent hiring and supervision. 2017 WL 10544634, at *1-2. The court rejected this argument, holding that the plaintiff had not shown that the official had “any personal knowledge concerning the accident at issue, or that his corporate knowledge is so special or unique or that they cannot obtain the information they are seeking by deposing XPO’s 30(b)(6) witnesses.” *Id.* at *2.

Here, Mr. Baer is a “high-level decision maker removed from the daily subjects of the litigation.” *Celerity*, 2007 WL 205067, at *3 (quashing the deposition as improper). He has no personal knowledge—let alone unique or special knowledge—about the incident, the property, the Plaintiff, or the other defendants. Ex. 3 (Decl. of R. Baer ¶ 3). After more than a year and a half of discovery, including a full day deposing Airbnb’s corporate deponent, Plaintiff has adduced no evidence to the contrary. This stands to reason as Mr. Baer did not start working at Airbnb until almost five months after the alleged surreptitious recording.

Nor can Plaintiff show that Mr. Baer possesses relevant, non-privileged information that cannot be obtained through other, less burdensome means. As noted above, she has not tried. She should not be permitted to start depositions at the top of Airbnb’s corporate structure. *Sun Cap. Partners, Inc. v. Twin City Fire Ins. Co.*, 310 F.R.D. 523, 528 (S.D. Fla. 2015) (“[E]ven when a high-ranking official of a corporation does have direct knowledge of the facts, it is inappropriate to compel his or her deposition without first deposing lesser-ranking employees who have more direct knowledge of the facts at issue.”). Rather than pursue avenues that may not impose significant harm on Airbnb, Plaintiff is doing nothing more than harassing the company’s Chief Legal Officer with an improper subpoena.

III. Deposing Mr. Baer Would Be Particularly Oppressive And Harassing, and Plaintiff Cannot Show His Deposition Is Necessary

Airbnb has identified substantial, particularized harm that it would suffer if Plaintiff is

permitted to depose Mr. Baer. As discussed above, the very questioning Plaintiff contemplates would necessarily impede on the privilege⁵—a bell that cannot be unrung—and run afoul of the apex doctrine. Accordingly, Plaintiff has the burden of showing “with specificity” exactly how not deposing Airbnb’s attorney “will impair the presentation of the case on the merits to the point that an unjust result is a real, rather than a merely possible, threat.” See *Hollman*, 384 S.C. at 578. Additionally, “[t]he trial court must determine whether there are reasonable alternatives available to discover the information.” *Id.* For the reasons discussed, Plaintiff cannot meet that standard here.

The Court should therefore grant a protective order to prevent this oppressive discovery tactic. *Hollman*, 384 S.C. at 578. Plaintiff has “ample opportunity by discovery in the action to obtain the information sought.” Rule 26(a)(i)-(ii), SCRCF. She should not be permitted to depose Airbnb’s Chief Legal Officer.

CONCLUSION

Plaintiff’s continued insistence on deposing Mr. Baer is an attempt to circumvent the attorney-client privilege and harass Airbnb. Undersigned counsel affirms that he has communicated with opposing counsel about the issues raised in this motion and has attempted in good faith to resolve the matter, but has been unable to do so. For the reasons discussed, Airbnb respectfully requests that the Court quash Plaintiff’s subpoena to depose Rich Baer and grant Airbnb’s motion for a protective order.

⁵ If counsel conscientiously objected whenever Plaintiff’s questions called for privileged information, under Rule 30(j)(3), SCRCF, Airbnb would still bear the unnecessary burden of having to move for a protective order. This would happen innumerable times during a deposition in which Plaintiff seeks to depose counsel about the advice he gives his client on compliance issues.

Dated this 17th day of January, 2023.

Respectfully submitted

/s/ Beattie B. Ashmore

Beattie B. Ashmore

SC Bar No. 10419

650 East Washington Street

Greenville, SC 29601

PH: (865) 467-1001.

E: beattie@beattieashmore.com

Attorney for Defendant Airbnb, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **DEFENDANT AIRBNB, INC.'S NOTICE OF MOTION AND MOTION TO QUASH PLAINTIFF'S SUBPOENA TO DEPOSE RICH BAER, AND FOR A PROTECTIVE ORDER and Exhibits thereto** has been served as indicated below on the 17th day of January, 2023:

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

Deborah B. Barbier
Deborah B. Barbier, LLC
1811 Pickens Street
Columbia, SC 29201
Attorney for Plaintiff
Via electronic filing

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

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
Via U.S. Mail

Joe McCulloch
Kathy R. Schillachi
1116 Blanding Street
Columbia, SC 29201
Attorneys for Rhett Riviere
Via U.S. Mail

James Mixon Griffin
Margaret Nicole Fox
4408 Forest Drive, Ste. 300
Columbia, SC 29202
Attorneys for Rhett Riviere and Chase
Enterprises, LLC of South Carolina
Via U.S. Mail

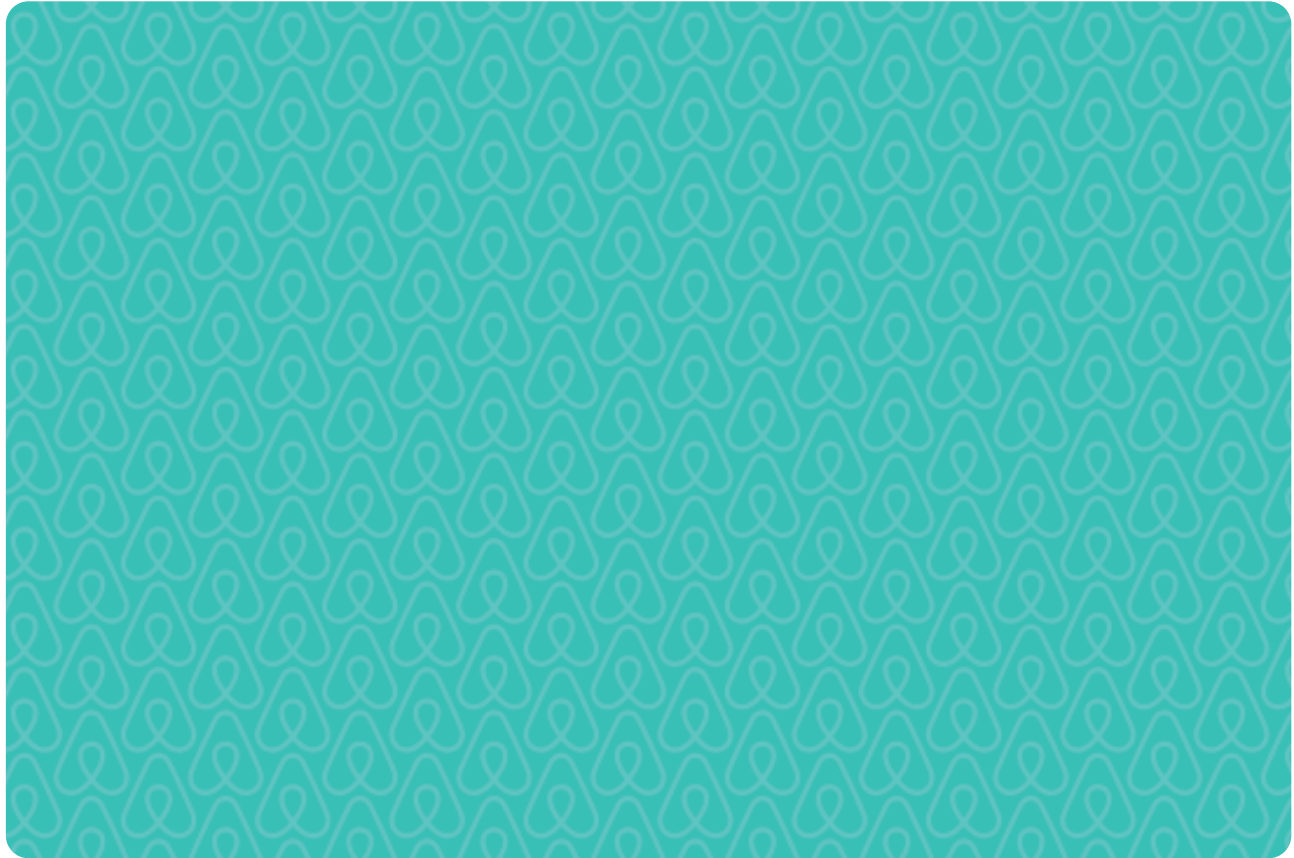
Damon C. Wlodarczyk
Riley Pope & Laney, LLC
P.O. Box 11412
Columbia, SC 29211
Attorney for Katherine A. Thomas
Via electronic filing

/s/ Beattie B. Ashmore
Beattie B. Ashmore

EXHIBIT 1

Rich Baer Joins Airbnb as Chief Legal Officer

By [Airbnb](#) · September 24, 2019 · [Company](#).



Airbnb announced today that Rich Baer will join the company as Chief Legal Officer. Over his long career, Rich has distinguished himself as an outstanding lawyer for large, fast growing public companies and leader of global legal teams with expertise in a wide range of complex matters at the intersection of law, business and society.

“Airbnb makes it possible for anyone to belong anywhere. Our success in pursuing this goal depends on our ability to balance the interests of all stakeholders in the Airbnb community around the world,” said Airbnb Chief Operating Officer Belinda Johnson. “As someone who has served as the general counsel for fast scaling, large, complex, globally branded and publicly traded companies, Rich will be an incredible advocate for all our stakeholders and we are thrilled to welcome him to the Airbnb team.”

“I’ve met with numerous hosts and heard their inspiring stories, hiked Red Rocks on an Airbnb experience, and seen firsthand how Airbnb is changing the way we travel, helping people belong anywhere in the world and providing economic empowerment.

I’m inspired by Airbnb’s purpose to drive belonging and how it is intently focused on balancing the interests of its diverse array of stakeholders, including hosts, guests, employees, and communities. I am excited to have the chance to work with the incredibly talented Airbnb team and can’t wait to get started.”

Rich Baer, Airbnb Chief Legal Officer

Named by the National Law Journal as one of the country’s top general counsels, Baer has unparalleled experience and a long record of success. A trial attorney by training, Baer has led the legal teams at Qwest Communications where he helped lead the turnaround of the company, United Health and most recently, Liberty Media. Liberty is a set of five public companies which own or hold large stakes in companies such as SiriusXM, Formula 1, LiveNation Entertainment, TripAdvisor, Qurate, Zulily, the Atlanta Braves, Charter Communications and GCI, among others.

Throughout his career, Baer has focused on making the legal community more diverse and inclusive. Under his leadership, Qwest was named by the Minority Corporation Counsel Association as an Employer of Choice and Rich was named a Diversity Trailblazer by the Colorado State Bar Association.

In addition to his legal work, Baer is Chairman of the Board at National Jewish Health, and has served as a board member of the Institute for the Advancement of the American Legal System, the Colorado Legal Aid Foundation, the Daniels College of Business Executive Advisory Board and the Colorado Campaign for Inclusive Excellence.

Baer is a graduate of Columbia University and Duke University School of Law. He will start at Airbnb in early October and report to Belinda Johnson. Baer will be based in San Francisco.

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EXHIBIT 2

From: Beattie B. Ashmore, P.A. <beattie@beattieashmore.com>
Sent: Monday, January 9, 2023 11:23 AM
To: Debbie Barbier; damonw@rplfirm.com; Ryan Beasley; Staff@wesleyfew.com; Jim Griffin; joe@mccullochlaw.com; John Harte; Taylor, Damali A.; Stephanie Gray; Rothstein, James K.; Rhonda Bell
Subject: Deposition dates

[EXTERNAL MESSAGE]

Hi Debbie,

Thanks -- we will notice Ms. Foster's deposition for February 16 at my office in Greenville.

We still don't have your attorney dates for third party depositions. I'll go ahead and notice the depositions using the dates that we offered and Damon provided.

As for the depositions you noticed: Subpoenas are required under Rule 45, whether or not these folks are officers, directors or managers. If you have a case saying otherwise, please send that to us. Lindsey Scully is not an Airbnb employee, so she's not an officer, director, or manager. In addition, the Airbnb employees are not available on the dates you unilaterally set.

Even with your explanations, we don't think these depositions are appropriate. However, in the interest of cooperation, we're willing to make Vicki Ballagh available for an appropriately limited deposition. Ms. Ballagh leads Airbnb's Global Crisis Management team, which played no role in the alleged incident here. You indicate that her team "handles numerous incidents that are similar to" the amended complaint. That is not correct. To date, that team has handled only a single matter involving a hidden camera. Although we do not think this is sufficient to depose her, we will make her available for a couple of hours on Zoom to answer questions about GCM's handling of hidden camera matters. We will get back to you promptly with dates that she is available.

As to Rich Baer and Tara Bunch—both are Airbnb executives at the highest level: Mr. Baer is Airbnb's Chief Legal Officer and Tara Bunch is Global Head of Operations. Neither of them had any involvement whatsoever in the allegations here. In fact, neither worked at Airbnb until long after Riviere allegedly recorded Plaintiff—Mr. Baer joined in late 2019 and Ms. Bunch joined a year after the alleged recording. They are apex witnesses, and their depositions aren't justified. *Cross v. XPO Express, Inc.*, 2017 WL 10544634, at *1 (D.S.C. May 8, 2017). We would ask you to withdraw those notices.

Mr. Baer's deposition is particularly inappropriate because he is the company's most senior in-house lawyer. *See, e.g., Pure Fishing, Inc. v. Redwing Tackle, Ltd.*, 2012 U.S. Dist. LEXIS 52724, *2-3 (D.S.C. April 16, 2012) (warning of "the inherent dangers of deposing another party's counsel" and that "such a deposition is only appropriate in limited circumstances"). Putting aside your comment that you would not intentionally ask for privileged communications, his thoughts, impressions, and discussions about Airbnb's policies and compliance are undeniably privileged and/or attorney work product—that's exactly why courts disfavor attorney depositions. He also has no personal, unique or special knowledge about any applicable policies re South Carolina's Real Estate Licensing statute (or any other of the allegations). *Cross*, 2017 WL 10544634, at *1 (D.S.C. May 8, 2017). This is especially true since Plaintiff admitted in her discovery responses that the statute does not apply to corporations like Airbnb but only applies to individuals, so we do not see any justification for his deposition. We will be forced to go to the court if you insist on proceeding with this deposition.

For Ms. Bunch, not only is she an apex witness, whatever representations about “safety” you alleged necessarily pre-date Ms. Bunch’s employment at Airbnb. She has no personal, unique, or special knowledge about this matter or about Airbnb’s representations. *Cross*, 2017 WL 10544634, at *1 (D.S.C. May 8, 2017).

Lindsey Scully hasn’t worked for any Airbnb entity for nearly three years. Before that, she was a communications lead for Airbnb Canada and had no involvement with the facts of this case. She lives in Canada, so you’ll have to follow appropriate Canadian procedure if you want to go forward with her deposition. In your email, you cut off her full statement to claim some inconsistency with Airbnb’s 30(b)(6) testimony. Her full statement was: “We take privacy issues extremely seriously and have a zero-tolerance policy for this behavior. We have removed the host from the platform while we investigate and are providing the guest with our full support.” There is nothing inconsistent with the 30(b)(6) testimony.

We have been responsive to your discovery requests, which have been sweeping and sometimes unclear and predicated on incorrect assumptions. I don’t believe I have seen any interrogatories requesting Airbnb names employees who have information about the topics you described in your email —i.e., none of your interrogatories have sought the identities of:

1. individuals with knowledge of Airbnb’s policies on complying with South Carolina real estate broker laws;
2. individuals with knowledge of the statement that ““We take privacy issues extremely seriously and have a zero-tolerance policy for this behavior. We have removed the host from the platform while we investigate and are providing the guest with our full support””;
3. individuals with knowledge of representations by Airbnb that safety is Airbnb's "number one priority"; and,
4. individuals with knowledge of "numerous incidents similar to" the allegations of amended complaint.

Please let us know if you will withdraw the deposition notices for Rich Baer and Tara Bunch. If we’re going to have to fight about them, we need to know as soon as possible.

As noted above, we will provide you with dates for Ms. Ballagh’s Zoom depo in the next day or two.

Beattie Ashmore
Beattie B. Ashmore, P.A.
650 East Washington Street
Greenville, South Carolina 29601
Office: (864) 467-1001

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Beattie B. Ashmore



Criminal Defense: White-Collar
Greenville, South Carolina

ELECTRONICALLY FILED - 2023 Jan 17 9:31 AM - AIKEN - COMMON PLEAS - CASE#2021CP0200889

From: Deborah Barbier <dbb@deborahbarbier.com>

Sent: Wednesday, January 4, 2023 12:11 PM

To: Damon Wlodarczyk <damonw@rplfirm.com>; Beattie B. Ashmore, P.A. <beattie@beattieashmore.com>; Ryan Beasley <rlb@ryanbeasleylaw.com>; Wes Few Staff <staff@wesleyfew.com>; Wes Few <wes@wesleyfew.com>; Jim Griffin <jgriffin@griffindavislaw.com>; Joe McCulloch <joe@mccullochlaw.com>; John Harte <john@jwhartelaw.com>; Damali A. Taylor <dtaylor@omm.com>; Stephanie Gray <stephanie@beattieashmore.com>; James K. Rothstein <jrothstein@omm.com>

Subject: RE: Request for Deposition Dates

Beattie – On December 24, 2022, you indicated that Airbnb was unable to provide convenient dates for the witnesses we requested until January 4, 2023. You also requested that I provide you with more information about why the Plaintiff seeks to depose Rich Baer, Lindsey Sculley, Tara Bunch and Vicki Ballagh. The following is a brief summary of the basis to depose these people:

1. Rich Baer – I do not intend to ask Mr. Baer’s for privileged communications, but Mr. Baer performs many other functions in his role at Airbnb and is privy to many relevant facts which are discoverable and pertinent to the Amended Complaint. In particular, Mr. Baer should be knowledgeable regarding Airbnb’s policies on complying with South Carolina real estate laws.
2. Lindsey Sculley— Ms. Sculley has made numerous public statements regarding Airbnb’s “zero tolerance policy” on hidden cameras which she did not limit to Airbnb Canada. Her statements are inconsistent with Airbnb’s corporate representative, so we are entitled to explore all of these issues and more with this witness.
3. Tara Bunch – As head of Airbnb’s Global Head of Operations, Ms. Bunch oversees the Safety Team and reports to CEO Brian Chesky. Because Airbnb falsely represents that “safety” is their number one priority, her testimony is relevant to these misleading representations as alleged in our Amended Complaint.
4. Vicki Ballagh- As Airbnb’s Global Crisis Management Officer, Ms. Ballagh’s team handles numerous incidents which are similar to and within the scope of our Amended Complaint.

As you know, today is January 4, 2023, so please let me know the dates that these Airbnb employees are available to be deposed. If you refuse to provide dates, we will plan to proceed with the depositions as already noticed. As they are all officers, directors and managers or Airbnb – they are subject to the jurisdiction of the South Carolina courts.

If Airbnb contends that these employees do not have relevant information and are not subject to the jurisdiction of the South Carolina courts, please identify for me the Airbnb employees who do have relevant information and are subject to the South Carolina courts, as we have previously requested in our Interrogatories.

As for Ms. Foster, she is available to be deposed on February 7, 16th or 23rd.

Look forward to hearing from you –

Best regards,

Debbie

Deborah B. Barbier

Deborah B. Barbier, LLC
1811 Pickens Street
Columbia, South Carolina 29201
(803) 445-1032 (office)
(803) 445-1036 (fax)
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www.deborahbarbier.com

From: Damon Wlodarczyk <damonw@rplfirm.com>
Sent: Wednesday, January 4, 2023 10:59 AM
To: Beattie B. Ashmore, P.A. <beattie@beattieashmore.com>; Deborah Barbier <dbb@deborahbarbier.com>; Ryan Beasley <rlb@ryanbeasleylaw.com>; Wes Few Staff <staff@wesleyfew.com>; Wes Few <wes@wesleyfew.com>; Jim Griffin <jgriffin@griffindavislaw.com>; Joe McCulloch <joe@mccullochlaw.com>; John Harte <john@jwhartelaw.com>; Damali A. Taylor <dtaylor@omm.com>; Stephanie Gray <stephanie@beattieashmore.com>; James K. Rothstein <jrothstein@omm.com>
Subject: RE: Request for Deposition Dates

I'm available Jan 20, February 14, 16-17, 20-24 and 27-March 3.



Damon C. Wlodarczyk | Attorney and Counselor at Law
Riley Pope & Laney, LLC – Columbia | Charleston | Charlotte
Office: 803.799.9993
Email: damonw@rplfirm.com

From: Beattie B. Ashmore, P.A. <beattie@beattieashmore.com>
Sent: Wednesday, January 4, 2023 9:32 AM
To: Deborah Barbier <dbb@deborahbarbier.com>; Ryan Beasley <rlb@ryanbeasleylaw.com>; Wes Few Staff <staff@wesleyfew.com>; Wes Few <wes@wesleyfew.com>; Jim Griffin <jgriffin@griffindavislaw.com>; Joe McCulloch <joe@mccullochlaw.com>; John Harte <john@jwhartelaw.com>; Damon Wlodarczyk <damonw@rplfirm.com>; Damali A. Taylor <dtaylor@omm.com>; Stephanie Gray <stephanie@beattieashmore.com>; James K. Rothstein <jrothstein@omm.com>
Subject: RE: Request for Deposition Dates

Can we get attorneys Jan/Feb available dates please? Otherwise, we'll have to notice them on a date of our choosing. Can you provide dates for the plaintiff today please? Thanks all. Beattie.

Beattie Ashmore
Beattie B. Ashmore, P.A.

650 East Washington Street
Greenville, South Carolina 29601
Office: (864) 467-1001

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Beattie B. Ashmore



Beattie B. Ashmore



Criminal Defense: White-Collar
Greenville, South Carolina

From: Beattie B. Ashmore, P.A.

Sent: Thursday, December 29, 2022 8:51 AM

To: Deborah Barbier <dbb@deborahbarbier.com>; Ryan Beasley <rlb@ryanbeasleylaw.com>; Wes Few Staff <staff@wesleyfew.com>; Wes Few <wes@wesleyfew.com>; Jim Griffin <jgriffin@griffindavislaw.com>; Joe McCulloch <joe@mccullochlaw.com>; John Harte <john@jwhartelaw.com>; Damon Wlodarczyk <damonw@rplfirm.com>; Damali A. Taylor <dtaylor@omm.com>; Stephanie Gray <stephanie@beattieashmore.com>; James K. Rothstein <jrothstein@omm.com>

Subject: Request for Deposition Dates

Debbie,

Your email misrepresents the record, including the hearing before Judge Dennis. His mention of six digit sanctions was drawn from another case he handled and it was directed at Julie Moose on behalf of Tiger Riviere- not Airbnb. (see 5/31/22 transcript at P. 13, line 11).

Airbnb has complied completely and cooperatively with all discovery obligations. You still have not (and cannot) explain what basis you have to depose Airbnb's senior executives who had no involvement with this case—including its General Counsel (in other words, the Company's attorney) and a former employee who worked for Airbnb *Canada*. We once again respectfully ask you to please provide the basis for the depositions you have requested. We'd like an explanation of your position on these subpoenas, otherwise it appears the plaintiff is simply lashing out over a failed mediation with harassing subpoenas.

To address your specific points:

On your points 1-3 re: the 30(b)(6), your representations are inaccurate. Airbnb did not fight the 30(b)(6) deposition for nine months. You filed this lawsuit on April 28, 2021. You waited eleven months, until March 2022, to propose a 30(b)(6) deposition of Airbnb. We offered to meet and confer over that deposition, but you never responded. Two months later, on May 26, 2022, you unilaterally noticed the deposition. We filed a motion for a protective order on June 14—not because we objected to the deposition, but to the breadth of your requested topics. The Court set a hearing on June 28 and granted Airbnb’s motion in part that day and asked the parties to submit proposed topics, which Airbnb timely submitted. The Court issued its order on August 3, and we filed our motion to alter/amend on August 4. Meanwhile, we scheduled the 30(b)(6) for August 30 subject to our motion to alter/amend. The Court ordered further briefing on August 26, and set a briefing scheduling with a September 14 reply date. On October 11 the Court denied reconsideration and *the very next day* we provided dates in October and in December—including dates just two weeks away for a witness coming from across the country. The 30(b)(6) began on October 26 and lasted for approximately ten hours, until 7:30 PM. You insisted on making the witness fly to Aiken for that deposition even though we told you that the witness’s close friend died in a tragic accident just days before the deposition.

Despite all of this (and re #7), we agreed to allow you to have another full day with the witness and immediately provided you with additional dates. We mutually agreed to cancel the 30(b)(6) to conduct a mediation. Following the failed mediation, we are providing our 30(b)(6) witness for a second full day on 1/25. I’d also point out that ever since I joined the case, at least 3 or 4 times you have scheduled depositions (on some occasions after asking us for dates and then you actually set the depositions on my conflict days) and insisted on dates only to call off the depositions with one days notice (Lassiter and Emerson are examples). As for Mr. Riviere’s deposition, we all arranged our schedules so that he could be deposed on November 3 but you cancelled his deposition with just three days’ notice as it was accidentally disclosed to us that you had arranged a private mediation with him. Ms. Foster may have settled with him, but as our filed objection notes, your purported stipulated dismissal is defective as it does not bear our or Thomas’s signature.

Your other points are also incorrect. #4 – Yes, Airbnb objected to your document requests and some interrogatories, as is customary, but then it answered and produced documents. In fact, Airbnb has produced over 1300 pages of documents.

On #5 & 6 – We will be making a small production and log that completes your follow up requests for production, hopefully as early as tomorrow. The documents are minimal and our production is complete.

Next, as noted above, Judge Dennis never threatened sanctions against Airbnb—not during that hearing or at any other time.

Finally, it appears that you refuse to provide your own client’s availability for her deposition, but please respond to our request and send us your attorney availability in January and February so that we can start scheduling third parties for depositions.

Looking forward to working cooperatively in the New Year.

Happy New Year to all!
Beattie

Beattie Ashmore
Beattie B. Ashmore, P.A.

650 East Washington Street
Greenville, South Carolina 29601
Office: (864) 467-1001

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Beattie B. Ashmore



Beattie B. Ashmore



Criminal Defense: White-Collar
Greenville, South Carolina

From: Deborah Barbier <dbb@deborahbarbier.com>

Date: December 27, 2022 at 8:31:44 PM EST

To: "Beattie B. Ashmore, P.A." <beattie@beattieashmore.com>

Cc: Stephanie Gray <stephanie@beattieashmore.com>, "Sestito, Dawn" <dsestito@omm.com>, "Taylor, Damali A." <dtaylor@omm.com>, mtrifos@rplfirm.com, Cassy Young <cassy@wesleyfew.com>, "Rothstein, James K." <jrothstein@omm.com>, damonw@rplfirm.com, Wes Few <wes@wesleyfew.com>, Ryan Beasley <rlb@ryanbeasleylaw.com>, Elizabeth Ross <elizabeth@ryanbeasleylaw.com>, staff@wesleyfew.com, Jim Griffin <jgriffin@griffindavislaw.com>, joe@mccullochlaw.com, Kathy Schillaci <kathy@mccullochlaw.com>, John Harte <john@jwhartelaw.com>, Maggie Fox <mfox@griffindavislaw.com>, Valerie McDonald <valerie.mcdonald@att.net>

Subject: RE: Request for Deposition Dates

Beattie – In sum, I would describe Airbnb's non-cooperation efforts as follows:

1. Fighting a Rule 30(b)(6) deposition for nine months;
2. Objecting to every topic in the Rule 30(b)(6) deposition;
3. Moving to reconsider their denied motion for a protective order;
4. Objecting to every single request to produce and interrogatory propounded;
5. Failing to produce documents that have been ordered to be produced;
6. Failing to comply with a Court Order granting out Motion to Compel; and
7. Producing a Rule 30(b)(6) witness who refuses to answer basic questions on topics that she has been ordered to testify on.

If Airbnb needs more detail on this, it will be outlined in our Motion for Sanctions which we anticipate having to file after the conclusion of the Rule 30(b)(6) deposition. As Judge Dennis noted, six figure sanctions will be requested. Thanks

Debbie

From: Beattie B. Ashmore, P.A. <beattie@beattieashmore.com>

Sent: Tuesday, December 27, 2022 8:13 PM

To: Deborah Barbier <dbb@deborahbarbier.com>

Cc: Stephanie Gray <stephanie@beattieashmore.com>; Sestito, Dawn <dsestito@omm.com>; Taylor, Damali A. <dtaylor@omm.com>; mtrifos@rplfirm.com; Cassy Young <cassy@wesleyfew.com>; Rothstein, James K. <jrothstein@omm.com>; damonw@rplfirm.com; Wes Few <wes@wesleyfew.com>; Ryan Beasley <rlb@ryanbeasleylaw.com>; Elizabeth Ross <elizabeth@ryanbeasleylaw.com>; staff@wesleyfew.com; Jim Griffin <jgriffin@griffindavislaw.com>; joe@mccullochlaw.com; Kathy Schillaci <kathy@mccullochlaw.com>; John Harte <john@jwhartelaw.com>; Maggie Fox <mfox@griffindavislaw.com>

Subject: Re: Request for Deposition Dates

Debbie you'll need to explain how Airbnb has been "non-cooperative in discovery". You keep making that assertion but please tell me what you mean what you mean so it can be addressed now. We'll tackle these other issues moving forward. Thanks all. Beattie.

Sent from my iPhone

On Dec 27, 2022, at 7:31 PM, Deborah Barbier <dbb@deborahbarbier.com> wrote:

Beattie – We received your email on Christmas Eve – a religious holiday for many. Today is December 27th. It is disappointing that Airbnb refuses to cooperate in the setting of the depositions of their own employees and believes that a California subpoena is necessary. We disagree. I will discuss with my co-counsel whether it is worth wasting the Court's time on litigating this issue when they return from celebrating the holidays. I am sure the Court will see it as yet another attempt by Airbnb to be non-cooperative in discovery. When you give us the dates those employees can be deposed, we will give you the dates that work for Ms. Foster. After all, we asked for these depositions first, so they should be scheduled first. Ms. Foster is unavailable to discuss her availability for a deposition until January 4th as well -

Deborah B. Barbier

Deborah B. Barbier, LLC
1811 Pickens Street
Columbia, South Carolina 29201
(803) 445-1032 (office)
(803) 445-1036 (fax)
(803) 730-6290 (cell)
www.deborahbarbier.com

From: Beattie B. Ashmore, P.A. <beattie@beattieashmore.com>

Sent: Tuesday, December 27, 2022 5:41 PM

To: Deborah Barbier <dbb@deborahbarbier.com>; Stephanie Gray <stephanie@beattieashmore.com>; Sestito, Dawn <dsestito@omm.com>; Taylor, Damali A. <dtaylor@omm.com>; mtrifos@rplfirm.com; 'Cassy Young' <cassy@wesleyfew.com>; Rothstein, James K. <jrothstein@omm.com>; damonw@rplfirm.com; Wes Few <wes@wesleyfew.com>; Ryan Beasley <rlb@ryanbeasleylaw.com>; Elizabeth Ross <Elizabeth@ryanbeasleylaw.com>; Staff@wesleyfew.com; Jim Griffin <jgriffin@griffindavislaw.com>; joe@mccullochlaw.com; Kathy Schillaci <kathy@mccullochlaw.com>;

John Harte <john@jwhartelaw.com>; Maggie Fox <mfox@griffindavislaw.com>

Subject: Request for Deposition Dates

All, no one has responded with dates for January and February. Can you please let me know your availability so we can start getting our subpoenas served? What dates would the plaintiff be available? Lets get that one set then we can back fill from there. Joe/Jim, when is Mr. Riviere available? Please let me know you are in receipt of this email. Many thanks and Happy New Year! Beattie.

Beattie Ashmore
Beattie B. Ashmore, P.A.
650 East Washington Street
Greenville, South Carolina 29601
Office: (864) 467-1001

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<image001.png>

<image002.png>

<image003.png>

From: Beattie B. Ashmore, P.A.

Sent: Saturday, December 24, 2022 4:26 PM

To: Debbie Barbier <dbb@deborahbarbier.com>; Stephanie Gray <stephanie@beattieashmore.com>; Sestito, Dawn <dsestito@omm.com>; Taylor, Damali A. <dtaylor@omm.com>; mtrifos@rplfirm.com; 'Cassy Young' <cassy@wesleyfew.com>; Rothstein, James K. <jrothstein@omm.com>; damonw@rplfirm.com; Wes Few <wes@wesleyfew.com>; Ryan Beasley <rlb@ryanbeasleylaw.com>; Elizabeth Ross <Elizabeth@ryanbeasleylaw.com>; Staff@wesleyfew.com; Jim Griffin <jgriffin@griffindavislaw.com>; joe@mccullochlaw.com; Kathy Schillaci <kathy@mccullochlaw.com>; John Harte <john@jwhartelaw.com>; Maggie Fox <mfox@griffindavislaw.com>

Subject: Deposition Notices

Debbie,

Good seeing you yesterday. As we discussed, your request to depose four new witnesses presents problems. We remain hopeful that we will be able to work through these issues without the need for motion practice.

On 12/13, you demanded we send you our attorney availability for depositions ASAP. The very next morning, I sent you our available attorney dates.

When you responded on 12/21, you sent deposition notices for Rich Baer (for 1/18/23), Lindsey Sculley (1/19/2023), Tara Bunch (1/26/2023), and Vicki Ballagh (1/27/2023). We did not get these notices until 4:38pm, 4 days before Christmas, and these were individuals that you have never mentioned to us before nor have we ever discussed until yesterday.

I have no idea if these witnesses would be available on the dates you unilaterally set. Airbnb's corporate offices are closed for two weeks at the end of the year every year for their annual winter break. They will reopen on January 4. We are unable to get in touch with these folks to check their availability before then. Moreover, as we discussed, the notices you sent are insufficient—you will need to serve subpoenas. You mentioned that you will have California counsel to help you serve California subpoenas.

If you had run those names by us, we could have told you that none of these individuals are relevant to this case.

1. Rich Baer is Airbnb's Chief Legal Officer. He is the company's lawyer and his thoughts, mental impressions and conversations regarding this matter will be subject to the attorney client privilege. He also had no involvement with the facts of this case—he had not even joined Airbnb at the time this incident occurred.
2. Lindsey Sculley—who worked for *Airbnb Canada*—has no conceivable relevance to this US case about events occurring in Aiken, South Carolina.
3. Tara Bunch is Airbnb's Global Head of Operations. She is a high-ranking employee who had no involvement with the facts of this case. She did not even join Airbnb until a year after the incident in question.
4. Vicki Ballagh, Airbnb's Global Crisis Management. That team had no involvement with the incident in question—a fact our 30(b)(6) witness can confirm.

If you intend to proceed with your request to depose all of these individuals (via properly served domesticated subpoenas), please tell us the factual basis for each of these depositions.

We are eager to get this case moving and will facilitate scheduling of Airbnb witnesses with relevant information. Part two of your deposition of Airbnb's 30(b)(6) witness is set for January 25. As to these notices, it appears you just chose high-level Airbnb employees to harass and annoy Airbnb.

Finally, as I mentioned to you, we have several witnesses we will be deposing, including Ms. Foster. Please provide us with your available attorney dates in January and February, as well as a list of date options for Ms. Foster's deposition. All, can we please get your available dates in January and February before the close of business Tuesday December 27th please?

I hope you all have a wonderful holiday with your families!

With kind regards,
Beattie

Beattie Ashmore
Beattie B. Ashmore, P.A.
650 East Washington Street
Greenville, South Carolina 29601
Office: (864) 467-1001

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Beattie B. Ashmore



Criminal Defense: White-Collar
Greenville, South Carolina



Beattie B. Ashmore

EXHIBIT 3

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

JULIANNE FOSTER,

Plaintiff,

v.

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

Defendants.

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

DECLARATION OF RICH BAER

DECLARATION OF RICH BAER

I, Rich Baer, under penalty of perjury, hereby declare as follows:

1. I am an attorney duly licensed to practice law in the State of Colorado and the State of New York. I am presently employed by Airbnb, Inc. (“Airbnb”) as Airbnb’s Chief Legal Officer. I submit this declaration in support of Airbnb’s Motion to Quash Plaintiff’s Subpoena to Depose Rich Baer And For a Protective Order. I have personal knowledge of the facts set forth herein, and if called as a witness, I could and would testify to them.

2. I understand that on January 10, 2023, the Plaintiff in this action emailed Airbnb a subpoena for my deposition testimony on January 18, 2023.

3. I joined Airbnb in my position as Chief Legal Officer in October 2019, and have served in this role continuously since then through the present. Accordingly, I joined Airbnb after the events at issue are alleged to have occurred. I have no personal, unique, or special knowledge regarding Plaintiff’s allegations regarding the incident described in her First Amended Complaint.

4. As Airbnb's Chief Legal Officer, I am Airbnb's most senior in-house attorney and am part of Airbnb's Executive Management team, which comprises Airbnb's highest-ranking executives and officers. I report directly to Chief Executive Officer Brian Chesky.

5. In my role as Airbnb's Chief Legal Officer, I provide Defendant Airbnb with legal advice and analysis on legal issues facing the company. I am responsible for all of Airbnb's legal affairs globally, including overseeing Airbnb's global legal and ethics functions affecting the company's more-than-6,000 employees. I am also responsible for supervising Airbnb's entire legal department worldwide, which is comprised of approximately 175 employees.

6. I understand that plaintiff's counsel has suggested that I "should be knowledgeable regarding Airbnb's policies on complying with South Carolina real estate laws." I have no non-privileged information about that topic. If I were to have any information, documents, and communications on this subject, it would have been provided confidentially, and would include and comprise my mental impressions, opinions, theories, and legal advice to Airbnb, which would have been created in the course of performing my functions as Airbnb's Chief Legal Officer and in-house attorney.

7. Given the nature of my functions and responsibilities as Airbnb's Chief Legal Officer and most senior in-house attorney, which concern Airbnb's employees and operations worldwide, my role cannot be easily fulfilled by any other Airbnb employee.

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//

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8. Due to my responsibilities to Airbnb as its Chief Legal Officer, I am unavailable to sit for deposition on January 18, 2023. I understand that plaintiff's counsel selected that date, but did not check for my availability prior to unilaterally selecting it.

I declare under penalty of perjury under the laws of the State of South Carolina that the foregoing is true and correct.

Executed on February 13, 2023, at 3:21 pm.

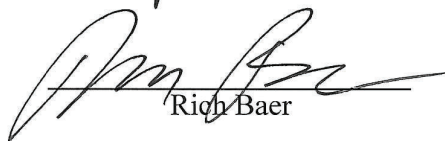

Rich Baer

EXHIBIT 4

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

JULIANNE FOSTER,
Plaintiff,

v.

KATHERINE A. THOMAS,
AND AIRBNB, INC,
Defendants.

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

**PLAINTIFF'S ANSWERS TO
DEFENDANT AIRBNB'S SECOND SET OF
SUPPLEMENTAL INTERROGATORIES AND
THIRD REQUEST FOR PRODUCTION**

Pursuant to Rules 26 and 33 of the South Carolina Rules of Civil Procedure, Plaintiff Julianne Foster ("Plaintiff") hereby answers Defendant Airbnb's Second Set of Supplemental Interrogatories and Third Request for Production.

RESERVATION OF RIGHTS WITH RESPECT TO RESPONSES

In setting forth these responses, Plaintiff does not waive the attorney/client, work product/trial preparation, or any other privilege or immunity from disclosure which may attach to the information called for in, or respond to, the requests. Further, Plaintiff does not concede the relevance or materiality of the information of the requests or the subject matter to which they infer.

These responses are submitted subject to, and without waiving or intending to waive but on the contrary intending to reserve and reserving:

- a. All questions as to competency, relevancy, materiality, privilege, and admissibility as evidence for any purpose of any of the documents referred to or answers given, or the subject thereof, in any subsequent proceeding or in the trial of this action or any other action or proceeding;
- b. The right to object to other discovery procedures involving or relating to the subject matter of the requests herein responded to; and

“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.” *Faile v. S.C. Dep’t of Juvenile Justice*, 350 S.C. 315, 334, 566 S.E.2d 536, 546 (2002). However, there are several exceptions. *Id.* A duty to protect arises where: 1) the defendant has a special relationship to the victim; 2) where the defendant has a special relationship to the injurer; 3) the defendant voluntarily undertakes a duty; 4) the defendant negligently or intentionally creates the risk; and 5) where a statute imposes a duty on the defendant. *Id.*

Airbnb had a special relationship with Plaintiff and Mr. Riviere. (See Responses to Int. Nos. 14 and 15.) Airbnb also undertook a duty to protect guests staying in Airbnb properties and negligently or intentionally created a risk by inadequately vetting its hosts and failing to enforce its policies regarding recording devices. Airbnb solicits guests to use its services by representing that safety is its top priority for Airbnb guests and that “Airbnb is designed with safety—both online and off—in mind.” Airbnb states that its hosts are required to inform guests of any cameras, even if turned off, and that undisclosed recording devices are never permitted. Although Airbnb has undertaken to protect guests by vetting hosts and providing a rental without any recording devices, Airbnb has been negligent in its undertaking and in creating the risk. Airbnb’s vetting is inadequate and Airbnb does little to nothing to enforce its policy against recording devices being used and their disclosure. Airbnb was aware that cameras and undisclosed recording devices have been discovered in its rentals and negligently undertook some inadequate security measures to protect guests while representing to guests that Airbnb rentals are safe and that safety is its top priority.

19. If you contend that South Carolina Code Section 40-57-20 requires corporations to have a license issued by the South Carolina Real Estate Commission, identify all facts supporting that contention, including any and all corporations known to you that were required to become and

did become licensed by the South Carolina Real Estate Commission to be real estate brokers, real estate salespersons, or real estate property managers or to otherwise advertise or provide such services.

RESPONSE: Plaintiff objects to this Interrogatory as overly broad and unduly burdensome because it seeks the full factual basis supporting a claim or defense. *Cohen*, 2018 WL 1900043, *3. Plaintiff also objects to this Interrogatory because information it seeks is protected by the work product privilege. Moreover, identification of any corporations that have been required to become and did become licensed by the South Carolina Real Estate Commission to be real estate brokers, real estate salespersons, or real estate property managers or to otherwise advertise or provide such services is equally available to Airbnb as it is to Plaintiff. Plaintiff also objects to this request to the extent it is construed to request documents or information not reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections, Plaintiff will provide the principal or material facts in response to this Interrogatory. *Moses*, 236 F.R.D. at 674.

Airbnb performs the functions of a broker by advertising and providing such services. A corporation, like Airbnb, must act through individuals, and cannot hide behind the corporate structure to evade the requirement that its agents and/or employees must be licensed brokers.

20. If you contend that Airbnb controlled the property where you claim you were secretly recorded on or around May 17, 2019, through May 18, 2019, as alleged in your Complaint, identify all facts supporting that contention and identify all time periods during which you contend Airbnb controlled the property.

RESPONSE: Plaintiff objects to this Interrogatory as overly broad and unduly burdensome because it seeks the full factual basis supporting a claim or defense. *Cohen*, 2018 WL 1900043, *3. Plaintiff also objects to this Interrogatory because information it seeks is protected

See also Complaint.

27. If your answer to any Requests for Admission served with these Interrogatories is not an unqualified admission, (a) state the number of the Request for Admission, and (b) identify all facts upon which you base your answer.

RESPONSE: Plaintiff objects to this Interrogatory as overly broad and unduly burdensome because it seeks the full factual basis supporting a claim or defense. *Cohen*, 2018 WL 1900043, *3. Plaintiff also objects to this Interrogatory because information it seeks is protected by the work product privilege. Plaintiff also objects to this request to the extent it is construed to request documents or information not reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections, Plaintiff will provide the principal or material facts in response to this Interrogatory. *Moses*, 236 F.R.D. at 674. Additionally, Plaintiff contends that this Interrogatory's subparts as to each Request to Admit should be counted as separate interrogatories. Subject to these objections, Plaintiff responds as follows:

Request for Admission Number 2: The term "manage" is vague. Airbnb manages Airbnb rental properties in many ways. Airbnb operates, controls, supervises, and is otherwise responsible for Airbnb rental properties. For example, through its numerous policies that each rental property and host must comply with, Airbnb specifically manages many aspects of the rental properties, including the placement of cameras and recording devices on the property.

See also Plaintiff's Responses to Airbnb Int. Nos. 14 and 15 and Complaint.

Request for Admission Number 3: The term "control" is vague. Airbnb controls Airbnb rental properties in many ways. Airbnb operates, manages, supervises, and is otherwise responsible for Airbnb rental properties. For example, through its numerous policies that each rental property

and host must comply with, Airbnb specifically controls many aspects of the rental properties, including the placement of cameras and recording devices on the property.

See also Plaintiff's Response to Airbnb's Int. Nos. 14 and 15 and Complaint.

Request for Admission Number 4: As Plaintiff stated in her response, the information known to Plaintiff or readily obtainable by her is insufficient to enable her to admit or deny this request; Plaintiff does not have the knowledge to either admit or deny Request for Admission Number 4. Accordingly, she cannot identify any facts at this time, but she will supplement as discovery continues.

Request for Admission Number 5: Defendants Airbnb, Mr. Riviere, Ms. Thomas, and Chase enterprises, LLC, created a business enterprise whereby Airbnb solicited listings of places for rent, such as the rental property where Plaintiff was secretly recorded, solicited prospective guests to be tenants, and Airbnb collected the rent. These Defendants collectively advertised and promoted rental properties and arranged and invited guests to the Airbnb property for the benefit of Defendants. Defendant Airbnb operated, controlled, managed, supervised, handled reservations for and were otherwise responsible for the Airbnb rental properties.

Request for Admissions Number 6: Individuals, employees, agents, or others acting on behalf of a corporation can apply for and obtain a license from the South Carolina Real Estate Commission to become a real estate broker, real estate salesperson, or real estate property manager or to otherwise advertise or provide such services.

Request for Admission 7: Individuals, employees, agents, or others acting on behalf of a corporation can apply for and obtain a license from the South Carolina Real Estate Commission to become a real estate broker, real estate salesperson, or real estate property manager or to otherwise advertise or provide such services.

Request for Admission 8: The term “background checks” is vague and overbroad. Airbnb’s 30(b)(6) witness declined to confirm that Airbnb performed a “criminal background check” on Mr. Riviere despite stating that a background check includes a state and county criminal records check; she repeatedly referred to it as simply a “background check.” *See* Depo. of 30(b)(6) witness Monique Chauvet at 273:24-274:16; 274:11-16.

Airbnb’s policy on background checks does not include arrest records, and, on its website, Airbnb itself states that its background checks are “limited.” *See also id.* at 308:21-22; 312:20-23. 317:22-23. Airbnb’s limited “background checks,” which take seconds to perform, *id.* at 336:21-337:1-3, are insufficient as evidenced by the fact that Airbnb’s “background check” on Riviere failed to reveal his arrest and conviction for voyeurism.

See also Plaintiff’s Response to Airbnb’s Int. No. 26 and Complaint.

REQUEST FOR PRODUCTION

1. Please produce all documents and communications identified in, or related in any way, to your answers to Airbnb’s Second Set of Interrogatories.

RESPONSE: Plaintiff objects to this request to the extent it is construed to request documents or information protected by privilege, including specifically the attorney-client and/or

EXHIBIT 5

[Pure Fishing, Inc. v. Redwing Tackle, Ltd.](#)

United States District Court for the District of South Carolina, Columbia Division

April 16, 2012, Decided; April 16, 2012, Filed

C/A No.:3:10-cv-3117-JFA

Reporter

2012 U.S. Dist. LEXIS 52724 *

Pure Fishing, Inc., Plaintiff, v. Redwing Tackle, Ltd.,
Defendant.

Subsequent History: Reconsideration denied by [Pure Fishing, Inc. v. Redwing Tackle, Ltd., 2012 U.S. Dist. LEXIS 56939 \(D.S.C., Apr. 24, 2012\)](#)

Core Terms

deposition, protective order, depose, legal department, preparation, Trademark, paralegal

Counsel: [*1] For Pure Fishing Inc, Plaintiff: Angelica Marie Colwell, LEAD ATTORNEY, Nexsen Pruet (Chas), Charleston, SC; Cherie Wilson Blackburn, LEAD ATTORNEY, Nexsen Pruet Adams Kleemeier, Charleston, SC; Daniel C Leonardi, LEAD ATTORNEY, Nexsen Pruet Adams Kleemeier, Columbia, SC.

For Redwing Tackle Ltd, Defendant: Christine Kent Toporek, Donald Jay Davis, Jr, LEAD ATTORNEYS, Young Clement Rivers and Tisdale, Charleston, SC; Barbara L Waite, PRO HAC VICE, Barbara L Waite Law Office, Washington, DC.

For Redwing Tackle Ltd, Counter Claimant: Christine Kent Toporek, Donald Jay Davis, Jr, LEAD ATTORNEYS, Young Clement Rivers and Tisdale, Charleston, SC; Barbara L Waite, PRO HAC VICE, Barbara L Waite Law Office, Washington, DC.

For Pure Fishing Inc, Counter Defendant: Angelica Marie Colwell, LEAD ATTORNEY, Nexsen Pruet (Chas), Charleston, SC; Cherie Wilson Blackburn, LEAD ATTORNEY, Nexsen Pruet Adams Kleemeier, Charleston, SC; Daniel C Leonardi, LEAD ATTORNEY, Nexsen Pruet Adams Kleemeier, Columbia, SC.

For Redwing Tackle Ltd, Counter Claimant: Christine Kent Toporek, Donald Jay Davis, Jr, LEAD ATTORNEYS, Young Clement Rivers and Tisdale, Charleston, SC; Barbara L Waite, Barbara L Waite Law Office, [*2] Washington, DC.

Judges: Joseph F. Anderson, Jr., United States District Judge.

Opinion by: Joseph F. Anderson, Jr.

Opinion

PROTECTIVE ORDER

This matter is before the court pursuant to Plaintiff Pure Fishing's motion for a protective order (ECF No. 48) to prevent two depositions. The matter is fully briefed and the court heard oral argument from the parties on April 16, 2012. At the hearing, the court granted the motion and now supplements that ruling with this protective order preventing Defendant Redwing Tackle from taking the deposition of Julie C. VanDerZanden, Esquire, IP Counsel for Pure Fishing, and Lori Ocker, paralegal in the legal department of Jarden Corporation.

Pursuant to *Rule 26(c) of the Federal Rules of Civil Procedure*, this court may issue protective orders to protect a party from "annoyance, embarrassment, oppression, or undue burden or expense." Courts are particularly apt to issue protective orders where one party seeks to depose another party's counsel. Such a deposition is only appropriate in limited circumstances "where the party seeking to take the deposition has shown that (1) no other means exist to obtain the information than to depose opposing counsel, (2) the information sought is relevant [*3] and nonprivileged; and (3) the information is crucial to the preparation of the case." [Shelton v. Am. Motors Corp., 805 F.2d 1323, 1327 \(8th Cir. 1986\)](#) (internal citation omitted). Because Defendant seeks to depose one of Plaintiff's attorneys, Defendant must carry this burden.

Defendant seeks to depose Ms. VanDerZanden and Ms. Ocker to discover information relevant to its

counterclaim alleging fraud by Plaintiff on the United States Patent and Trademark Office (PTO), arguing that a Declaration of Use signed by Ms. VanDerZanden was false and submitted to the PTO with an intent to misled. Plaintiff opposes the deposition of one its attorneys—albeit in-house counsel rather than trial counsel—and argues that the information upon which the attorney relied is available from numerous other sources. Moreover, Plaintiff notes that Defendant could adequately prepare for its case with information from sources other than the testimony of VanDerZanden and Ocker.

The court finds that the defendant has not carried its burden. Given the inherent dangers of deposing another party's counsel, allowing the depositions at issue would not be appropriate. While some of the information Defendant seeks is not [*4] privileged, it is available from alternate sources. As Plaintiff notes, the information concerning the use or non-use of the trademarks by the Plaintiff is available from numerous sources, including the affidavits and materials submitted in conjunction with this motion. Plaintiff has also addressed the basis of Ms. VanDerZanden's actions in its answers to Defendant's interrogatories. The court is not persuaded by Defendant's arguments that the information submitted with the Declaration is false, and that, therefore, it may inquire into VanDerZanden's intent regarding the filing of that Declaration.

Accordingly, the court hereby grants Plaintiff's motion and issues this protective order preventing Defendant from taking the depositions of Julie C. VanDerZanden, IP Counsel for Pure Fishing, and Lori Ocker, paralegal in the legal department of Jarden Corporation.

IT IS SO ORDERED.

/s/ Joseph F. Anderson, Jr.

Joseph F. Anderson, Jr.

United States District Judge

April 16, 2012

Columbia, South Carolina

End of Document

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.

**DEFENDANT AIRBNB, INC.’S
MOTION AND MEMORANDUM TO
QUASH PLAINTIFF’S NOTICE OF
DEPOSITION OF TARA BUNCH
AND FOR A PROTECTIVE ORDER**

TO: THE HONORABLE COURT AND ALL COUNSEL OF RECORD

PLEASE TAKE NOTICE that Defendant Airbnb, Inc. (“Airbnb”), by and through its undersigned counsel, moves this Honorable Court, under Rules 26(c) and 45(c) of the South Carolina Rules of Civil Procedure, to quash Plaintiff’s notice of deposition of non-party and Airbnb’s Global Head of Operations Tara Bunch and for a protective order. Undersigned counsel affirms that he has communicated with opposing counsel about the issues raised in this motion and has attempted in good faith to resolve the matter, but has been unable to do so.

INTRODUCTION

Four days after Airbnb and Plaintiff had an unsuccessful mediation, Plaintiff issued her first 30(b)(1) deposition notices to Airbnb in this action. These notices were directed to two of Airbnb’s highest-ranking corporate executives: Tara Bunch (Airbnb’s Head of Global Operations) and Rich Baer (Airbnb’s Chief Legal Officer). Neither executive was employed at Airbnb during the time period alleged in Plaintiff’s complaint and neither has personal knowledge of the facts

alleged.¹ Plaintiff has noticed the deposition of Ms. Bunch for January 26, 2023—a date Plaintiff chose unilaterally without input from Airbnb or Ms. Bunch.² Ms. Bunch is at the apex of Airbnb’s corporate structure with a supervisory role over more than 2,340 employees worldwide. She did not join Airbnb until a full year after the alleged incident. Compelling her deposition would be oppressive, harassing, and unduly burdensome to Airbnb and Ms. Bunch.

Plaintiff claims, without support, that Ms. Bunch would know about representations Airbnb allegedly made and on which Plaintiff allegedly relied. Any alleged representations necessarily predated the May 2019 incident—and therefore predate Ms. Bunch’s employment, which began in May 2020. Ms. Bunch simply does not—and could not—have relevant personal knowledge. Plaintiff has made no attempt to serve interrogatories seeking the identity of anyone else within the organization who may have such personal knowledge. Instead, she has immediately sought to depose Airbnb’s most senior executives, who have no unique or special knowledge of the facts of this case.

Airbnb therefore respectfully requests that the Court quash the subpoena and deny Plaintiff’s attempt to depose Ms. Bunch pursuant to Rules 26(c) and 45(c) of the South Carolina Rules of Civil Procedure and this Court’s inherent authority.

BACKGROUND

Plaintiff’s claims arise from an incident that occurred during a one-night stay at a property in Aiken owned by co-defendant Rhett Riviere and managed by his then-girlfriend co-defendant Katherine Thomas. FAC ¶ 1, 89-92. Plaintiff’s Amended Complaint alleges that Riviere secretly

¹ Airbnb has filed a separate motion to quash and for a protective order regarding Plaintiff’s deposition subpoena to Mr. Baer.

² Plaintiff emailed Airbnb’s counsel a subpoena for Ms. Bunch’s deposition on January 10, 2023. Ms. Bunch is not available for deposition on the noticed date. Ex. 1 (Bunch Decl. ¶ 6).

recorded her during her May 17-18, 2019, stay, which Plaintiff's friend reserved via Airbnb's platform. *Id.* ¶¶ 89, 93, 95, 103-04. After over 1.5 years of discovery, not a single witness or piece of evidence suggests that Airbnb was aware of Riviere's criminal predilections. Plaintiff brings causes of action against Airbnb for negligence, premises liability, negligence per se based on an alleged violation of a real-estate licensure statute, fraudulent misrepresentation, negligent hiring and supervision, vicarious liability for invasion of privacy, and South Carolina's Unfair Trade Practices Act ("SCUTPA"). She alleges that Airbnb "represent[s] itself as ... safe and trustworthy," that "guests must rely entirely on Airbnb's assurances that the rental property is safe and secure, and that the Host is trustworthy," and that she "relied upon Airbnb's name, reputation, and claims that it would provide only safe and trustworthy rental facilities." FAC ¶¶ 29, 58-59, 61, 94.

Ms. Bunch began working at Airbnb in May 2020—more than a year after Riviere allegedly recorded Plaintiff. Ex. 1 (Bunch Decl. ¶¶ 2, 5). Ms. Bunch is a member of Airbnb's executive team and reports directly to the CEO. *Id.* ¶ 3. In other words, she is at the top of Airbnb's corporate hierarchy. As Global Head of Operations, Ms. Bunch oversees Airbnb's Customer Service, Trust, and Payments teams that support hosts and guests worldwide. *Id.* ¶ 4.

Ms. Bunch has no personal knowledge of Plaintiff, Riviere, Thomas, or the subject property. *Id.* ¶ 5. Nothing in the discovery thus far—including the 1,300+ pages of Airbnb documents produced or the first full day of Airbnb's 30(b)(6) deposition³—has shown otherwise.

Plaintiff now seeks to depose Ms. Bunch on the theory that "Airbnb falsely represents that 'safety is their number one priority,'" and that Ms. Bunch's testimony is therefore purportedly

³ The 30(b)(6) deposition of Airbnb's corporate representative began on October 26, 2022, and lasted approximately 10 hours; the deposition will reconvene on January 25, 2023.

“relevant to these misleading representations.” Ex. 2 at 3 (Jan. 4, 2023 D. Barbier email to B. Ashmore). Plaintiff has not explained (and she cannot) how Ms. Bunch could have personal knowledge about representations Airbnb allegedly made before Ms. Bunch joined the company. Unsurprisingly, she does not. Ex. 1 (Bunch Decl. ¶ 5).

Plaintiff has also made no attempt to obtain this information from a less intrusive source. For example, she has not issued any interrogatories to identify knowledgeable employees, or sought a deposition of a lower-level employee with personal knowledge. *See* Ex. 2 at 1-2 (Jan. 9, 2023 B. Ashmore Email to D. Barbier).

LEGAL STANDARD

“If the discovery process threatens to become abusive or create a particularized harm to a litigant or third party, the trial judge may issue an order ‘to protect a party or person from annoyance, embarrassment, oppression, or undue burden by expense.’” *Hollman v. Woolfson*, 384 S.C. 571, 578, 384 S.C. 571, 578 (2009) (quoting Rule 26(c), SCRPC).

Where a plaintiff seeks the deposition of a high-ranking corporate officer, Plaintiff has the additional burden under the apex doctrine of showing that: (1) the deponent has “unique or special knowledge of the facts at issue and (2) other less burdensome avenues for obtaining the information sought have been exhausted.” *See Cross v. XPO Express, Inc.*, 2017 WL 10544634, at *1 (D.S.C. May 8, 2017) (citations omitted).

Even if the Court declines to apply the apex doctrine as such,⁴ Plaintiff still must show

⁴ Rule 26(c), SCRPC (“Protective Orders”), contains the same substantive standard for protective orders relied on by federal and other state courts applying the apex doctrine. *Compare* Rule 26(c), SCRPC (“the court . . . may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden by expense”), *with* Fed. R. Civ. P. 26(c) (“The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense”); *see also Roberts v. Peterson*, 292 S.C. 149 (Ct. App. 1987) (where a state rule has adopted the language of a federal rule, federal cases

that deposing Airbnb’s Head of Global Operations is necessary. “If a [party] requesting a protective order shows a particularized harm which will be caused by allowing the discovery, the opposing party has the burden of showing the information sought is ‘relevant and necessary’ to the case.” *Hollman*, 384 S.C. at 578. Specifically, it is Plaintiff’s burden under South Carolina law to “demonstrate with specificity exactly how the lack of information will impair the presentation of the case on the merits to the point that an unjust result is a real, rather than a merely possible, threat.” *Id.*

ARGUMENT

Plaintiff’s subpoena to Ms. Bunch—and her contemporaneous subpoena to Airbnb’s Chief Legal Officer Mr. Baer—shows that her purpose is not to uncover relevant facts, but rather to harass Airbnb and its executives, while disrupting corporate business. In a company of more than 6,000 employees, Ms. Bunch—as Airbnb’s Global Head of Operations—is among the nine individuals who make up Airbnb’s Executive Management team. *See* Ex. 3 (Airbnb, *Governance: Executive Management*). In this top-level role, Ms. Bunch is responsible for global teams supporting users in over 220 countries and regions and payments around the world. Ex. 1 (Bunch Decl. ¶ 4). The teams Ms. Bunch oversees—totaling 2,340 employees—support the more than four million hosts who offer a collective six million active listings worldwide. *Id.*

Plaintiff made no effort to explore less burdensome avenues to obtain information in discovery before leapfrogging to the top rung of Airbnb’s corporate ladder. She did not issue interrogatories to identify lower-level employees who may possess any relevant knowledge, nor did she issue interrogatories to identify whether Ms. Bunch knew anything about Plaintiff, Riviere, Thomas, or the reservation at issue. Plaintiff was informed before she issued her subpoena that

interpreting the federal rule are persuasive in the absence of prior state law).

Ms. Bunch joined Airbnb a full year after Riviere’s alleged criminal misconduct—and therefore could not have any direct or personal knowledge about the facts of this case or statements Airbnb made before the misconduct allegedly occurred.

There can be no question that deposing a top-level corporate officer with no personal or unique knowledge of the facts of the case, is harassing, oppressive, and unduly burdensome. Under both the apex doctrine and South Carolina law, the Court should quash the deposition notice and issue a protective order.

A. The Court Should Grant Airbnb’s Motion for a Protective Order Under the Apex Doctrine.

“The Apex doctrine recognizes that deposition notices directed at an official at the highest level or apex of corporate management creates a tremendous potential for abuse or harassment.” *In re Lipitor (Atorvastatin Calcium) Mktg.*, No. 2:14-MN-02502-RMG, 2014 WL 12621613, at *2 (D.S.C. Nov. 13, 2014) (citations and quotations omitted); *see also Celerity, Inc. v. Ultra Clean Holding, Inc.*, 2007 WL 205067, at *3 (N.D. Cal. Jan. 25, 2007) (“Virtually every court that has addressed deposition notices directed at an official at the highest level or ‘apex’ of corporate management has observed that such discovery creates a tremendous potential for abuse or harassment.”); *Brown v. Branch Banking & Tr. Co.*, 2014 WL 235455, at *2 (S.D. Fla. Jan. 22, 2014) (“Courts have generally restricted parties from deposing high-ranking officials because (by virtue of their position) they ‘are vulnerable to numerous, repetitive, harassing, and abusive depositions, and therefore need some measure of protection from the courts.’”). To prevent such abuse and harassment, the apex doctrine requires that “before deposing a corporate defendant’s high ranking officer, ‘the plaintiff must show (1) the executive has unique or special knowledge of the facts at issue and (2) other less burdensome avenues for obtaining the information sought have been exhausted.’” *Cross*, 2017 WL 10544634, at *1.

Plaintiff has not and cannot meet her burden to establish that Ms. Bunch has *any* knowledge of the facts at issue in this case, much less “unique or special” knowledge about the facts surrounding Plaintiff’s one-night stay in May 2019. *Cross*, 2017 WL 10544634, at *1.

Ms. Bunch has had no involvement with or personal knowledge of the incident, the Plaintiff, Riviere, Thomas, or the subject property. Ex. 1 (Bunch Decl. ¶ 5). Nor does she have personal knowledge of any relevant representations Airbnb allegedly made regarding safety. *See id.* ¶ 5; Ex. 2 at 3 (Jan. 4, 2023 D. Barbier email to B. Ashmore). This is a matter of both fact and logic: Because Plaintiff purportedly relied upon those alleged representations made *before* her May 2019 stay at Riviere’s property, Ms. Bunch—who did not join Airbnb until May 2020, could not have been involved in or have any special or unique knowledge about those statements. *See Armstrong v. Collins*, 366 S.C. 204, 218 (Ct. App. 2005) (constructive fraud requires *reliance* on the representation); *Maybank v. BB&T Corp.*, 416 S.C. 541, 569 (2016) (under SCUTPA, injury must be “*a result of* the defendant’s unfair or deceptive act” (emphasis added)). And general knowledge would not suffice. *See Cross*, 2017 WL 10544634, at *1-2 (potential general knowledge of a corporation’s CFO not sufficient basis for his deposition when plaintiff made no showing that the CFO had “any personal knowledge concerning the accident at issue, or that his corporate knowledge is so special or unique or that they cannot obtain the information they are seeking by deposing XPO’s 30(b)(6) witnesses.”).

Because Ms. Bunch did not work at Airbnb at the time of the incident, it stands to reason that whatever knowledge she may now have about Airbnb statements before the incident necessarily came from an alternative source. *Sun Cap. Partners, Inc. v. Twin City Fire Ins. Co.*, 310 F.R.D. 523, 528 (S.D. Fla. 2015) (“[E]ven when a high-ranking official of a corporation does have direct knowledge of the facts, it is inappropriate to compel his or her deposition without first

deposing lesser-ranking employees who have more direct knowledge of the facts at issue.”). Plaintiff did not attempt to pursue alternative, less-burdensome sources before choosing to burden Airbnb’s Global Head of Operations with a deposition. Plaintiff cannot establish that “no less intrusive means exist” to obtain the same information. *Brown*, 2014 WL 235455, at *3.

B. South Carolina Discovery Rules Provide A Basis For Quashing The Subpoena Even Independent Of The Apex Doctrine.

Should the Court not apply the apex doctrine, the South Carolina discovery rules are still squarely against the deposition of Ms. Bunch.⁵ Here, Airbnb has identified a substantial, particularized harm that would occur if Plaintiff is permitted to depose Ms. Bunch: compelling this senior executive to sit for an entire day in deposition when Plaintiff knows she has no unique, personal knowledge of the facts—and knows she was not employed by Airbnb until a full year after the alleged incident—would impose an unjustifiable hardship. As discussed above, Ms. Bunch is responsible for overseeing more than 2,340 employees across multiple, critical teams within this global public corporation and it will disrupt her work and Airbnb’s corporate business to force her to sit for a deposition.

Plaintiff therefore has the burden of showing “with specificity” how the deposition is “necessary” to her case—*i.e.*, exactly how not deposing Airbnb’s Global Head of Operations “will impair the presentation of the case on the merits to the point that an unjust result is a real, rather than a merely possible, threat.” *See Hollman*, 384 S.C. at 578. She cannot meet this burden—especially because the “[t]he trial court must determine whether there are reasonable alternatives available to discover the information.” *Id.* Any theoretical knowledge Ms. Bunch could possess

⁵ *See, e.g., Performance Sales & Mktg. LLC v. Lowe’s Cos., Inc.*, 2012 WL 4061680, at *4 (W.D.N.C. Sept. 14, 2012) (“Put simply, the apex doctrine is the application of the rebuttable presumption that the deposition of a high-ranking corporate executive . . . constitutes ‘good cause’ for such an order as an ‘annoyance’ or ‘undue burden’ within the meaning of Rule 26(c)(1).”).

would certainly be obtainable from alternative sources—sources Plaintiff has made no attempt to identify. To date, Plaintiff has issued more than a dozen separate interrogatories and 48 document requests. Instead of subpoenaing a senior corporate officer, she certainly could have asked for the identity of an Airbnb employee who is knowledgeable about any statements Plaintiff claims to have relied upon. She has not and she cannot demonstrate, as she must, that Ms. Bunch’s deposition is necessary. *Hollman*, 384 S.C. at 578.

Using the Court’s subpoena power as a vehicle for harassment undermines the very aims of discovery. Because Ms. Bunch does not possess *any* information that cannot be obtained through “reasonable alternatives,” *id.*; *see also* Rule 26(a)(i)-(ii), SCRCPP, it is requested that this Court grant a protective order to prevent this oppressive discovery tactic.

CONCLUSION

For these reasons, Airbnb respectfully requests that the Court quash Plaintiff’s notice of deposition of Tara Bunch and grant Airbnb’s motion for a protective order.

Dated this 19th day of January, 2023.

Respectfully submitted

/s/ Beattie B. Ashmore
Beattie B. Ashmore
SC Bar No. 10419
650 East Washington Street
Greenville, SC 29601
PH: (865) 467-1001.
E: beattie@beattieashmore.com

Attorney for Defendant Airbnb, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **DEFENDANT AIRBNB, INC.'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION TO QUASH PLAINTIFF'S NOTICE OF DEPOSITION OF TARA BUNCH AND FOR A PROTECTIVE ORDER and Exhibits thereto** has been served as indicated below on the 19th day of January, 2023:

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

Deborah B. Barbier
Deborah B. Barbier, LLC
1811 Pickens Street
Columbia, SC 29201
Attorney for Plaintiff
Via electronic filing

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

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
Via U.S. Mail

Joe McCulloch
Kathy R. Schillachi
1116 Blanding Street
Columbia, SC 29201
Attorneys for Rhett Riviere

Via U.S. Mail

James Mixon Griffin
Margaret Nicole Fox
4408 Forest Drive, Ste. 300
Columbia, SC 29202
Attorneys for Rhett Riviere and Chase
Enterprises, LLC of South Carolina
Via U.S. Mail

Damon C. Wlodarczyk
Riley Pope & Laney, LLC
P.O. Box 11412
Columbia, SC 29211
Attorney for Katherine A. Thomas
Via Electronic Filing

/s/ Beattie B. Ashmore
Beattie B. Ashmore

EXHIBIT

1

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

JULIANNE FOSTER,

Plaintiff,

v.

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

Defendants.

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

DECLARATION OF TARA BUNCH

ELECTRONICALLY FILED - 2023 Jan 19 9:56 AM - AIKEN - COMMON PLEAS - CASE#2021CP0200889

I, Tara Bunch, under penalty of perjury, hereby declare as follows:

1. I submit this declaration in support of Airbnb's Motion to Quash Plaintiff's Subpoena to Depose Tara Bunch and For a Protective Order. I have personal knowledge of the facts set forth herein, and if called as a witness, I could and would testify to them.

2. In May 2020, I joined Airbnb, Inc. ("Airbnb") as Global Head of Operations and continue to serve in this role today. Immediately prior to joining Airbnb, I was a senior executive at Apple.

3. I am a member of Airbnb's Executive Management team, which is composed of Airbnb's highest-ranking executives and officers. I report directly to Airbnb's Chief Executive Officer Brian Chesky.

4. As Airbnb's Global Head of Operations, I oversee Airbnb's Community Support, Trust, and Payments teams, which currently consist of approximately 2,340 employees. These teams support guests and over four million hosts who offer approximately six million active listings in more than 220 countries and regions worldwide.

5. I have reviewed Plaintiff's First Amended Complaint related to events occurring from May 18 to 19, 2019. I joined Airbnb one year after the events at issue in this litigation are alleged to have occurred. I have no personal, unique, or special knowledge of Plaintiff or her allegations about Rhett Riviere or Katherine Thomas regarding the incident described in her First Amended Complaint. I have no direct, personal, or unique knowledge about statements regarding guest safety that Airbnb or any Airbnb officer or employee may have made before I joined Airbnb in May 2020.

//

//

6. In connection with my responsibilities as Airbnb's Global Head of Operations, I have immovable conflicts and am unavailable to sit for deposition on January 26, 2023. Plaintiff's counsel issued a notice of the deposition date without first seeking my availability.

I declare under penalty of perjury under the laws of the State of South Carolina that the foregoing is true and correct.

Executed on January 18, 2023, at New Braunfels, Texas.

DocuSigned by:
Tara Bunch
50221E2B4D634CD...
Tara Bunch

EXHIBIT 2

From: Beattie B. Ashmore, P.A. <beattie@beattieashmore.com>
Sent: Monday, January 9, 2023 11:23 AM
To: Debbie Barbier; damonw@rplfirm.com; Ryan Beasley; Staff@wesleyfew.com; Jim Griffin; joe@mccullochlaw.com; John Harte; Taylor, Damali A.; Stephanie Gray; Rothstein, James K.; Rhonda Bell
Subject: Deposition dates

[EXTERNAL MESSAGE]

Hi Debbie,

Thanks -- we will notice Ms. Foster's deposition for February 16 at my office in Greenville.

We still don't have your attorney dates for third party depositions. I'll go ahead and notice the depositions using the dates that we offered and Damon provided.

As for the depositions you noticed: Subpoenas are required under Rule 45, whether or not these folks are officers, directors or managers. If you have a case saying otherwise, please send that to us. Lindsey Scully is not an Airbnb employee, so she's not an officer, director, or manager. In addition, the Airbnb employees are not available on the dates you unilaterally set.

Even with your explanations, we don't think these depositions are appropriate. However, in the interest of cooperation, we're willing to make Vicki Ballagh available for an appropriately limited deposition. Ms. Ballagh leads Airbnb's Global Crisis Management team, which played no role in the alleged incident here. You indicate that her team "handles numerous incidents that are similar to" the amended complaint. That is not correct. To date, that team has handled only a single matter involving a hidden camera. Although we do not think this is sufficient to depose her, we will make her available for a couple of hours on Zoom to answer questions about GCM's handling of hidden camera matters. We will get back to you promptly with dates that she is available.

As to Rich Baer and Tara Bunch—both are Airbnb executives at the highest level: Mr. Baer is Airbnb's Chief Legal Officer and Tara Bunch is Global Head of Operations. Neither of them had any involvement whatsoever in the allegations here. In fact, neither worked at Airbnb until long after Riviere allegedly recorded Plaintiff—Mr. Baer joined in late 2019 and Ms. Bunch joined a year after the alleged recording. They are apex witnesses, and their depositions aren't justified. *Cross v. XPO Express, Inc.*, 2017 WL 10544634, at *1 (D.S.C. May 8, 2017). We would ask you to withdraw those notices.

Mr. Baer's deposition is particularly inappropriate because he is the company's most senior in-house lawyer. *See, e.g., Pure Fishing, Inc. v. Redwing Tackle, Ltd.*, 2012 U.S. Dist. LEXIS 52724, *2-3 (D.S.C. April 16, 2012) (warning of "the inherent dangers of deposing another party's counsel" and that "such a deposition is only appropriate in limited circumstances"). Putting aside your comment that you would not intentionally ask for privileged communications, his thoughts, impressions, and discussions about Airbnb's policies and compliance are undeniably privileged and/or attorney work product—that's exactly why courts disfavor attorney depositions. He also has no personal, unique or special knowledge about any applicable policies re South Carolina's Real Estate Licensing statute (or any other of the allegations). *Cross*, 2017 WL 10544634, at *1 (D.S.C. May 8, 2017). This is especially true since Plaintiff admitted in her discovery responses that the statute does not apply to corporations like Airbnb but only applies to individuals, so we do not see any justification for his deposition. We will be forced to go to the court if you insist on proceeding with this deposition.

For Ms. Bunch, not only is she an apex witness, whatever representations about “safety” you alleged necessarily pre-date Ms. Bunch’s employment at Airbnb. She has no personal, unique, or special knowledge about this matter or about Airbnb’s representations. *Cross*, 2017 WL 10544634, at *1 (D.S.C. May 8, 2017).

Lindsey Scully hasn’t worked for any Airbnb entity for nearly three years. Before that, she was a communications lead for Airbnb Canada and had no involvement with the facts of this case. She lives in Canada, so you’ll have to follow appropriate Canadian procedure if you want to go forward with her deposition. In your email, you cut off her full statement to claim some inconsistency with Airbnb’s 30(b)(6) testimony. Her full statement was: “We take privacy issues extremely seriously and have a zero-tolerance policy for this behavior. We have removed the host from the platform while we investigate and are providing the guest with our full support.” There is nothing inconsistent with the 30(b)(6) testimony.

We have been responsive to your discovery requests, which have been sweeping and sometimes unclear and predicated on incorrect assumptions. I don’t believe I have seen any interrogatories requesting Airbnb names employees who have information about the topics you described in your email —i.e., none of your interrogatories have sought the identities of:

1. individuals with knowledge of Airbnb’s policies on complying with South Carolina real estate broker laws;
2. individuals with knowledge of the statement that ““We take privacy issues extremely seriously and have a zero-tolerance policy for this behavior. We have removed the host from the platform while we investigate and are providing the guest with our full support””;
3. individuals with knowledge of representations by Airbnb that safety is Airbnb's "number one priority"; and,
4. individuals with knowledge of "numerous incidents similar to" the allegations of amended complaint.

Please let us know if you will withdraw the deposition notices for Rich Baer and Tara Bunch. If we’re going to have to fight about them, we need to know as soon as possible.

As noted above, we will provide you with dates for Ms. Ballagh’s Zoom depo in the next day or two.

Beattie Ashmore
Beattie B. Ashmore, P.A.
650 East Washington Street
Greenville, South Carolina 29601
Office: (864) 467-1001

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Beattie B. Ashmore



Criminal Defense: White-Collar
Greenville, South Carolina

ELECTRONICALLY FILED - 2023 Jan 19 9:56 AM - AIKEN - COMMON PLEAS - CASE#2021CP0200889

From: Deborah Barbier <dbb@deborahbarbier.com>

Sent: Wednesday, January 4, 2023 12:11 PM

To: Damon Wlodarczyk <damonw@rplfirm.com>; Beattie B. Ashmore, P.A. <beattie@beattieashmore.com>; Ryan Beasley <rlb@ryanbeasleylaw.com>; Wes Few Staff <staff@wesleyfew.com>; Wes Few <wes@wesleyfew.com>; Jim Griffin <jgriffin@griffindavislaw.com>; Joe McCulloch <joe@mccullochlaw.com>; John Harte <john@jwhartelaw.com>; Damali A. Taylor <dtaylor@omm.com>; Stephanie Gray <stephanie@beattieashmore.com>; James K. Rothstein <jrothstein@omm.com>

Subject: RE: Request for Deposition Dates

Beattie – On December 24, 2022, you indicated that Airbnb was unable to provide convenient dates for the witnesses we requested until January 4, 2023. You also requested that I provide you with more information about why the Plaintiff seeks to depose Rich Baer, Lindsey Sculley, Tara Bunch and Vicki Ballagh. The following is a brief summary of the basis to depose these people:

1. Rich Baer – I do not intend to ask Mr. Baer’s for privileged communications, but Mr. Baer performs many other functions in his role at Airbnb and is privy to many relevant facts which are discoverable and pertinent to the Amended Complaint. In particular, Mr. Baer should be knowledgeable regarding Airbnb’s policies on complying with South Carolina real estate laws.
2. Lindsey Sculley— Ms. Sculley has made numerous public statements regarding Airbnb’s “zero tolerance policy” on hidden cameras which she did not limit to Airbnb Canada. Her statements are inconsistent with Airbnb’s corporate representative, so we are entitled to explore all of these issues and more with this witness.
3. Tara Bunch – As head of Airbnb’s Global Head of Operations, Ms. Bunch oversees the Safety Team and reports to CEO Brian Chesky. Because Airbnb falsely represents that “safety” is their number one priority, her testimony is relevant to these misleading representations as alleged in our Amended Complaint.
4. Vicki Ballagh- As Airbnb’s Global Crisis Management Officer, Ms. Ballagh’s team handles numerous incidents which are similar to and within the scope of our Amended Complaint.

As you know, today is January 4, 2023, so please let me know the dates that these Airbnb employees are available to be deposed. If you refuse to provide dates, we will plan to proceed with the depositions as already noticed. As they are all officers, directors and managers or Airbnb – they are subject to the jurisdiction of the South Carolina courts.

If Airbnb contends that these employees do not have relevant information and are not subject to the jurisdiction of the South Carolina courts, please identify for me the Airbnb employees who do have relevant information and are subject to the South Carolina courts, as we have previously requested in our Interrogatories.

As for Ms. Foster, she is available to be deposed on February 7, 16th or 23rd.

Look forward to hearing from you –

Best regards,

Debbie

Deborah B. Barbier

Deborah B. Barbier, LLC
1811 Pickens Street
Columbia, South Carolina 29201
(803) 445-1032 (office)
(803) 445-1036 (fax)
(803) 730-6290 (cell)
www.deborahbarbier.com

From: Damon Wlodarczyk <damonw@rplfirm.com>
Sent: Wednesday, January 4, 2023 10:59 AM
To: Beattie B. Ashmore, P.A. <beattie@beattieashmore.com>; Deborah Barbier <dbb@deborahbarbier.com>; Ryan Beasley <rlb@ryanbeasleylaw.com>; Wes Few Staff <staff@wesleyfew.com>; Wes Few <wes@wesleyfew.com>; Jim Griffin <jgriffin@griffindavislaw.com>; Joe McCulloch <joe@mccullochlaw.com>; John Harte <john@jwhartelaw.com>; Damali A. Taylor <dtaylor@omm.com>; Stephanie Gray <stephanie@beattieashmore.com>; James K. Rothstein <jrothstein@omm.com>
Subject: RE: Request for Deposition Dates

I'm available Jan 20, February 14, 16-17, 20-24 and 27-March 3.



Damon C. Wlodarczyk | Attorney and Counselor at Law
Riley Pope & Laney, LLC – Columbia | Charleston | Charlotte
Office: 803.799.9993
Email: damonw@rplfirm.com

From: Beattie B. Ashmore, P.A. <beattie@beattieashmore.com>
Sent: Wednesday, January 4, 2023 9:32 AM
To: Deborah Barbier <dbb@deborahbarbier.com>; Ryan Beasley <rlb@ryanbeasleylaw.com>; Wes Few Staff <staff@wesleyfew.com>; Wes Few <wes@wesleyfew.com>; Jim Griffin <jgriffin@griffindavislaw.com>; Joe McCulloch <joe@mccullochlaw.com>; John Harte <john@jwhartelaw.com>; Damon Wlodarczyk <damonw@rplfirm.com>; Damali A. Taylor <dtaylor@omm.com>; Stephanie Gray <stephanie@beattieashmore.com>; James K. Rothstein <jrothstein@omm.com>
Subject: RE: Request for Deposition Dates

Can we get attorneys Jan/Feb available dates please? Otherwise, we'll have to notice them on a date of our choosing. Can you provide dates for the plaintiff today please? Thanks all. Beattie.

Beattie Ashmore
Beattie B. Ashmore, P.A.

650 East Washington Street
Greenville, South Carolina 29601
Office: (864) 467-1001

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Beattie B. Ashmore



Beattie B. Ashmore



Criminal Defense: White-Collar
Greenville, South Carolina

From: Beattie B. Ashmore, P.A.

Sent: Thursday, December 29, 2022 8:51 AM

To: Deborah Barbier <dbb@deborahbarbier.com>; Ryan Beasley <rlb@ryanbeasleylaw.com>; Wes Few Staff <staff@wesleyfew.com>; Wes Few <wes@wesleyfew.com>; Jim Griffin <jgriffin@griffindavislaw.com>; Joe McCulloch <joe@mccullochlaw.com>; John Harte <john@jwhartelaw.com>; Damon Wlodarczyk <damonw@rplfirm.com>; Damali A. Taylor <dtaylor@omm.com>; Stephanie Gray <stephanie@beattieashmore.com>; James K. Rothstein <jrothstein@omm.com>

Subject: Request for Deposition Dates

Debbie,

Your email misrepresents the record, including the hearing before Judge Dennis. His mention of six digit sanctions was drawn from another case he handled and it was directed at Julie Moose on behalf of Tiger Riviere- not Airbnb. (see 5/31/22 transcript at P. 13, line 11).

Airbnb has complied completely and cooperatively with all discovery obligations. You still have not (and cannot) explain what basis you have to depose Airbnb's senior executives who had no involvement with this case—including its General Counsel (in other words, the Company's attorney) and a former employee who worked for Airbnb *Canada*. We once again respectfully ask you to please provide the basis for the depositions you have requested. We'd like an explanation of your position on these subpoenas, otherwise it appears the plaintiff is simply lashing out over a failed mediation with harassing subpoenas.

To address your specific points:

On your points 1-3 re: the 30(b)(6), your representations are inaccurate. Airbnb did not fight the 30(b)(6) deposition for nine months. You filed this lawsuit on April 28, 2021. You waited eleven months, until March 2022, to propose a 30(b)(6) deposition of Airbnb. We offered to meet and confer over that deposition, but you never responded. Two months later, on May 26, 2022, you unilaterally noticed the deposition. We filed a motion for a protective order on June 14—not because we objected to the deposition, but to the breadth of your requested topics. The Court set a hearing on June 28 and granted Airbnb’s motion in part that day and asked the parties to submit proposed topics, which Airbnb timely submitted. The Court issued its order on August 3, and we filed our motion to alter/amend on August 4. Meanwhile, we scheduled the 30(b)(6) for August 30 subject to our motion to alter/amend. The Court ordered further briefing on August 26, and set a briefing scheduling with a September 14 reply date. On October 11 the Court denied reconsideration and *the very next day* we provided dates in October and in December—including dates just two weeks away for a witness coming from across the country. The 30(b)(6) began on October 26 and lasted for approximately ten hours, until 7:30 PM. You insisted on making the witness fly to Aiken for that deposition even though we told you that the witness’s close friend died in a tragic accident just days before the deposition.

Despite all of this (and re #7), we agreed to allow you to have another full day with the witness and immediately provided you with additional dates. We mutually agreed to cancel the 30(b)(6) to conduct a mediation. Following the failed mediation, we are providing our 30(b)(6) witness for a second full day on 1/25. I’d also point out that ever since I joined the case, at least 3 or 4 times you have scheduled depositions (on some occasions after asking us for dates and then you actually set the depositions on my conflict days) and insisted on dates only to call off the depositions with one days notice (Lassiter and Emerson are examples). As for Mr. Riviere’s deposition, we all arranged our schedules so that he could be deposed on November 3 but you cancelled his deposition with just three days’ notice as it was accidentally disclosed to us that you had arranged a private mediation with him. Ms. Foster may have settled with him, but as our filed objection notes, your purported stipulated dismissal is defective as it does not bear our or Thomas’s signature.

Your other points are also incorrect. #4 – Yes, Airbnb objected to your document requests and some interrogatories, as is customary, but then it answered and produced documents. In fact, Airbnb has produced over 1300 pages of documents.

On #5 & 6 – We will be making a small production and log that completes your follow up requests for production, hopefully as early as tomorrow. The documents are minimal and our production is complete.

Next, as noted above, Judge Dennis never threatened sanctions against Airbnb—not during that hearing or at any other time.

Finally, it appears that you refuse to provide your own client’s availability for her deposition, but please respond to our request and send us your attorney availability in January and February so that we can start scheduling third parties for depositions.

Looking forward to working cooperatively in the New Year.

Happy New Year to all!
Beattie

Beattie Ashmore
Beattie B. Ashmore, P.A.

650 East Washington Street
Greenville, South Carolina 29601
Office: (864) 467-1001

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Beattie B. Ashmore



Beattie B. Ashmore



Criminal Defense: White-Collar
Greenville, South Carolina

From: Deborah Barbier <dbb@deborahbarbier.com>

Date: December 27, 2022 at 8:31:44 PM EST

To: "Beattie B. Ashmore, P.A." <beattie@beattieashmore.com>

Cc: Stephanie Gray <stephanie@beattieashmore.com>, "Sestito, Dawn" <dsestito@omm.com>, "Taylor, Damali A." <dtaylor@omm.com>, mtrifos@rplfirm.com, Cassy Young <cassy@wesleyfew.com>, "Rothstein, James K." <jrothstein@omm.com>, damonw@rplfirm.com, Wes Few <wes@wesleyfew.com>, Ryan Beasley <rlb@ryanbeasleylaw.com>, Elizabeth Ross <elizabeth@ryanbeasleylaw.com>, staff@wesleyfew.com, Jim Griffin <jgriffin@griffindavislaw.com>, joe@mccullochlaw.com, Kathy Schillaci <kathy@mccullochlaw.com>, John Harte <john@jwhartelaw.com>, Maggie Fox <mfox@griffindavislaw.com>, Valerie McDonald <valerie.mcdonald@att.net>

Subject: RE: Request for Deposition Dates

Beattie – In sum, I would describe Airbnb's non-cooperation efforts as follows:

1. Fighting a Rule 30(b)(6) deposition for nine months;
2. Objecting to every topic in the Rule 30(b)(6) deposition;
3. Moving to reconsider their denied motion for a protective order;
4. Objecting to every single request to produce and interrogatory propounded;
5. Failing to produce documents that have been ordered to be produced;
6. Failing to comply with a Court Order granting out Motion to Compel; and
7. Producing a Rule 30(b)(6) witness who refuses to answer basic questions on topics that she has been ordered to testify on.

If Airbnb needs more detail on this, it will be outlined in our Motion for Sanctions which we anticipate having to file after the conclusion of the Rule 30(b)(6) deposition. As Judge Dennis noted, six figure sanctions will be requested. Thanks

Debbie

From: Beattie B. Ashmore, P.A. <beattie@beattieashmore.com>

Sent: Tuesday, December 27, 2022 8:13 PM

To: Deborah Barbier <dbb@deborahbarbier.com>

Cc: Stephanie Gray <stephanie@beattieashmore.com>; Sestito, Dawn <dsestito@omm.com>; Taylor, Damali A. <dtaylor@omm.com>; mtrifos@rplfirm.com; Cassy Young <cassy@wesleyfew.com>; Rothstein, James K. <jrothstein@omm.com>; damonw@rplfirm.com; Wes Few <wes@wesleyfew.com>; Ryan Beasley <rlb@ryanbeasleylaw.com>; Elizabeth Ross <elizabeth@ryanbeasleylaw.com>; staff@wesleyfew.com; Jim Griffin <jgriffin@griffindavislaw.com>; joe@mccullochlaw.com; Kathy Schillaci <kathy@mccullochlaw.com>; John Harte <john@jwhartelaw.com>; Maggie Fox <mfox@griffindavislaw.com>

Subject: Re: Request for Deposition Dates

Debbie you'll need to explain how Airbnb has been "non-cooperative in discovery". You keep making that assertion but please tell me what you mean what you mean so it can be addressed now. We'll tackle these other issues moving forward. Thanks all. Beattie.

Sent from my iPhone

On Dec 27, 2022, at 7:31 PM, Deborah Barbier <dbb@deborahbarbier.com> wrote:

Beattie – We received your email on Christmas Eve – a religious holiday for many. Today is December 27th. It is disappointing that Airbnb refuses to cooperate in the setting of the depositions of their own employees and believes that a California subpoena is necessary. We disagree. I will discuss with my co-counsel whether it is worth wasting the Court's time on litigating this issue when they return from celebrating the holidays. I am sure the Court will see it as yet another attempt by Airbnb to be non-cooperative in discovery. When you give us the dates those employees can be deposed, we will give you the dates that work for Ms. Foster. After all, we asked for these depositions first, so they should be scheduled first. Ms. Foster is unavailable to discuss her availability for a deposition until January 4th as well -

Deborah B. Barbier

Deborah B. Barbier, LLC
1811 Pickens Street
Columbia, South Carolina 29201
(803) 445-1032 (office)
(803) 445-1036 (fax)
(803) 730-6290 (cell)
www.deborahbarbier.com

From: Beattie B. Ashmore, P.A. <beattie@beattieashmore.com>

Sent: Tuesday, December 27, 2022 5:41 PM

To: Deborah Barbier <dbb@deborahbarbier.com>; Stephanie Gray <stephanie@beattieashmore.com>; Sestito, Dawn <dsestito@omm.com>; Taylor, Damali A. <dtaylor@omm.com>; mtrifos@rplfirm.com; 'Cassy Young' <cassy@wesleyfew.com>; Rothstein, James K. <jrothstein@omm.com>; damonw@rplfirm.com; Wes Few <wes@wesleyfew.com>; Ryan Beasley <rlb@ryanbeasleylaw.com>; Elizabeth Ross <Elizabeth@ryanbeasleylaw.com>; Staff@wesleyfew.com; Jim Griffin <jgriffin@griffindavislaw.com>; joe@mccullochlaw.com; Kathy Schillaci <kathy@mccullochlaw.com>;

John Harte <john@jwhartelaw.com>; Maggie Fox <mfox@griffindavislaw.com>

Subject: Request for Deposition Dates

All, no one has responded with dates for January and February. Can you please let me know your availability so we can start getting our subpoenas served? What dates would the plaintiff be available? Lets get that one set then we can back fill from there. Joe/Jim, when is Mr. Riviere available? Please let me know you are in receipt of this email. Many thanks and Happy New Year! Beattie.

Beattie Ashmore
Beattie B. Ashmore, P.A.
650 East Washington Street
Greenville, South Carolina 29601
Office: (864) 467-1001

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<image001.png>

<image002.png>

<image003.png>

From: Beattie B. Ashmore, P.A.

Sent: Saturday, December 24, 2022 4:26 PM

To: Debbie Barbier <dbb@deborahbarbier.com>; Stephanie Gray <stephanie@beattieashmore.com>; Sestito, Dawn <dsestito@omm.com>; Taylor, Damali A. <dtaylor@omm.com>; mtrifos@rplfirm.com; 'Cassy Young' <cassy@wesleyfew.com>; Rothstein, James K. <jrothstein@omm.com>; damonw@rplfirm.com; Wes Few <wes@wesleyfew.com>; Ryan Beasley <rlb@ryanbeasleylaw.com>; Elizabeth Ross <Elizabeth@ryanbeasleylaw.com>; Staff@wesleyfew.com; Jim Griffin <jgriffin@griffindavislaw.com>; joe@mccullochlaw.com; Kathy Schillaci <kathy@mccullochlaw.com>; John Harte <john@jwhartelaw.com>; Maggie Fox <mfox@griffindavislaw.com>

Subject: Deposition Notices

Debbie,

Good seeing you yesterday. As we discussed, your request to depose four new witnesses presents problems. We remain hopeful that we will be able to work through these issues without the need for motion practice.

On 12/13, you demanded we send you our attorney availability for depositions ASAP. The very next morning, I sent you our available attorney dates.

When you responded on 12/21, you sent deposition notices for Rich Baer (for 1/18/23), Lindsey Sculley (1/19/2023), Tara Bunch (1/26/2023), and Vicki Ballagh (1/27/2023). We did not get these notices until 4:38pm, 4 days before Christmas, and these were individuals that you have never mentioned to us before nor have we ever discussed until yesterday.

I have no idea if these witnesses would be available on the dates you unilaterally set. Airbnb's corporate offices are closed for two weeks at the end of the year every year for their annual winter break. They will reopen on January 4. We are unable to get in touch with these folks to check their availability before then. Moreover, as we discussed, the notices you sent are insufficient—you will need to serve subpoenas. You mentioned that you will have California counsel to help you serve California subpoenas.

If you had run those names by us, we could have told you that none of these individuals are relevant to this case.

1. Rich Baer is Airbnb's Chief Legal Officer. He is the company's lawyer and his thoughts, mental impressions and conversations regarding this matter will be subject to the attorney client privilege. He also had no involvement with the facts of this case—he had not even joined Airbnb at the time this incident occurred.
2. Lindsey Sculley—who worked for *Airbnb Canada*—has no conceivable relevance to this US case about events occurring in Aiken, South Carolina.
3. Tara Bunch is Airbnb's Global Head of Operations. She is a high-ranking employee who had no involvement with the facts of this case. She did not even join Airbnb until a year after the incident in question.
4. Vicki Ballagh, Airbnb's Global Crisis Management. That team had no involvement with the incident in question—a fact our 30(b)(6) witness can confirm.

If you intend to proceed with your request to depose all of these individuals (via properly served domesticated subpoenas), please tell us the factual basis for each of these depositions.

We are eager to get this case moving and will facilitate scheduling of Airbnb witnesses with relevant information. Part two of your deposition of Airbnb's 30(b)(6) witness is set for January 25. As to these notices, it appears you just chose high-level Airbnb employees to harass and annoy Airbnb.

Finally, as I mentioned to you, we have several witnesses we will be deposing, including Ms. Foster. Please provide us with your available attorney dates in January and February, as well as a list of date options for Ms. Foster's deposition. All, can we please get your available dates in January and February before the close of business Tuesday December 27th please?

I hope you all have a wonderful holiday with your families!

With kind regards,
Beattie

Beattie Ashmore
Beattie B. Ashmore, P.A.
650 East Washington Street
Greenville, South Carolina 29601
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Beattie B. Ashmore



Criminal Defense: White-Collar
Greenville, South Carolina



Beattie B. Ashmore

EXHIBIT 3



AIRBNB INVESTOR

- [Home](#)
- [Events & Presentations](#)
- [Press Releases](#)
- [Stock Info](#)
- [Financials](#)
- [Governance](#)
- [Resources](#)

GOVERNANCE

- [Executive Management](#)
- [Board of Directors](#)
- [Committee Composition](#)
- [Governance Documents](#)
- [ESG](#)

Executive Management



Brian Chesky

Airbnb Co-founder and Chief Executive Officer



Hiroki Asai

Global Head of Marketing



Rich Baer

Chief Legal Officer



Ari Balogh

Chief Technology Officer



Nathan Blecharczyk

Airbnb Co-founder and Chief Strategy Officer



Tara Bunch

Global Head of Operations



Jay Carney

Global Head of Policy and Communications



Catherine Powell

Global Head of Hosting



Dave Stephenson

Chief Financial Officer and Head of Employee Experience

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

JULIANNE FOSTER,

Civil Case No. 2021-CP-02-00889

Plaintiff,

v.

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

**THIRD PARTY DEFENDANT
RHETT RIVIERE’S MOTION TO
COMPEL ARBITRATION**

Defendants.

AIRBNB, INC.,

Third-Party Plaintiff,

v.

RHETT RIVIERE,

Third-Party Defendant.

Pursuant to 9 U.S.C. §§ 3 and 4 of the Federal Arbitration Act (“FAA”), Defendant Rhett Riviere (Riviere) moves to compel arbitration of the third-party claims asserted by Airbnb, Inc. (“Airbnb”) in the above-captioned action. All of Airbnb’s claims against Riviere arise out of a transaction involving interstate commerce and are subject to a binding arbitration agreement that is governed by the FAA. Accordingly, the Court should compel arbitration.

“The policy of the United States and of South Carolina is to favor arbitration of disputes.” *Parsons v. John Wieland Homes & Neighborhoods of the Carolinas, Inc.*, 418 S.C. 1, 6-7, 791 S.E.2d 128, 131 (2016) (citing *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 590, 553 S.E.2d 110, 115 (2001)). As such, there is a strong presumption in favor of the validity of arbitration

agreements. *See Towles v. United Healthcare Corp.*, 338 S.C. 29, 37, 524 S.E.2d 839, 844 (Ct. App. 1999). Absent evidence that parties to an agreement delegated issues of arbitrability to an arbitrator, such determination is rightly made by the court. *See Palmetto Wildlife Extractors, LLC v. Ludy*, 435 S.C. 690, 700-701, 869 S.E.2d 859, 864-65 (Ct. App. 2022), *reh'g denied* (Feb. 25, 2022)). Where there is “clear and unmistakable” evidence of such delegation, the arbitrator properly determines gateway issues of arbitrability. *Id.* (citing *Doe v. TCSC, LLC*, 420 S.C. 602, 608, 846 S.E.2d 874, 877 (Ct. App. 2020)).

In the present matter, both Plaintiff Foster and Defendant Airbnb agreed to the Airbnb Terms and Conditions which contained the Arbitration Agreement. Similarly, Defendant Thomas, was required to agree to the Terms and Conditions prior to listing the property on the Airbnb platform. Defendant Airbnb has alleged a claim for indemnification against Riviere pursuant to the Airbnb Terms and Conditions. The Terms and Conditions contained the following agreement:

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.

See Terms of Service § 19.4, attached hereto as Exhibit A. Furthermore, the Terms of Service also provided that the Arbitration Agreement “evidences a transaction in interstate commerce and thus the [FAA] *governs the interpretation and enforcement of this provision.*” *Id.* § 19.6 (emphasis added). Accordingly, the clear language of the agreement dictates that the gateway issue of arbitrability be determined by the arbitrator and requires the court compel the third-party claims to arbitration conducted in accordance with the FAA.

Moreover, even if the Court were inclined to make this gateway determination itself – which it should not given section 19.6 - the plain language of the Arbitration Agreement necessitates the claims against Riviere be sent to arbitration. The Arbitration Agreement is clear that it is applicable to “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.” Terms of Service § 19.4. As an initial matter, Airbnb relies on section 18 of the Terms of Service in its contractual indemnification claim against Riviere, and therefore, it is a “claim...arising out of...these Terms” subject to arbitration. Additionally, all of Airbnb’s third-party claims against Riviere stem from and are related to Plaintiff’s allegations that she was damaged by conduct that occurred after agreeing to the Terms of Service. Thus, it is clear, the third-party claims are encompassed by the Arbitration Agreement, and to the extent there is any uncertainty, “when the scope of the arbitration clause is open to question, a court must decide the question in favor of arbitration.” *Parsons*, 418 S.C. at 7, 791 S.E.2d at 131 (citing *Landers v. Fed. Deposit Ins. Corp.*, 402 S.C. 100, 109, 739 S.E.2d 209, 213 (2013)).

Based on the foregoing, the Court should grant the motion to compel arbitration of the third-party claims because all of Airbnb’s claims fall within the scope of the Airbnb Arbitration Agreement which is governed by the FAA.

[SIGNATURE BLOCK ON FOLLOWING PAGE]

s/ James M Griffin

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kathy@mccullochlaw.com

ATTORNEYS FOR DEFENDANT RIVIERE

Columbia, SC
May 23, 2023

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

JULIANNE FOSTER,

Civil Case No. 2021-CP-02-00889

Plaintiff,

v.

**THIRD PARTY DEFENDANT
RHETT RIVIERE’S MOTION TO
DISMISS, OR, IN THE
ALTERNATIVE, TO STAY**

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

Defendants.

AIRBNB,

Third-Party Plaintiff,

v.

RHETT RIVIERE,

Third-Party Defendant.

Pursuant to Rules 12(b)(1), (3), and (6) of the South Carolina Rules of Civil Procedure, Third-Party Defendant Rhett Riviere (“Riviere”) moves to dismiss Third-Party Plaintiff Airbnb’s (“Airbnb”) claims asserted against him in the third-party complaint. The Court should grant this motion because all of Airbnb’s claims against Riviere arise out of a transaction involving interstate commerce and are subject to a binding arbitration agreement that is governed by the Federal Arbitration Act (“FAA”). Accordingly, the Court should dismiss the claims with prejudice. In the alternative, the Court should stay the claims pending the completion of arbitration.

In its third-party complaint, Airbnb alleges four causes of action against Riviere that stem from the agreement entitled Airbnb Terms of Use: (1) breach of contract; (2) contractual

indemnification; (3) interference with contractual relationship; and (4) equitable indemnification. Additionally, this same agreement – the Airbnb Terms of Use - is central to the underlying case brought by Plaintiff against Airbnb. As set forth in Riviere’s Motion to Compel Arbitration – the Airbnb Terms of Use contained a valid arbitration clause that is governed by the FAA. The scope of the arbitration clause clearly covers each of the third-party claims against Riviere. Therefore, the third-party claims are appropriately resolved in arbitration.¹

Because all of Airbnb’s third-party claims are subject to arbitration, the Court lacks subject matter jurisdiction and, additionally, is not a proper venue for the adjudication of those claims. *See Cox v. Assisted Living Concepts, Inc.*, CA No. 6:13-00747, 2014 WL 1094394, at *7 (D.S.C. Mar. 18, 2014) (“Where all claims pled by a plaintiff are subject to an [FAA] arbitration agreement, the court should dismiss the claims rather than merely stay further judicial proceedings.” (quoting *Choice Hotels Int’l, Inc. v. BSR Tropicana Resort, Inc.*, 252 F.3d 707, 709-10 (4th Cir. 2001) (“Notwithstanding the terms of § 3 [of the FAA] . . . dismissal is a proper remedy when all of the issues presented in a lawsuit are arbitrable.”))). Moreover, the third-party complaint fails to set forth a claim constituting a cause of action for which this Court can provide Airbnb relief given all of the present third-party claims are subject to arbitration. Accordingly, the third-party claims should be dismissed, with prejudice, or, in the alternative, the Court should stay the action until such time as arbitration has concluded.

[SIGNATURE BLOCK ON FOLLOWING PAGE]

¹ Riviere refers the Court to his Motion to Compel Arbitration (filed May 23, 2023) and the arguments contained therein.

s/ James M Griffin

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ATTORNEYS FOR DEFENDANT RIVIERE

Columbia, SC
May 26, 2023

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Columbia, SC 29201
T: 803.799.2000 F: 803.256.7500
nelsonmullins.com

June 16, 2023

Via E-Filing and Email

The Honorable J. Cordell Maddox, Jr.
P.O. Box 8002
Anderson, SC 29622
cmaddoxsc@sccourts.org

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

Judge Maddox:

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

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

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

No. 2021-CP-02-00889
June 14, 2023
Page 2

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

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

Respectfully,

/s/ C. Mitchell Brown

C. Mitchell Brown

Enclosure

cc: Via ECF and Email
Counsel of Record

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.)

Declaration of Monique Chauvet

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

Defendants.)
)
)
)

I, Monique Chauvet, hereby declare as follows:

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

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

Platform. The dates and times of users' initial assent to each version of the Terms of Service are recorded automatically in Airbnb's database in the ordinary course of business at or near the time of the assent. I have personally reviewed Airbnb's records relating to the sign-up screens and Consent Events Airbnb uses, as discussed below. I have also reviewed Airbnb's business records pertaining to the account associated with the user name Michele Jain ("Ms. Jain") associated with the email address Mbain5@gmail.com and the unique Airbnb user identification number ("User ID") 255245518. I have confirmed that Ms. Jain consented to Airbnb's Terms of Service.

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

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

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

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

Ms. Jain Consented to the Terms of Service

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

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

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


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

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

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

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

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


By 

Monique Chauvet

Exhibit 1

(Initial Sign-up Screen)

Continue with Facebook

 Continue with Google

or

Sign up with Email

Already have an Airbnb account? [Log in](#)

Exhibit 2

(Second Screen)



Sign up with [Facebook](#) or [Google](#)

or

Birthday

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

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

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

Already have an Airbnb account? [Log in](#)

Exhibit 3

(Final Screen)

Before you join

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

Airbnb Community Commitment

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

Airbnb Terms of Service

I also accept [Airbnb's Terms of Service](#), [Payments Terms of Service](#), [Privacy Policy](#), and [Nondiscrimination Policy](#).

Accept

Decline

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June 29, 2023

Via E-Filing and Email:

The Honorable J. Cordell Maddox, Jr.
P.O. Box 8002
Anderson, SC 29622
cmaddoxsc@sccourts.org

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

Your Honor,

Please allow this letter to respond to Airbnb's 2nd letter filed June 16, 2023, and to supplement our letter dated June 16, 2023, specifically with respect to point no. 1, "whether or not there is an enforceable contract to arbitrate."

Airbnb, Inc. has now submitted another Affidavit from Monique Chauvet. As noted, this witness is an employee in Airbnb's Legal Investigations unit, titled as their Legal Investigations Coordinator. To our knowledge, she has never served in any operational role at Airbnb. She was also their 30(b)(6) witness for the first two sessions of that court-ordered deposition on: (i) Oct. 26, 2022, and (ii) Jan. 25, 2023.

As noted at the hearing on June 13, 2023, this is the same 30(b)(6) deposition for which Judge Jocelyn Newman ordered Plaintiff has the right to re-file her motion for sanctions in the event Airbnb does not comply and provide new witnesses on all topics. (Order dated May 25, 2023, stating, "Plaintiff's Motion for Sanctions [related to Airbnb 30(b)(6) deposition] (filed on 2/14/23) is DENIED with leave to refile..."); *see also* Hearing Transcript, April 5, 2023, at 34 to 56 (Judge Newman stating the "30(b)(6) shall continue at, you know, whatever dates and times to address all 26 topics, however many designees that takes, ... [and] ... The motion for sanctions as to Airbnb, with respect to the 30(b)(6) designation, is denied at this time with leave to refile it.").

As also noted at the hearing on June 13, Rule 6(d), SCRPC, provides, "When a motion is to be supported by affidavit, the affidavit shall be served with the motion ..." *Id.* (emphasis added). Since Airbnb has now presented not one (but two) Affidavits /

Declarations in support of their motion to compel arbitration after the hearing on June 13, 2023, Plaintiff is entitled to respond.

In Ms. Chauvet's first Affidavit / Declaration dated June 13, 2023, she states in Para. 1: "**I have personal knowledge** of the facts set forth below. If called as a witness, I could and would testify to the facts herein. I am authorized to provide this Declaration on Airbnb's behalf." Id. (bold emphasis added).

In Ms. Chauvet's 2nd Affidavit / Declaration dated June 16, 2023, she again states in Para. 1: "**I have personal knowledge** of the facts set forth below. If called as a witness, I could and would testify to the facts herein. I am authorized to provide this Declaration on Airbnb's behalf." Id. (bold emphasis added).

However, in this Court's order on Plaintiff's Motion to Compel dated June 6, 2022 (Judge R. Markley Dennis, Jr.), Airbnb was specifically ordered to respond to Interrogatories and Requests set forth in the Order. At the conclusion of these 8 required responses the Court ordered Airbnb to provide, the order stated, "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." Id. at 3. At the bottom of this Court's order dated June 6, 2022, it was stated, "If the foregoing is not fully complied with by [Airbnb], the Court will consider a motions for sanctions with monetary penalties." Id. at 5.

Despite this extremely unusual and specific order, Airbnb responded to this Court's ordered Item No. 5, which required it to "[i]dentify 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," as follows:

Response: After a reasonable search, **Airbnb has identified no employees who, as of May 2019, had knowledge of facts related to Michelle Jain being an Airbnb guest.** Along with this response, Airbnb is producing (i) the information Michelle Jain provided at sign-up; and (ii) information related to Jain's reservation with Thomas and associated payment data. Airbnb does not have any records of any communications between Airbnb and Jain.¹ Airbnb does not understand this request to require it to produce any communications Jain may have had with third parties, the production of which would violate the federal Stored Communications Act.

Id. (underline and bold emphasis added).²

Additionally, at the time of providing the above-identified Court-ordered response, Airbnb had also provided its response on March 16, 2022, to Plaintiff's initial Interrogatory Nos. 1 and 2 (served on May 19, 2021), addressing Standard Interrogatory Nos. 1 and 7 (see

¹ An electronic signature would necessarily be a "communication."

² Airbnb's court-ordered discovery responses of July 6, 2022, are attached here as Exhibit 1.

e.g., Rule 33(b)(1) and (7), SCRC), on witnesses, objecting and “responding” as follows: “Airbnb is unaware of any witnesses beyond the parties, Michelle Jain, and those listed in the police and investigative reports who may have knowledge regarding any illegal recording by Defendants Riviere and/or Foster.” *Id.* (underline emphasis added). Plaintiff would attach these March 16, 2022 discovery responses from Airbnb, but Airbnb marked all twelve pages of their initial discovery responses CONFIDENTIAL.

Apparently, Airbnb was unable to identify Ms. Chauvet as the one person with “personal knowledge” of its alleged relationship with Michele Jain when they were first ordered to do so on June 6, 2022.

Monique Chauvet’s Personal Knowledge

Still further, a review of the post-hearing Affidavits / Declarations of Ms. Chauvet shows the following:

- (1) She is not now and was not ever an operations employee at Airbnb. As such, she would not have had knowledge related to how Michele Jain might have signed up in April 2019. Any information she is providing on that issue has to have been sourced from other persons within the company, who remain unidentified (and not yet subject to Plaintiff’s discovery requests, originally served on May 19, 2021);
- (2) Airbnb did not require Michele Jain or anyone to actually read or review any of the 4 documents³ they were “required” to accept (or agree) to as a condition of registering as a Guest or a Host;
- (3) Airbnb knew that virtually none of the people signing up / registering to be Hosts or Guests had (or took) time to read any of those 4 documents. Airbnb also did not send the accepted documents electronically or otherwise afterwards to confirm the alleged agreements made;
- (4) Airbnb provided no consideration to Jain by her merely registering to be a Guest. Jain only transacted when she booked an Airbnb with a Host, which did not occur until April 13, 2019. Airbnb alleges Jain registered as a Guest on April 11, 2019; and
- (5) Airbnb also knew that it could not have been conducting any type of meaningful background checks or “verifications” of the identities of its new Hosts or Guests by virtue of this easy-as-pie registration procedure, which they now allege bind everyone involved to arbitration proceedings (even for unforeseen harms).

³ This would include the following: (i) Terms of Service, (ii) Payment Terms of Service, (iii) Privacy Policy, and (iv) Nondiscrimination Policy. (Ex. 3, Airbnb 2nd Supplemental Letter, filed June 16, 2023). Airbnb also apparently required its registrants to “agree” to its Community Commitment, whereas the 4 documents it now relies upon were merely required to be accepted (and not viewed or received). (*Id.*).

User Interface and Lack of Notice of Terms

Further, with respect to the existence of an enforceable arbitration agreement, Airbnb's TOS states California law applies. (Airbnb Motion to Compel Arb., filed May 15, 2023, at Ex. A, page 22). Airbnb's TOS at Section 21.1 states as follows:

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

Id. at 22 (underline emphasis added).

Recently, in Doe v. Massage Envy Franchising, LLC, 87 Cal. App. 5th 23, 30-31, 303 Cal. Rptr. 3d 269 (2022 Cal. App.), the Court of Appeal of California stated:

It has long been the law in California that “an offeree, regardless of apparent manifestation of his consent, is not bound by inconspicuous contractual provisions of which he was unaware, contained in a document whose contractual nature is not obvious.” (Windsor Mills, Inc. v. Collins & Aikman Corp. (1972) 25 Cal.App.3d 987, 993 [101 Cal. Rptr. 347].) This principle “applies with particular force to provisions for arbitration.” (Ibid.)

Id. (underline emphasis added).

A review of the three Exhibits provided by Airbnb with the 2nd Declaration of Ms. Chauvet on June 16, 2023, shows a lack of any disclosure of a binding “arbitration” provision, much less a “conspicuous” notice of a waiver of a right to trial by jury for unforeseen torts, such as invasion of privacy. Plaintiff in this action never dreamed she would be recorded nude in the bedroom of the Airbnb rental. The discovery Plaintiff has managed to obtain in this case, as well as the court records of the 50 states, shows Airbnb well knew of the need to warn its Guests (and patrol its Hosts) to prevent or minimize further secret recordings of Airbnb Guests in the bedrooms and bathrooms of their rentals.

“Courts consider the specific features of the website's interactivity and the visibility of the website's terms of use, including placement of the terms-of-use link, the font size of the link relative to the surrounding text, and whether a site visitor would necessarily have seen some notice regarding the applicable terms of use while using the site.” Watkins v. Carr, 2018 U.S. Dist. LEXIS 236639, *9 (D.Md. 2018) (citing Nicosia v. Amazon.com, Inc., 834 F.3d 220, 237 (2d Cir. 2016)). The District Court in Watkins denied the motion to compel arbitration, further stating, “the static printout of the ‘Terms of Use’ page tells the Court nothing about

how a user encounters these terms, where on the website the terms are first viewed, whether a website user must see the terms as a condition of using the website, and when in the process of reading JQO blogposts, if at all, the reader would see these terms. *Id.* at *10.

A “static print out of the “TOS” page” is all that Airbnb has provided in this instance.

Bielski v Coinbase, Inc., 2023 Lexis 2636 (SCOTUS, June 23, 2023)

Earlier this week, one of Airbnb’s attorneys forwarded to Your Honor’s chambers a copy of *Coinbase, Inc. v. Bielski*, 2023 U.S. LEXIS 2636, *5 (June 23, 2023). As stated in *Bielski*, “[t]he sole question here is whether the district court must stay its pre-trial and trial proceedings while the interlocutory appeal is ongoing.” *Id.* Airbnb’s reading of *Coinbase* is set forth as follows: “A stay of judicial proceedings is supported whether the motion to compel is granted or denied.” (Airbnb Counsel Email, June 28, 2023).

For starters, *Coinbase* was filed as a class action. *Id.* Second, there is no indication *Coinbase* involves a dispute as to whether or not an agreement to arbitrate existed between Coinbase and the purported class members. Third, a quick review of that case’s docket in the Northern District of California (Case No. 3:21-cv-07478-WHA) reveals the Complaint was filed on Sept. 24, 2021, and Coinbase’s motion to compel arbitration was filed on Jan. 13, 2022 (as Docket No. 26). In contrast, Airbnb waited over two years, to seek their playbook arbitration delay tactic in this case, to the great prejudice of Plaintiff.

Finally, as noted above, *Coinbase*’s holding relates to the existence or need for a stay when a case is on an interlocutory appeal, not for merely filing a motion two years after all the discovery decisions did not go their way.

Conclusion

Airbnb has worked hard for over two years now to prove it has no regard for South Carolina or its rules of Court. Ms. Foster, who was not a party to any agreement with Airbnb, has already suffered a horror unforeseen to her. After two years of enduring Airbnb’s abusive litigation tactics, including a mediation at Airbnb’s request, and taking her deposition pursuant to the S.C. Rules of Procedure, she deserves her day in court in front of a jury of her peers. Indeed, South Carolina courts have declined to enforce arbitration provisions in cases of outrageous acts that are unforeseeable to reasonable consumers. *Wilson v. Willis*, 426 S.C. 326, 334, 827 S.E.2d 167, 171 (2019).

Thank you again for your careful consideration of this important matter.

Best regards,

DEBORAH BARBIER

RYAN BEASLEY

WES FEW

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF AIKEN

SECOND JUDICIAL CIRCUIT

CASE NO.: 2021-CP-02-00889

JULIANNE FOSTER,

Plaintiff,

v.

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

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

Defendants.

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

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

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

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

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

RESPONSE: See Response to No. 1 above for information regarding background checks run on Katherine Thomas. After a reasonable search, Airbnb has identified no employees who have knowledge of facts related to Katherine Thomas serving as an Airbnb host through May 2019. Again, should the topic be within the scope of a deposition under SCRPA Rule 30(b)(6), Airbnb can on request identify a corporate representative who is knowledgeable about the background check process in effect at the time background checks were run on Rhett Riviere and Katherine Thomas through May 2019. Airbnb already produced in April user information from Thomas' Airbnb account. Airbnb now produces a copy of the screen that Airbnb used to request information from users on July 17, 2016, as captured by the Wayback Machine. Thomas signed up using the "continue with Facebook option," and therefore Airbnb did not request additional information from her through the sign-up screen. Airbnb is also producing the following

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

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

RESPONSE: After a reasonable search, Airbnb has not identified any Airbnb employee who reviewed information submitted by Katherine Thomas to serve as an Airbnb host. Airbnb does not perform a manual review of information for every user who creates an account. Airbnb produced on April 8 the background checks Airbnb ran on Thomas through May 2019 and that it located after a reasonable search, and after a further reasonable search has not identified any additional documents related to any review of the information submitted by Thomas to be an Airbnb host. Nevertheless, should the topic be within the scope of a deposition under SCRPA Rule 30(b)(6), Airbnb can on request identify a

corporate representative who is knowledgeable about the background check process in effect at the time background checks were run on Rhett Riviere and Katherine Thomas through May 2019.

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

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

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

RESPONSE: After a reasonable search, Airbnb has identified no employees who, as of May 2019, had knowledge of facts related to Michelle Jain being an Airbnb guest. Along with this response, Airbnb is producing (i) the information

Michelle Jain provided at sign-up; and (ii) information related to Jain's reservation with Thomas and associated payment data. Airbnb does not have any records of any communications between Airbnb and Jain. Airbnb does not understand this request to require it to produce any communications Jain may have had with third parties, the production of which would violate the federal Stored Communications Act.

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

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

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

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

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

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

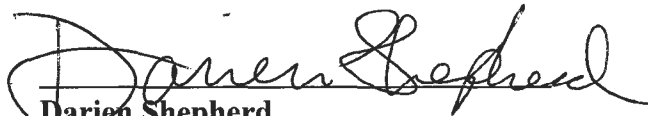
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Affidavit

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

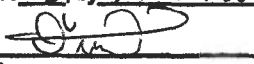


Darien Shepherd
Legal Investigations Supervisor
Airbnb, Inc.

Sworn to before me this
6th day of July 2022

State of Oregon
County of Multnomah

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



Notary Public

