

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Milton G. Kimpson, Circuit Court Judge

Appellate Case No. 2025-001220

Lower Court Case No. 2022-CP-40-04419

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SC Court of Appeals

Ansel Jamahl Postell Respondent-Appellant,

v.

Campus Advantage, Inc. and EMRES II South Carolina, LLC
d/b/a The Rowan..... Appellants-Respondents.

**RECORD ON APPEAL
VOL. 1**

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STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS
	)	
Answer Jamahl Postell,	)	
	)	
Plaintiff,	)	Case No. 2022-CP-40-04419
	)	
v.	)	
	)	
Campus Advantage, Inc., and	)	ORDER
EMRES II South Carolina, LLC.,	)	
	)	
Defendants.	)	

This matter was tried before a jury in Richland County beginning September 16, 2024 and ending September 19, 2024. The Plaintiff alleged causes of action against Defendants Campus Advantage, Inc., and ERMRES II South Carolina, LLC (Defendants), for ouster, conversion, breach of contract, negligence and violations of the South Carolina Unfair Trade Practices Act (UTPA), all arising out of the unauthorized removal of personal property from an apartment that he rented from the Defendants. The Court directed a verdict for the Defendants on the ouster claim but allowed the remaining causes of action to go to the jury. ¹ The jury returned a general verdict in favor of the Plaintiff on all submitted causes of action, awarding \$230,000 in actual damages and \$462,500.24 in punitive damages. The Court allowed the parties ten (10) days to submit posttrial motions. The Defendants filed a Motion for Judgement Notwithstanding the Verdict (JNOV) pursuant to Rule 50(b), SCRCPP, and a Motion for New Trial Absolute, or, in the alternative, a New Trial Nisi Remittitur, pursuant to Rule 59, SCRCPP. The Plaintiff's posttrial

¹ At the close of the Plaintiff's case in chief, the Defendants moved for a directed verdict on Plaintiff's cause of action under the UTPA. The Court denied the motion. After the completion of their case and the close of all evidence, Defendants moved for directed verdict on the breach of contract cause of action and renewed their motion on the UTPA cause of action. Plaintiff contends that the Defendants' failure to move for directed verdict on the breach of contract cause of action at the end of Plaintiff's case in chief precluded the motion for directed verdict on that claim at the close of evidence and also prevents Defendants' JNOV motion on that claim here. The Court will address the Defendants' JNOV motions on both the UTPA and breach of contract causes of action.

motions seek treble damages, attorneys' fees and costs under the UTPA, as well as interest pursuant to Rule 68(b), SCRCP. The parties filed memoranda in support of their respective motions and in opposition to the motions filed by the opposing party.

I. **Defendant's Motion for JNOV and New Trial Absolute, or, in the alternative, New Trial Nisi Remittitur.**

Rule 50(b), SCRCP, provides as follows:

Notwithstanding the Verdict. Whenever a motion for a directed verdict made at the close of all the evidence is denied or for any reason is not granted, the court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. A party who has moved for a directed verdict may move to have the verdict and any judgment entered thereon set aside and to have judgment entered in accordance with his motion for a directed verdict; or if a verdict was not returned, such party may move for judgment in accordance with his motion for a directed verdict. A motion for a new trial may be joined with this motion, or a new trial may be prayed for in the alternative. If a verdict was returned the court may allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of judgment as if the requested verdict had been directed. If no verdict was returned the court may direct the entry of judgment as if the requested verdict had been directed or may order a new trial.

In *Sabb v South Carolina State University*, 350 S.C. 416, 236, 567 S.E.2d 231, 427 (2002), our Supreme Court observed the following:

In ruling on directed verdict or JNOV motions, the trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the party opposing the motions. *Steinke v. South Carolina Dep't of Labor, Licensing and Regulation*, 336 S.C. 373, 520 S.E.2d 142 (1999). The trial court must deny the motions when the evidence yields more than one inference or its inference is in doubt. *Id.* This Court will reverse the trial court only when there is no evidence to support the ruling below. *Id.* Further, a trial court's decision granting or denying a new trial will not be disturbed unless the decision is wholly unsupported by the evidence or the court's conclusions of law have been controlled by an error of law. *Id.* (emphasis added)

The Defendants assert that their motion for JNOV should be granted on the Plaintiff's UTPA and breach of contract causes of action. This Court must evaluate the Defendant's JNOV arguments under the standard announced in *Sabb*.

A. Defendants' Motion for JNOV on the UTPA Cause of Action.

“To recover in an action under the UTPA, the plaintiff must show: (1) the defendant engaged in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or deceptive act affected public interest; and (3) the plaintiff suffered monetary or property loss as a result of the defendant's unfair or deceptive act(s).” *Wright v. Craft*, 372 S.C. 1, 23, 640 S.E.2d 486, 498 (Ct. App. 2006). Defendants assert that Plaintiff failed to identify an “unfair or deceptive” act during trial which could have supported the jury’s verdict. The Court disagrees.

Wright defines an unfair or deceptive trade practice as “a practice which is offensive to public policy or which is immoral, unethical, or oppressive.” *Id.* While the Defendants are correct that the Court instructed the jury that the Defendants’ failure to reach a settlement with Plaintiff over the value of his missing personal property was not an unfair trade practice, as pointed out in Plaintiff’s Memorandum in Response to Defendants’ Post-trial Motions, there is other evidence in the Record to support the jury’s determination that the Defendants committed unfair trade practices. “The trial court must deny the motions [JNOV] when the evidence yields more than one inference or its inference is in doubt.” *Sabb*, 350 S.C. at 236, 567 S.E.2d at 427.

The Plaintiff renewed his lease agreement with the Defendants on July 6, 2022. His mother thereafter paid six (6) months of rent in advance. Several days later, on July 25, 2022, during a complex-wide procedure known as “turnover”, Defendants’ employees, acting on move out instructions from their supervisors, entered Plaintiff’s apartment and, treating the unit as if it had been vacated via lease termination or abandonment, removed Plaintiff’s personal property and other belongings. According to the Defendants, the employees were supposed to only validate the apartment’s occupancy status, but the employees instead went about “bagging and tagging” certain of Plaintiff’s personal property and disposing of other items. Some of the “bagged and tagged” property ended up being taken home by one of the employees, while other property was placed in Defendants’ storeroom, where it was subsequently damaged. Other items of Plaintiff’s personal property were discarded.

There was ample evidence to support the jury’s finding that an unfair or deceptive trade practice had been committed based on Defendants’ actions in removing Plaintiff’s personal property -- as if his lease had expired and Plaintiff had left his belongings or he had abandoned

his apartment -- in the situation where Plaintiff had actually renewed his lease and paid advance rent for this same apartment.²

In this regard, the Defendants' argument based upon the Landlord Tenant Act (Act) is not persuasive. The Defendants point to S.C. Code Ann. 27-40-730(d)-(f) to offer that a landlord may remove a tenant's property in certain cases and that here, the Defendants cannot be liable under the Act for the removal of Plaintiff's property unless they were grossly negligent:

(d) When a dwelling unit has been abandoned or the rental agreement has come to an end and the tenant has removed a substantial portion of his property or voluntarily and permanently terminated his utilities and has left personal property in the dwelling unit or on the premises with a fair-market value of five hundred dollars or less, the landlord may enter the dwelling unit, using forcible entry if required, and dispose of the property.

(e) When a dwelling unit has been abandoned or the rental agreement has come to an end and the tenant has left personal property in the dwelling unit or on the premises in the cases not covered by subsection (d) above, the landlord may have the property removed only pursuant to the provisions of Sections 27-37-10 to 27-37-150.

(f) Where property is disposed of by the landlord pursuant to subsection (d) and the property was in excess of five hundred dollars, the landlord is not liable unless the landlord was grossly negligent.

Plaintiff valued his lost property at an amount greater than five hundred dollars. As such, pursuant to section 27-40-730(e), to comply with the provisions of the Act, the Defendants should have pursued remedies under sections 27-37-10 to 27-37-150, which pertain to ejectment.

² The jury also had evidence that after Plaintiff renewed his lease, he received an email alerting him of the upcoming "turnover" and the need to be out of his apartment by July 25, 2022. Plaintiff's mother sent an email to Defendants on July 14, 2022 at 8:48 AM inquiring why Plaintiff had received this notice when he had renewed the lease for his apartment unit. On July 15, 2022 at 11:19 AM, the Defendants responded with the statement that "It was an email sent to everybody by default [and] he can disregard if he renewed."

On July 11, 2022, Plaintiff received an email from Katie Floyd, the Defendants' manager, which, although acknowledging that Plaintiff had renewed his lease, also contained information for students who were moving out of the apartment complex during the upcoming turnover. Plaintiff's mother sent Ms. Floyd an email on July 14, 2022 at 6:16 PM reminding her that Plaintiff had renewed his lease. Ms. Floyd responded to Plaintiff's mother that the email Plaintiff received "states that our records have you renewing your lease with us" and that the correspondence "details information that is important for all renewed residents to review."

Despite the Defendants' correspondence acknowledging that the Plaintiff's lease had been renewed and assuring Plaintiff that he could disregard the turn out messages, Plaintiff's apartment was turned-out during the July 25, 2022 moveout exercise.

The Defendants did not pursue ejectment remedies but instead, their employees acted as if section 12-37-730(d) applied which allows the landlord to enter an apartment and dispose of personal property valued at less than \$500. However, section 27-40-730(d) was not applicable to Plaintiff inasmuch as this provision applies if “a dwelling unit has been abandoned, or the rental agreement has come to an end...” Here, the Plaintiff had previously renewed his lease meaning that his lease had not ended, and his apartment unit had not been abandoned. Finally, the Defendants’ reference to subsection 27-40-730 (f)’s direction that “the landlord is not liable unless the landlord was grossly negligent” is similarly unpersuasive. As it relates to his claim under the UTPA, the Plaintiff was not seeking to hold Defendants liable for damages under the Act. Further, whether liable under the Act or not, Defendants failed to follow the Act’s procedures.³

Defendants also offer that the employees who entered Plaintiff’s apartment and removed his property were acting outside of the scope of their employment. Defendants’ Motion states that “the jury could have considered four possibilities when contemplating the incident giving rise to Plaintiff’s claims, to include that (1) that both Ashanti and Carlton were acting within the scope of employment, and (2) neither Ashanti nor Carlton were acting within the scope of employment...” Defendants then assert that the evidence only leads to one conclusion, that Carlton was acting outside of the scope of his employment, and that if so, his actions cannot be imputed to Defendants. The Defendants, both in their Motion and in argument to the jury, further contended that Carlton’s actions in taking the personal property removed from the apartment to his home were criminal.

For the purposes of this Motion, however, the Court must consider if there is any evidence or inference to support the jury’s verdict. The Court finds that there is evidence from which the jury could have found that both employees were acting within the scope of their employment. As Defendants acknowledge, the” jury could have considered four possibilities” in this regard. Moreover, the two employees were following their employer’s instructions by entering the Plaintiff’s apartment given that Plaintiff’s apartment was on the “move out” list. And, while the employees should have gotten specific verification from the Defendants’ prior to beginning the trash out procedure, the failure to strictly comply with policy does not translate

³ Given the award of punitive damages, it is likely that the jury would have determined that the Defendants met subsection 27-40-730 (f)’s gross negligence standard had that issue been submitted to it.

into the employees acting outside of the scope of their employment. Moreover, even if Carlton committed a crime when he took Plaintiff's property away from the apartment complex to his home – this behavior occurred later in the sequence of events and does not negate the evidence from which the jury could find that he was acting within the scope of his employment when he entered into the apartment at the Defendants' instructions and began the "bag and tag" removal of Plaintiff's property.

The Defendants' Motion does not challenge the remaining prongs of the UTPA – that "the unfair or deceptive act affected public interest" and that "the Plaintiff suffered damages." Nevertheless, the Court finds that there was sufficient evidence to satisfy these elements. See, *Burbach v. Investors Mgmt. Corp. Internat'l*, 326 S.C. 492, 484 S.E.2d 119 (Ct. App. 1997) (UTPA violation upheld in the context of a residential landlord/tenant matter.)

B. Defendants' Motion for JNOV on the Breach of Contract Cause of Action.

Defendants next offer that the Court should grant JNOV with regard to the Plaintiff's breach of contract claim because they assert the lease agreement, in particular, subparagraphs 11.2, Casualty Loss, and 14., Risk of Loss of Resident's Property, excludes Plaintiff's recovery from the Defendants for the loss of his personal property. The Court disagrees.

In pertinent part, subparagraph 11.2 provides

Unless otherwise required by law, Owner is not liable to Residents or Residents' guests for personal injury, damages to or loss of personal property for any cause outside of Owner's control, including but not limited to: acts of God, fire, smoke, flood, rain, pipe leaks, ice, hail, snow, lightning, wind, earthquakes, theft, vandalism, or utility interruptions. (emphasis added)

Here, the loss of Plaintiff's personal property resulted from the actions of Defendants' employees, who were operating at Defendants' behest when they entered the Plaintiff's apartment and "bagged and tagged" his property. As such, Plaintiff's loss did not result from a "cause outside of Owner's control."

Defendant's lease subparagraph 14, Risk of Loss of Resident's Property, purports to be broader, stating "[r]esidents, shall bear the risk of loss of any and all of Resident's personal property whether located in the Leased premises, in garage/carport, designated storage areas or anywhere within the Residential Community." While the term "loss" is not defined, the

paragraph continues to provide that “[r]esidents agree not to hold Owner, its agents and/or employees liable in any manner for or on account of any loss or damages sustained by reason of the acts or omissions of third parties, or arising from any casualty.” By implication, therefore, liability for loss or damages sustained by the acts or omissions of Defendant’s employees is not excluded from potential liability.

Plaintiff’s memorandum in opposition sets forth a similar argument, pointing out that Defendants’ lease agreement lacks the explicit exculpatory language needed to shield Defendants from liability for their own wrongful acts. Inasmuch as the Court has interpreted the lease agreement to allow Plaintiff’s claims, the Court agrees with this proposition.

The Defendants also complain about the Court’s pretrial ruling excluding evidence that Plaintiff failed to obtain renter’s insurance to cover loss/damage to his personal property. The Court was concerned that the introduction of information about insurance would create the potential for jury confusion. The insurance at issue was not liability insurance so the probative value of such evidence had to be weighed against the potential for prejudice and jury confusion. See, *Wright v. Heister Const. Co.*, 389 S.C. 504, 514, 698 S.E.2d 822, 828 (Ct. App. 2010) (“Because this evidence [property insurance] is not expressly excluded by Rule 411, ‘we must determine whether the probative value of the evidence is substantially outweighed by the prejudicial effect and potential for confusing the jury.’”) There was certainly a danger of prejudice flowing from this information -- whether the Plaintiff had property insurance did not impact the issue of Defendants’ liability for removing Plaintiff’s property. Although a better explanation should have been provided, the Court stands by its ruling to exclude this evidence.

C. **Defendants’ Motion for New Trial Absolute.**

In *Chapman v. Upstate RV and Marine*, 364 S.C. 82, 610 S.E.2d 852 (Ct. App. 2005), the South Carolina Court of Appeals observed that a trial judge must grant a new trial absolute “if the amount of the verdict is grossly inadequate or excessive so as to shock the conscience of the court and clearly indicates the figure reached was the result of passion, caprice, prejudice, partiality, corruption or some other improper motives.” (quoting *Vinson v. Hartley*, 324 S.C. 389, 404-405, 477 S.E.2d 715, 723(Ct. App. 1996)). *Chapman* cautioned, however, that “substantial deference should be given to a jury’s determination of damages.” *Id.* The Defendants cite three (3) grounds for a New Trial Absolute:

1. **Misconduct of Counsel.**

The Defendants offer a list of behaviors attributed to Plaintiff's counsel during opening and closing arguments, examination of witnesses and in general trial conduct which they assert was prejudicial and warrants a new trial. After carefully considering the Defendants' allegations, the Court believes that Plaintiff's counsel served as a zealous advocate for his client but did not engage in behavior that compels the grant of a new trial. In *Scoggins v. McClellion*, 321 S.C. 264, 269, 468 S.E.2d 12, 15 (Ct.App.1996), the court observed that "[t]he tests for granting a new trial on the basis of improper closing argument by opposing counsel is whether the complaining party was prejudiced to the extent that he or she was denied a fair trial." While *Coggins* specially referenced conduct during closing argument, this same principle should also apply to the Defendants' complaints about other portions of the trial. The Court finds that the challenged behaviors did not deny Defendants a fair trial.

2. **Damages the Jury Awarded are Inconsistent with the Evidence.**

Defendants assert that the jury's damage award was not supported by the evidence at trial. The Court has carefully weighed this matter and must deny the request for a New Trial Absolute on this basis. There was sufficient evidence to support the jury's award of both actual and punitive damages. As such, the Court declines to invade the province of the jury.

The jury awarded the Plaintiff actual damages of \$230,000. Actual damages may be made up of economic damages and noneconomic damages. See, *Mellon v. Lane*, 377 S.C. 261, 288-289, 659 S.E.2d 236, 250 (Ct. App. 2008) (Trial court award of actual damages, including medical expenses, emotional distress and pain and suffering, upheld on appeal.) In terms of economic losses, the Plaintiff created a spreadsheet listing the items that were removed from his apartment. The total value Plaintiff assigned to this property was \$27,000. Defendants challenge the accuracy of this value, pointing out that Plaintiff referred to this figure as an "estimate." Moreover, Defendants assert that Plaintiff's method of assigning values to the listed items of personal property -- using "Google" -- was unreliable. Nevertheless, the jury evaluated this evidence and considered the witnesses' testimony on direct and significantly, on cross examination where these same challenges were raised, but found that Plaintiff had at least \$27,500 in economic damages.

Further, the Court's review of the Record indicates that there was abundant evidence though the testimony of the Plaintiff and his mother to support the jury's finding that Plaintiff suffered non-economic damages such as mental suffering as a direct result of this incident.⁴ The Court's charge on this issue informed the jury that "mental suffering, apprehension, shock, fright, emotional upset, humiliation, and anxiety, either present or expected in the future, can be properly considered as an element of damages." Significantly, the jury instruction continued to state that "the amount of damages for mental suffering cannot be exactly measured."

The Court denies the Defendants' motion for new trial absolute on the asserted grounds. The jury's actual damages award, made up of an evaluation of Plaintiff's economic and non-economic damages, was not so large or excessive as to indicate that it was the result of caprice, prejudice, partiality, corruption or some other improper motive. There is sufficient evidence in the Record from which the jury could have determined that Plaintiff suffered in excess of \$200,000 in noneconomic damages. Furthermore, for the purposes of punitive damages, the Court finds that Plaintiff satisfied the clear and convincing evidence standard of proof to show that the Defendants' conduct in this matter was wanton, willful or in reckless disregard of Plaintiff's rights.

3. **Punitive Damages.**

Pursuant to *Gamble v. Stevenson*, 305 S.C. 104, 111-112, the Court must evaluate eight factors to determine whether a punitive damage award violates the defendant's right to due process:

(1) The Defendants' degree of culpability.

Based on its review, the Court finds that Defendants exhibited a high degree of culpability. The Defendants are in the business of renting apartments to area college students, who are living in the locale temporarily during school terms, instead of permanently. There are over 1000 student housing beds or units in Defendants' housing complex where Plaintiff lived. Moreover,

⁴ Although Plaintiff failed to introduce out-of-pocket bills/expenses associated with counseling, and/or mental health treatment, it is significant that the jury had the opportunity to evaluate the Plaintiff's credibility as he testified about the impact this incident has had on him. The Plaintiff was a young college student living in city with no family support other than regular communications with his mother who was located in Georgia. As an Honors Student, Plaintiff not only testified about the shock he felt at the time of discovery but also about the effects this incident had on his academic pursuits.

Defendants operate student housing in over 20 states other than South Carolina with over 40 properties. Defendants' business model caters to students moving in and out of apartment complexes and as such, it is not unreasonable to expect a certain level of efficiency in dealing with students.⁵ Plaintiff's injury was the result of Defendants' failures during the conduct of a periodic "turnout" exercise. The Plaintiff's apartment should not, however, have been the subject to "turnout" – as acknowledged by the Defendants, Plaintiff had renewed his lease and he had also paid six (6) months rent in advance so that the Defendants would hold the apartment until he returned to Columbia. Plaintiff's apartment should not have been on the moveout list given to its employees conducting the exercise. Further, the evidence showed that Defendants' agents, upon arriving at Plaintiff's apartment and discovering his personal property, did not take sufficient action to verify whether the move out list was correct but instead proceeded to trash out the apartment. The jury considered these actions to be sufficiently culpable to award punitive damages. The Court agrees and characterizes Defendants' degree of culpability as high.

(2) Duration of the Conduct.

Here the Defendants' conduct regarding Plaintiff's lost property lasted over a span of several days. Defendants emptied Plaintiff's apartment on move out day – there was no subsequent review of their actions and no discovery of the error until Plaintiff returned to Columbia on August 5, 2022 and advised the Defendants of the loss. To the Defendants' credit, Plaintiff was taken to a local store almost immediately to replace necessities but the procedure for Plaintiff to obtain reimbursement for his personal property was more arduous, requiring Plaintiff and his mother first to create a spreadsheet of lost property with assigned values followed by the demand that Plaintiff produce receipts for property, some of which had been purchased many months earlier. Of course, compensation for that same property was still at issue during the trial in September 2024. The Court believes the duration element mitigates toward upholding the punitive damages award.

(3) Defendant's awareness or concealment.

The Defendants should not have listed Plaintiff's apartment on the "move out" list. This Court believes that the Defendants should have been aware of the error prior to Plaintiff's return

⁵ Plaintiff introduced Defendants' eighty-three (83) page "Turnover Procedures" manual containing policies and guidance for the conduct of "moveout." In addition, Defendants held a meeting for staff personnel to discuss details of the moveout before the operation began in Plaintiff's complex.

to the apartment had there been an adequate review process. Nevertheless, it appears that the Defendants' management personnel had no actual knowledge of the improper trash out until being notified by the Plaintiff. Once Defendants became aware of the issue, efforts were undertaken to provide some relief to the Plaintiff, although the jury may very well have believed that under the circumstances, the demand for Plaintiff to provide receipts for items purchased in the past was unreasonable.

(4) The existence of similar past conduct.

While disputed by the Defendants, there was evidence in the Record through the testimony of Ashanti Young, one of the Defendants' employees who entered Plaintiff's apartment during the "move out", that other tenants' personal property had been improperly removed on previous occasions similar to that of the Plaintiff.⁶

(5) Likelihood the award will deter the defendant or others from engaging in like conduct.

The Defendants are in the business of renting housing to students and they routinely conduct "move out" exercises on a large scale. It is reasonable to conclude that the punitive damages award here will have a deterrent effect on the Defendants' conduct of those exercises, at minimum, establishing checks and balances to ensure turnout records are accurate. Moreover, as there are other apartment complexes in the business of renting apartments to students, publicity related to Plaintiff's punitive damages award will promote efforts to avoid such liability.

(6) Whether the award is reasonably related to the harm likely to result from such conduct; The Court finds that the punitive damage award here is reasonably related to the harm caused by the conduct. The jury found actual damages of \$230,000. As stated earlier, this award is made up of economic as well as non-economic damages such as mental suffering. The Defendants' customers are young college students- some of whom, like the Plaintiff, are living away from their homes without natural support groups. It is likely (and foreseeable) that some degree of mental suffering, in addition to the property damages, would result from the Defendants' conduct. The Court finds that the punitive damage award is reasonably related to that harm.

(7) Defendant's ability to pay;

Based on the evidence, the Court concludes that the Defendants have the ability to pay the punitive award here. There are over 1000 student beds in Plaintiff's complex, all generating

⁶ Plaintiff's memorandum in opposition contained an excerpt from Ms. Young's testimony on this point.

rent. Moreover, these Defendants have over 40 student housing assets spread over more than 20 other states.

(8) Other factors deemed appropriate – whether the award is excessive.

Given the evidence, the Court does not find that the amount of the punitive damage award to be excessive.

A reviewing trial court need not make findings on all of the *Gamble* factors in order to uphold an award of punitive damages. *Solanki v. Wal-Mart Store No. 2806*, 410 S.C. 229, 240, 763 S.E. 615, 620 (Ct. App. 2014) Here, the Court finds that *Gamble* factors (1), (2), (4), (5), (6), (7) and (8) support upholding the jury’s punitive damage award.

In *Mitchell v Fortis Ins. Co.*, 385 S.C. 570 686 S.E.2d 176 (2009), our Supreme Court articulated a revision to the punitive damage award evaluation, incorporating the principles set out in *BMW of North America v. Gore*, 517 U.S. 559, 116 S.Ct. 1589, 134 L.Ed.2d 809 (1996):

We now hold that *Gamble* remains relevant to the post-judgment due process analysis, but only insofar as it adds substance to the *Gore* guideposts. With these considerations in mind, we articulate the following test for our courts in conducting a post-judgment review of punitive damages awards.

Mitchell, 385 S.C. at 587, 686 S.E.2d at 185.

The *Mitchell* factors are 1) The degree of reprehensibility of the defendant’s conduct; 2) the disparity between the actual or potential harm suffered by the plaintiff and the amount of the punitive damages award – also referred to as the ratio between actual damages and punitive damages; and 3) comparative penalty awards. *Id.*, 385 S.C. at 587-588, 686 S.E.2d at 185-186. The *Gamble* factors may inform and provide substance to the evaluation under *Mitchell*. *Id.*

The Court has already determined that the Defendants’ conduct has a high degree of culpability under *Gamble* and finds that the conduct satisfies a sufficient degree of reprehensibility under *Mitchell* to warrant the punitive damage award. The Court notes that the Defendants’ conduct caused both economic harm to the Plaintiff in terms of property damage, but also physical harm in mental suffering.

The ratio between actual damages to punitive damages is slightly above two (2.01). This is an acceptable ratio. In *Austin v. Stokes Craven Holding Corporation*, 387 S.C. 22, 53-54, 691 S.E.2d 135, 151 (2010), the Court upheld a punitive damage ratio of 8.21, noting that it was “a single digit ratio.” Further, the *Austin* Court indicated that “in determining the reasonableness of

the ratio we may consider: the likelihood that that the award will deter the defendant from like conduct; whether the award is reasonably related to the harm likely to result from such conduct; and the defendant's ability to pay." *Id.*, 387 S.C. at 53, 691 S.E.2d at 151. Limiting the deterrence factor only to the conduct of the Defendants, the Court stands by its earlier discussion of these factors and finds that they support the punitive award here.

Finally, the Court believes that the comparative penalty award prong of the *Mitchell* test is also met. *Mitchell* describes the factors to be considered for this prong as:

[T]he court should consider the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases. When identifying "comparable cases" a court may consider: the type of harm suffered by the plaintiff or plaintiffs; the reprehensibility of the defendant's conduct; the ratio of actual or potential harm to the punitive damages award; the size of the award; and any other factors the court may deem relevant.

Mitchell, 385 S.C. at 588, 686 S.E.2d at 186.

In the *Burbach v. Investors Management Corporation* case cited earlier, the court upheld a jury award of \$32,000 punitive damages in a conversion case where the amount converted by the landlord was a \$350.00 security deposit. *Burbach*, 326 S.C. at 499, 484 S.E.2d at 121. This represented a ratio of 91.4. in punitive damages to actual damages. In the present case, Plaintiff's ratio of punitive damages to actual damages is slightly over 2. Under *Mitchell*, the Court may look to the type of harm suffered by the Plaintiff to identify comparable cases. The Plaintiff's harm consisted not only of personal property but mental suffering. On a mental suffering award of \$200,000, a punitive damage award of \$460,000 is not excessive.⁷

A weighing of the *Mitchell* factors yields the conclusion that the punitive damage award here is not violative of due process or any other constitutional limitations.

D. The 13th Juror Doctrine.

Under the 13th Juror Doctrine, the trial court has the authority to grant a New Trial Absolute when it believes the evidence does not justify the verdict. See, *S.C. Highway Dep't v. Townsend*, 263 S.C. 253, 285, 217 S.E.2d 778, 781 (1975). Here. As discussed earlier, the Court believes the evidence justifies the verdict. Defendants continue to assert that there was no

⁷ There do not appear to be statutory penalties applicable to the situation here

evidence upon which the jury could reasonably find that their employee, Carlton, was acting within the scope of his employment when he took Plaintiff's property from the apartment complex to his own home. The Defendants articulated this same argument at trial. To the extent the jury determined that Carlton was acting within the scope of his duties when he took the property to his home, there is evidence to support that decision. What Defendants seem to overlook is that the jury's verdict reflects the Defendants' improper inclusion of Plaintiff's apartment on the "move out" list when he had already renewed the lease for his apartment and had already paid the rent in advance. This action initiated a sequence of events that lead to Defendants' agents entering Plaintiff's apartment at Defendants' instructions and "bagging and tagging" Plaintiff's personal property. The Defendants' agent took some of Plaintiff's personal property home but then returned the property; other of Plaintiff's property was placed in storage where it was damaged and some property was simply discarded. Ultimately, the jury determined that Plaintiff was deprived of his personal property by the actions of the Defendants and their agents.

E. The Court denies Defendants' Motion for New Trial Nisi Remittitur

Alternatively, the Defendants assert that this Court should reduce the jury's verdict because it is excessive. Defendants continue to assert that the evidence does not warrant the damages awarded. The Court disagrees.

"If the trial court determines that the verdict is 'merely excessive,' the court has the power to reduce the verdict by granting a new trial nisi remittitur." *Mills v. South Carolina State Ports Authority*, 435 S.C. 213, 226, 865 S.E.2d 910, 916. However, there must be "'compelling reasons" to warrant invading the jury's province by granting a new trial nisi." *Id.* The Court finds that such compelling reasons do not exist and thus declines the action Defendants request.

II. Plaintiff's Posttrial Motions for Treble Damages, Attorney's Fees and Costs and Pre-Judgment Interest.

A. Treble Damages.

Plaintiff seeks to treble its actual damages for Defendants' Violation of the UTPA pursuant to S.C. Code Ann. 39-5-140, which states in pertinent part:

- (a) Any person who suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of an unfair or deceptive method, act or practice declared unlawful by Section 39-5-20 may bring an action individually, but not in a representative capacity, to recover actual damages. If the court finds that the use or employment of the unfair or deceptive method, act or practice was a willful or knowing violation of Section 39-5-20, the court shall award three times the actual damages sustained and may provide such other relief as it deems necessary or proper. Upon the finding by the court of a violation of this article, the court shall award to the person bringing such action under this section reasonable attorney's fees and costs.

- (d) For the purposes of this section, a willful violation occurs when the party committing the violation knew or should have known that his conduct was a violation of Section 39-5-20.

(emphasis added) ⁸

As an initial matter, this Court has already recognized that the jury, based on the evidence, could have found an unfair or deceptive act in violation of the UTPA based on the Defendants' entry into Plaintiff's apartment and treatment of Plaintiff's personal property as if it had been abandoned, when, in fact, Plaintiff had renewed his lease and paid advance rent. Further, the Defendants had acknowledged that Plaintiff had renewed his lease and made assurances to the Plaintiff prior to their agents entering the apartment and "bagging and tagging" his property. Under SC Code Ann. 39-5-140(d), "a willful violation occurs when the party committing the violation knew or should have known that his conduct was a violation of Section 39-5-20." The Court earlier observed that the Defendants' business model is to rent apartment units to college students. The Court finds that Defendants' actions were in violation of the UTPA and that Defendants "should have known" that by removing Plaintiff's personal property after he had renewed his lease as if he had instead terminated his lease or abandoned his apartment would

⁸ SC Code Ann. § 39-5-20, Unfair methods of competition and unfair or deceptive acts or practices unlawful; application of federal act, reads:

- (a) Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.
 (b) It is the intent of the legislature that in construing paragraph (a) of this section the courts will be guided by the interpretations given by the Federal Trade Commission and the Federal Courts to Section 5(a) (1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)), as from time to time amended.

constitute an unfair or deceptive practice in violation of UTPA. Accordingly, the Court finds that Defendants' violation of UTPA was willful and knowing within the meaning of section 39-5-140. Accordingly, the UTPA provides that the Court must grant trebled damages.

This does not, however, translate into a finding that the entire actual damages award of \$230,000 should be trebled. Recovery under S.C. Code Ann. 39-5-140(a) is available to a person "who suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of an unfair or deceptive method, act..." (emphasis added). On its face, therefore, the plain language of this statutory provision limits recovery thereunder to the value of lost "money or property. "This is the same as economic damage. See generally, *Payne v. Holiday Towers, Inc.*, 283 S.C. 210, 321 S.E.2d 179 (Ct. App. 1984).

The Court has earlier alluded to its belief that Plaintiff's economic damages were at least \$27,500, the value of his lost personal property listed on the spreadsheet he produced for Defendants. Accordingly, upon its finding that Defendants' violation of the UTPA was willful within the meaning of 39-5-140, the Court trebles the sum of \$27,500 to \$82,500.00.

B. Attorney's Fees and Costs.

Plaintiff's attorney, Todd Lyles, Esquire, has submitted an Affidavit of Attorney's fees seeking attorney's fees and costs under S.C. Code Ann. 39-5-140(a) ("Upon the finding by the court of a violation of this article, the court shall award to the person bringing such action under this section reasonable attorney's fees and costs."). Plaintiff, anticipating that the Court would treble the jury's actual damage award, offers that he is entitled to an attorney's fee award of \$384,166.75 and costs of \$6,996.81. The Defendants oppose this amount and ask for a hearing on this issue. While the Court believes that Plaintiff is entitled to an award of attorney's fees under the UTPA, given the needed evaluation under *Jackson v. Speed*, 326 S.C. 2898, 486 S.E.2d 750 (1997), the Court defers ruling on attorney's fees until the parties have an opportunity to appear.

C. Interest Pursuant to Rule 68(b), SCRPC.

Plaintiff further seeks interest pursuant to Rule 68(b), SCRPC. Without more, the Plaintiff is entitled to this relief inasmuch as his August 26, 2022 Offer of Judgment in the amount of \$75,000 was rejected by the Defendants and he obtained a jury verdict more

favorable than the Offer of Judgement. The Plaintiff is thus entitled to interest at the rate of 8% based upon the amount of the verdict from the amount of the award to the entry of judgment.

BASED ON THE FOREGOING, the Defendants' Motions for JNOV, New Trial Absolute and New Trial Remittitur Nisi are DENIED. Plaintiff's Motion for Treble Damages under the UTPA is GRANTED, subject to the limitations outlined herein and Plaintiff's Motion For Interest pursuant to Rule 68 is GRANTED. The Court defers ruling on Plaintiff's Motion for Attorneys Fees and Costs until the parties have an opportunity to appear.

AND IT IS SO ORDERED.

Honorable Milton G. Kimpson

_____, 2025



Richland Common Pleas

Case Caption: Ansel Jamahl Postell vs Campus Advantage Inc , defendant, et al
Case Number: 2022CP4004419
Type: Order/Other

IT IS SO ORDERED.

s/Milton G. Kimpson 2783

STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS
	)	
Ansel Jamahl Postell,	)	
	)	
Plaintiff,	)	Case No. 2022-CP-40-04419
	)	
v.	)	
	)	
Campus Advantage, Inc., and EMRES II	)	ORDER ON ATTORNEY'S FEES AND
South Carolina, LLC.,	)	COSTS AND FINAL JUDGMENT AMOUNT
	)	
Defendants.	)	

This matter was tried before a jury in Richland County on Plaintiff's allegations against Defendants of ouster, conversion, breach of contract, negligence and violations of the South Carolina Unfair Trade Practices Act (UTPA). All causes of action, except for ouster, were submitted to the jury and the jury returned a verdict against the Defendants on conversion, breach of contract, negligence and the UTPA, awarding \$230,000 in actual damages and \$462,500.24 in punitive damages for a total damage award of \$692,500.24. A general verdict form was used by the jury that did not require it to specify the damages assigned to any particular cause of action.

Both the Defendants and the Plaintiff filed posttrial motions which the Court ruled upon by Order dated May 20, 2025(Order). The Order denied Defendants' posttrial motions and granted, in part, Plaintiff's Posttrial Motion for Treble Damages, Attorneys Fees, Costs and Interest. The Court trebled the damages it determined were appropriate under the UTPA. A ruling on attorney's fees and costs (collectively "attorney's fees") was deferred until the Court could convene a hearing to determine a reasonable award under the prevailing standards. See, *Jackson v. Speed* 326 S.C. 289, 486 S.E.2d 750 (1997). ; *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 427 S.E.2d 659 (1993). The Order also granted Plaintiff interest under Rule 68(b), SCRC.

ATTORNEY'S FEES AND COSTS UNDER THE UTPA

The parties appeared before the Court on June 2, 2025, to present arguments on attorney's fees. The Plaintiff was represented by Todd R. Lyle, Esq. The Defendants were represented by Timothy S. VanDenBerg, Esq., and Michael Trask, Esq.

In his posttrial motion, Plaintiff sought to treble the UTPA damages pursuant to S.C. Code Ann. §39-5-140(a). After careful evaluation, the Court determined that only Plaintiff's actual economic losses of \$27,500 fit within the UTPA's phrase "actual damages" for the purposes of a treble damages award. Thus, the Court trebled Plaintiff's \$27,500 property loss to \$82,500.00.¹

Plaintiff's posttrial motion sought attorney's fees under the UTPA. In pertinent part, § 39-5-140(a) provides that "[u]pon the finding by the court of a violation of this article [Article 1, UTPA], the court shall award to the person bringing such action under this section reasonable attorney's fees and costs."

The Court believes it must base the eventual attorney fee award under §39-5-140(a) on the trebled damage award of \$82,500.00. Plaintiff disputes this, asserting instead that the fee award should be based on the entire jury verdict of \$692,500.24. While there is some appeal to this argument when considering the purpose of the UTPA and the fact that here, the jury rendered a general verdict, the Court believes that basing the fee award on the entire jury verdict which found Defendants liable for causes of action other than the UTPA is inconsistent with the statutory mandate that fees and costs are appropriate where a court has found a violation of "this article." On its face, the operative language of §39-5-140(a) directs that attorney's fees and costs are to be awarded to the person "bringing an action under this section" (emphasis added).² The

¹ On May 30, 2025, Plaintiff filed a Motion for Reconsideration on the treble damages issue which will be addressed in a separate order.

² The first sentence of §39-5-140(a) emphasizes that the phrase "this section" is limited to violations of the UTPA:

"Any person who suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of an unfair or deceptive method, act or practice declared unlawful by Section 39-5-20 may bring an action individually, but not in a representative capacity, to recover actual damages."

Court, therefore, awards attorney's fees to Plaintiff on the UTPA cause action of thirty-three (33%) percent of the trebled damage amount, which results in a fee award of \$27,225.00 .³ The Court further awards 33% of the total cost amount of \$6,996.81, for costs related to the UTPA violation equaling \$2,308.95. In doing so, the Court emphasizes that its fee award is solely for Plaintiff's UTPA claim as the motion before it is limited to attorney's fees under the UTPA.⁴

Under *Portrait Homes-S.C., LLC v. Pa. Nat'l Mut. Cas. Ins. Co.*, 442 S.C. 515, 594, 900 S.E.2d 245, 288 (Ct. App. 2023), a court should consider the following factors to determine a reasonable attorney's fee: "1) nature, extent, and difficulty of the legal services rendered; 2) time and labor devoted to the case; 3) professional standing of counsel; 4) contingency of compensation; 5) fee customarily charged in the locality for similar services; and 6) beneficial results obtained."

Plaintiff's evidence on this issue consisted of affidavits from Mr. Lyle and two other lawyers familiar with the case, attesting to the complexity of the case. Moreover, as the trial judge, the Court recognizes that this case presented substantive and challenging legal and factual issues for trial. The need to prove the elements of the UTPA cause of action created a higher degree of difficulty in this case. The Court finds that the first factor of *Portrait Homes* -- "nature, extent, and difficulty of the legal services rendered" -- supports the attorney's fee award. The second *Portrait Homes* factor -- time and labor devoted to the case -- also supports the fee award. Although Mr. Lyle's affidavit does not give a total number of hours spent on the case, it does give an overview of case investigation and development, including extensive discovery conducted. The Record further reflects extensive pretrial litigation, and the result indicates a great amount of trial preparation. As it relates to *Portrait Homes* factor (3) -- professional

³ Mr. Lyle's motion for UTPA attorney's fees requested fees based on a 33% rate.

⁴ More plainly, this award under the UTPA is wholly unrelated to any attorney's fee and cost agreement contained in the contract between the Plaintiff and his attorney.

standing of counsel - Mr. Lyle enjoys an excellent reputation as being a zealous advocate for his injury clients which supports the attorney's fee award. For the purposes of this case, factors (4) and (5) are interrelated. Factor (4) addresses the contingency of compensation. Mr. Lyle took this case on a contingency fee basis, meaning his law firm bore the economic risk of an adverse verdict for the Defendants. If there had not been a verdict for the Plaintiff, there would be no compensation. This factor supports the award of attorney's fees under the UTPA. Factor (5) considers the fee customarily charged in the locality for similar services. The Court believes that cases asserting UTPA violations are customarily pursued on contingency fee arrangements. Further, the 33% fee awarded is most probably less than the usual rate charged for cases taken to trial. Finally, factor (6), beneficial results obtained, is met here as evidenced by the jury's decision that the Defendants committed UTPA violations.

The Court finds that an attorney's fee award of \$27,225.00 and \$2,308.95 for costs under the UTPA is amply supported under the prevailing standards and the Court awards the same.

FINAL JUDGMENT AMOUNT

Accordingly, the Court awards the following damages to Plaintiff, Ansel Jamal Postell, against the Defendants, Campus Advantage, Inc., and EMRES II South Carolina, LLC., jointly and severally:

Economic damages:	\$ 202,500.00
Economic damages (trebled under UTPA)	\$ 82,500.00
Punitive Damages	\$ 462,500.24
 Total	 \$ <u>747,500.24</u>
 Atty Fee (UTPA)	 \$ 27,225.00
 Costs (UTPA)	 \$ 2,308.95

Rule 68, SCRCP interest to 6/10/25 \$ 154,816.52

Total Judgment Amount \$ 931,850.71

THEREFORE, Plaintiff shall have judgment against the Defendants, jointly and severally, in the total amount of Nine Hundred Thirty-one Thousand Eight Hundred Fifty and 71/100 (\$931,850.71) Dollars.

AND IT IS SO ORDERED.

Honorable Milton G. Kimpson
Fifth Judicial Circuit

Columbia, South Carolina

_____, 2025

(Electronic Signature Page Follows)

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2022-CP-40-04419

Ansel Jamal Postell

PLAINTIFF(S)

Campus Advantage, Inc., and EMRES II South
Carolina, LLC

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Plaintiff	Campus Advantage	\$ 931,850.71
Plaintiff	EMRES II South Carolina	\$ 931,850.71
		\$

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

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

06/10/2025

Date _____

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

ATTORNEY(S) FOR THE DEFENDANT(S)

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

Case was tried before a jury and verdict rendered on September 19, 2024. Thereafter, the Court trebled certain damages by Order dated May 20, 2025 and further awarded attorney's fees by Order dated June 10, 2025.



Richland Common Pleas

Case Caption: Ansel Jamahl Postell vs Campus Advantage Inc , defendant, et al
Case Number: 2022CP4004419
Type: Order/Judgment and Form 4

IT IS SO ORDERED.

s/Milton G. Kimpson 2783

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
CASE NO. 2022-CP-40-04419

Ansel Jamahl Postell,

Plaintiff,

vs.

Campus Advantage, Inc., and EMRES
II South Carolina, LLC,

Defendants.

ORDER DENYING PLAINTIFF'S
MOTIONS TO RECONSIDER

The Plaintiff has timely and duly made two motions, filed May 30 and June 19, 2025, asking the court to reconsider its ruling on the amount of damages the court has trebled and to reconsider its ruling on the amount of attorney's fees awarded in the above-captioned action. Having reviewed these motions, the court has decided to deny them.

And IT IS SO ORDERED that the Plaintiff's aforesaid motions are hereby DENIED.

The Honorable Milton G. Kimpson
Circuit Judge



Richland Common Pleas

Case Caption: Ansel Jamahl Postell vs Campus Advantage Inc , defendant, et al
Case Number: 2022CP4004419
Type: Order/Other

IT IS SO ORDERED.

s/Milton G. Kimpson 2783

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
CASE NO. 2022-CP-40-04419

Ansel Jamahl Postell,

Plaintiff(s),

vs.

Campus Advantage, Inc. and EMRES II
South Carolina, LLC d/b/a The Rowan,

Defendants.

VERDICT FORM

RICHLAND COUNTY
FILED
2024 SEP 24 AM 9:16
JEANETTE W. McBRIDE
Clerk, C.S. & F.C.

Check "Yes" or "No" to the following questions:

1. Do you find that the Defendants are liable for the Conversion of Chattels of Ansel Postell's property?

☒ Yes (which means you have found in favor of the Plaintiff)

☐ No (which means you have found in favor of the Defendants)

2. Do you find that the Defendants was unfair or deceptive and violated the South Carolina Unfair Trade Practices Act?

☒ Yes (which means you have found in favor of the Plaintiff)

☐ No (which means you have found in favor of the Defendants)

3. Do you find that the Defendants are liable for breach of contract with Ansel Postell?

☒ Yes (which means you have found in favor of the Plaintiff)

☐ No (which means you have found in favor of the Defendants)

ROA 000032

4. Do you find that the Defendants were negligent in their duties to Ansel Postell or were negligent in hiring, training or supervising their employees?

☒ Yes (which means you have found in favor of the Plaintiff)

☐ No (which means you have found in favor of the Defendants)

If you answered "Yes" to any of the first five questions, also answer the following question.

5. Please state the total amount of damages sustained by Ansel Postell.

\$ 230,000

6. If Plaintiff proved its damages to a clear and convincing standard, please state the amount of punitive damages sustained by Ansel Postell.

\$ 462,500.24

Please sign and date below.

PLEASE SIGN AND DATE.

Foreperson

19 Sep 2024
Date

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	FILE NO. 2022-CP-40-04419
	)	
Ansel Jamahl Postell,	)	
	)	DEFENDANTS' MOTION FOR
Plaintiff	)	JUDGMENT NOTWITHSTANDING
	)	THE VERDICT AND FOR A NEW
v.	)	TRIAL ABSOLUTE, OR, IN THE
	)	ALTERNATIVE, A NEW TRIAL
Campus Advantage, Inc., and	)	<i>NISI REMITTITUR</i>
EMRES II South Carolina, LLC,	)	
	)	
<u>Defendants.</u>	)	

DEFENDANTS CAMPUS ADVANTAGE, INC. AND EMRES II SOUTH CAROLINA, LLC (“Defendants”), by and through the undersigned attorneys, will move before the Presiding Judge of the Court of Common Pleas for Richland County, in the Fifth Judicial Circuit of South Carolina, on the tenth (10th) day following the service hereof or as soon thereafter as counsel may be heard, for an Order granting Judgment Notwithstanding the Verdict pursuant to Rule 50(b) of the South Carolina Rules of Civil Procedure and a New Trial Absolute, or, in the alternative, a New Trial *Nisi Remittitur* pursuant to Rule 59 of the South Carolina Rules of Civil Procedure.

The parties tried this matter from September 16 to September 19, 2024, before the Honorable Milton G. Kimpson. At the close of all the evidence, Defendants made a Motion for a Directed Verdict on two of Plaintiff Ansel Jamahl Postell’s four remaining claims: South Carolina Unfair Trade Practice Act claim and breach of contract claim. At the conclusion of the trial, the jury returned a verdict for Plaintiff in the absorbent amount of \$230,000.00 in actual damages and \$462,500.24 in punitive damages. Judge Kimpson granted ten (10) days for any post-trial motions. This Motion follows.

JUDGMENT NOTWITHSTANDING THE VERDICT

Defendants first move for Judgment Notwithstanding the Verdict (“JNOV”). In ruling on a motion for JNOV, the Court must view the evidence and all reasonable inferences in the light most favorable to the non-moving party. *Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 27, 602 S.E.2d 772, 782 (2004). A motion for JNOV should be granted if no reasonable jury could have reached the challenged verdict. *Gastineau v. Murphy*, 331 S.C. 565, 568, 503 S.E.2d 712, 713 (1998).

A. South Carolina Unfair Trade Practices Act (“SCUTPA”)

Since this lawsuit began, Defendants have pressed Plaintiff to articulate with specificity the intentional unfair method of competition or deceptive act or practice that serves as the basis of his claim.

South Carolina courts define the terms “unfair” and “deceptive” according to the facts of each case. *Young v. Century Lincoln-Mercury, Inc.*, 302 S.C. 320, 326, 396 S.E.2d 105, 108 (Ct. App. 1989). Negligence alone is insufficient to form the basis of a SCUTPA claim. *See Wash. Mut. Bank v. Hiott*, No. 2006-UP-329, 2006 S.C. App. Unpub. LEXIS 357, *5 (Ct. App. Sep. 19, 2006) (applying *Clarkson v. Orkin Exterminating Co., Inc.* 761 F.2d 189 (4th Cir. 1995)). So is a mere breach of contract. *Cowart v. Poore*, 337 S.C. 359, 367, 523 S.E.2d 182, 186 (Ct. App. 1999). Plaintiff must also prove actual damages, which are defined as “the difference between that with which the plaintiff parted and that which he received.” *Payne v. Holiday Towers, Inc.*, 283 S.C. 210, 216, 321 S.E.2d 179, 182 (Ct. App. 1984).

At trial, Defendants moved for a directed verdict on this claim both at the close of Plaintiff’s case and at the close of all the evidence. Defendants also raised and argued issues with this claim in a hearing before Judge Clifton Newman on June 14, 2023, in consideration of,

inter alia, Defendants' Motion for Summary Judgment. Plaintiff offered no facts to support his claim in response to that motion and merely noted, "discovery is ongoing," citing the holding in *Burbach v. Investors Management Corp.*, which simply says SCUTPA may apply to residential leases. See *Burbach*, 326 S.C. 492, 484 S.E. 2d 119 (1997). Judge Newman denied the Motion for Summary Judgment. Defendants subsequently filed a Motion to Alter or Amend the Judgment and for Reconsideration on July 28, 2023. Judge Newman denied that motion too.

At trial, on cross-examination, Plaintiff stated his belief that Defendants violated SCUTPA because they had "promised to give him money, then didn't." During subsequent discussions on Defendants' Motions for Directed Verdict, as well as during the discussion on prospective jury charges, Judge Kimpson determined Defendants' failure to fulfill such a promise *was not a violation* of SCUTPA. Plaintiff's counsel then offered the circular reasoning that Defendants violated SCUTPA because the court in *Burbach* held that SCUTPA applies to residential leases. Plaintiff's counsel also suggested the mere disposal of a tenant's personal property alone violates SCUTPA. The problem with this reasoning is that the disposal of property is not illegal *per se*. What is more, the mere disposal of property is not an unfair or deceptive act under SCUTPA.

The South Carolina Landlord Tenant Act discusses the circumstances supporting a landlord's right to dispose of a tenant's personal property. S.C. Code Ann. § 27-40-730(d). To wit, when a rental agreement has ended and the tenant has removed a substantial portion of his personal property but has left personal property in his unit with a fair-market value of \$500 or less, the landlord may enter the unit and dispose of the property. *Id.* If the property disposed of exceeded \$500, the landlord is not liable unless that landlord was grossly negligent. S.C. Code Ann. § 27-40-730(f). The alleged violation of this statute is notably missing from Plaintiff's

Complaint and from all of Plaintiff's arguments to date. An analysis of the evidence in relation to this statute is instructive.

During Plaintiff's case, Ashanti Young testified that, on the morning of July 25, 2022, Katie Floyd gave her and Carlton Brown a list showing Plaintiff's unit was vacant. But for Judge Kimpson's ruling on Plaintiff's First Motion in Limine, Ashanti would have also testified about her contact with Timothy Green, one of Plaintiff's roommates, who told her Plaintiff had started moving his things out of his unit two weeks before move-out.

At this point, Ashanti and Carlton acted reasonably by verifying the leasing status of Plaintiff's unit in relation to the list. But it is at the point of entry when Campus Advantage policy was violated since the directive from management was that staff were only supposed to complete the verification process on July 25, 2022. Upon entering Plaintiff's unit and discovering items of personal property, Ashanti and Carlton *should* have called the front office to verify whether Plaintiff had a valid lease.

Multiple witnesses testified about the discussions in June and July 2022 between Plaintiff, his mother, and Defendants' employees, about Plaintiff's efforts to eventually renew his lease. *See Defs.' Exhibit 11*. Defendants have never contested the fact that Plaintiff renewed his lease on July 6, 2022. Katie Floyd and Melissa Hinton also testified at length about the systems, policies, and procedures (*e.g.*, the "Campus Advantage Turnover Procedures Manual") Defendants employed relating to the leasing process. *See Defs.' Exhibit 4*. Katie described the process for developing the list and why the information on the list, which she then gave to Ashanti and Carlton, did not reflect the accurate leasing status for Plaintiff's unit.

After entering the unit and discovering Plaintiff's personal property, Carlton contacted his maintenance supervisor Mike Allen to ask for permission to "trash-out" the unit and to "bag

and tag” the “electronics.” Mike *should* have directed Carlton to call the front office to first verify the tenant’s leasing status. Or Mike *could* have checked the leasing database himself. Regrettably, he didn’t and instead told Carlton to do something he was not authorized to do. Neither Mike nor Ashanti knew Carlton’s true intentions.

After the phone call with Mike, Carlton and Ashanti divided Plaintiff’s property into two categories: “bag and tag” and “trash out.” Carlton handled the former while Ashanti handled the latter. Defendants later discovered that Carlton took the items he handled to his personal residence. Defendants discovered this theft on August 5, 2022, when Plaintiff returned to an empty unit. Carlton subsequently returned the “bag and tag” items he had taken—the computer tower, gaming chair, two computer monitors, two computer speakers, weight vest, footlocker, plastic storage tote, backpack, and desk lamp. *See Defs.’ Exhibit 17.*

Plaintiff testified at trial that only the computer tower was damaged. And other than his testimony, there is no evidence of the computer’s condition before Carlton’s theft. Further, Plaintiff proffered no receipts at trial to show the cost of parts used to repair the computer. In the text exchange between Plaintiff and his mother, Plaintiff estimated the cost of parts to repair his computer ranged from \$6,500.00 to \$7,500.00. *See Defs.’ Exhibit 9.* Katie Floyd testified the damaged computer appeared to be receiving power because Plaintiff was able to reboot the computer when he retrieved the items from Katie’s office on August 5, 2022, after Carlton returned them. Katie testified that during subsequent conversations with Plaintiff over the next several days, Plaintiff then estimated the damage ranged from \$3,000.00 to \$5,000.00.

Ashanti removed the remaining “trash out” items from Plaintiff’s unit by placing them in trash bags and setting them outside the unit for ultimate disposal in the landfill. Ashanti testified she disposed of the following items: 3 pairs of dress shoes; 1 safe; 3 button-up shirts; 3–4 empty

shoe boxes; an assortment of rags and towels; 1 iron; 1 ironing board; 1 clothes hamper (“laundry basket”); 1 fitted sheet; and an assortment of cleaning supplies. Using the price-per-item associated with the spreadsheet Plaintiff’s mother provided on August 22, 2022, these items total \$1,115.00. Further, Defense Counsel acknowledged during his closing argument that these items were “not new,” so this is likely an over estimation of their value.

Returning to the analysis of sections 27-40-730(d) and (f), one must first determine whether Carlton and Ashanti were acting within the scope of their employment. An employee’s act is within the course and scope of her employment only “where reasonably necessary to accomplish the purpose of [his] employment and in furtherance of the [employer’s] business.” *Armstrong v. Food Lion, Inc.*, 371 S.C. 271, 276, 639 S.E.2d 50, 52 (2006). But when an employee “acts for some independent purpose of [his] own, wholly disconnected with the furtherance of [his employer’s] business, [his] conduct falls outside the scope of [his] employment.” *Kase v. Ebert*, 392 S.C. 57, 61, 707 S.E.2d 456, 458 (Ct. App. 2011) (quoting *Crittenden v. Thompson-Walker Co.*, 288 S.C. 112, 116, 341 S.E.2d 385, 387 (Ct. App. 1986)).

Here, the jury could have considered four possibilities when contemplating the incident giving rise to Plaintiff’s claims: (1) both Ashanti and Carlton were acting within the scope of employment; (2) neither Ashanti nor Carlton were acting within the scope of employment; (3) only Ashanti was acting within the scope of employment; or (4) only Carlton was acting within the scope of employment. The evidence, however, leads to only one conclusion: Carlton was acting well outside the scope of employment. While he may have been acting in furtherance of Defendants’ business by “bagging and tagging” Plaintiff’s personal property, he more than exceeded that scope when he took home and effectively stole Plaintiff’s personal property for his own benefit. This act was wholly disconnected with, and could in no way be seen as, furthering

Defendants' business. As a result, Defendants cannot be liable for his criminal actions. More importantly, Carlton's criminal actions—which cannot be imputed to Defendants—are an insufficient basis to find Defendants violated SCUTPA in any manner. The Court should therefore grant JNOV to Defendants on Plaintiff's SCUTPA claim.

B. Breach of Contract

Defendants addressed Plaintiff's breach of contract claim in their Motion for Summary Judgment as well as in the Motion for Directed Verdict at the close of all the evidence. In his response to Defendants' Motion for Summary Judgment, Plaintiff raised the requirement of "good faith and fair dealing" regarding residential leases in South Carolina. S.C. Code Ann. § 27-40-220. He also stated that "it is disingenuous to argue that The Rowan Defendants did not breach any material term of a lease governed under the South Carolina Residential Landlord Tenant Act when these landlords admittedly lost or destroyed the vast majority of Postell's personal property."

The fundamental problem with this argument is that loss of personal property is specifically *excluded* in Plaintiff's lease agreements. *See Defs.' Exhibits 12 & 13*. Section 11.2 Casualty Loss provides, "Unless otherwise required by law, Owner is not liable for . . . loss of personal property." *Id.* And Section 14 Risk of Loss of Resident's Property states, "Residents shall bear the risk of loss of any and all of Residents' personal property." *Id.* Further, the Lease Addendum addresses the requirement for residents to purchase a Renter's Insurance policy to protect their personal property from loss.

But for Judge Kimpson's ruling on Plaintiff's Second Motion in Limine, Defendants would have been able to ask witnesses about not only Plaintiff's renter's insurance policy but also these sections of the lease agreement as well. Under the lease agreements, Defendants

cannot be liable for a breach of contract based on the loss or destruction of Plaintiff's personal property. The Court should therefore grant JNOV to Defendants on Plaintiff's breach of contract claim.

NEW TRIAL ABSOLUTE

Defendants next move for New Trial Absolute. A trial court may grant a new trial absolute whenever necessary to prevent injustice. And the trial court “*must* grant a new trial absolute if the amount of the verdict is grossly inadequate or excessive so as to shock the conscience of the court and clearly indicates the figure reached was the result of passion, caprice, prejudice, partiality, corruption or some other improper motives.” *Howard v. Roberson*, 376 S.C. 143, 154, 654 S.E.2d 877, 883 (Ct. App. 2007) (emphasis added). “Ordinarily the only means of discovering the existence of passion and prejudice as influencing the verdict is by comparing the amount of the verdict with the evidence before the trial court.” *Nelson v. Charleston & W.C.Ry. Co.*, 231 S.C. 351, 362, 98 S.E.2d 798, 802 (1957). But “[t]he size of the verdict alone may show that it must have been the result of passion or prejudice.” *Id.* For the reasons below, the Court should grant a New Trial Absolute.

A. Misconduct of Counsel

Prejudicial conduct by counsel may justify a new trial. *See Dial v. Niggel Assocs. Inc.*, 333 S.C. 253, 256, 509 S.E.2d 269, 271 (1998); *Rivers v. Indus. Life & Health Ins. Co.*, 176 S.C. 175, 177–78, 179 S.E. 793, 794 (1935). The following list reflects statements and conduct by Plaintiff Counsel throughout the trial that was prejudicial to Defendants. The list is captured from notes taken contemporaneously during the trial, but more instances of prejudicial conduct will most certainly follow upon a thorough review of the trial transcript when received.

a. **From the Opening Statement.**

- i. In general, Plaintiff Counsel's opening statement on the overview of Plaintiff's case was overtly argumentative and improper.
- ii. Following Judge Kimpson's pre-trial ruling on Plaintiff's Rule 32(a)(4), SCRCR, request, Plaintiff Counsel made prejudicial comments relating to how Defendants would present Melissa Hinton's Rule 30(b)(6) video deposition, stating that Plaintiff would show only excerpts of the video during his case in chief but that the jury would have to "sit through" the entirety of the video deposition during Defendants' case.
- iii. Plaintiff Counsel showed the jury the altered deposition transcript purporting to be the answer by deponent to counsel's question.
- iv. Plaintiff Counsel showed the jury an altered trial exhibit (Plaintiff's Exhibit 15) before Judge Kimpson had ruled on Plaintiff's First Motion in Limine.
- v. Plaintiff Counsel misrepresented Melissa Hinton's Rule 30(b)(6) testimony in multiple respects, but specifically in stating that EMRES "fired" Campus Advantage.
- vi. Plaintiff Counsel had an overly extensive discussion of damages, particularly "non-economic damages," and of the law allowing jurors to award damages.

b. From Witness Examination.

- i. Plaintiff Counsel made several derogatory comments in response to Witness Katie Floyd's testimony.
- ii. Plaintiff Counsel invaded Witness Katie Floyd's personal space when counsel left the lectern and approached the witness in a threatening and hostile manner.

c. From the Closing Argument.

- i. Plaintiff Counsel made derogatory comments about the length and substance of Defense Counsel's closing argument (*e.g.*, "27 minutes," after asking his paralegal for the elapsed time; "I heard talk about superpowers but no apology," despite the apparent significance of Plaintiff's Ninth Motion in Limine "regarding apologies and/or being sorry").
- ii. Plaintiff Counsel made statements based on race and/or familial status that were not relevant to Plaintiff's case and were meant only to inflame the jury (*e.g.*, in 2022 Plaintiff was "a 19-yr-old African-American student living alone three hours from home"; Plaintiff's mother "is a single parent" and Plaintiff is "her only child").
- iii. Plaintiff Counsel made other inflammatory statements prejudicial to Defendants (*e.g.*, "Plaintiff and his mother have been called a liar for two years"; Defendants' operations were a "crap show"; inviting jury to "send a message to Austin, Texas that you can't do business like that here [in Columbia, SC]"; encouraging the jury to "add \$0.24 to the

verdict so that [Defendants] always remember this verdict from the year 2024”).

- iv. Plaintiff Counsel wrote monetary figures for “actual damages” and “punitive damages” (that ultimately became the respective amounts of the jury’s damages verdict) on the paper flip chart situated behind the witness box, while describing them as a way damages could be calculated in this case.

For the above-stated reasons, and certainly more to follow, the Court should grant a New Trial Absolute based on prejudicial conduct by Plaintiff Counsel.

B. The Damages the Jury Awarded are Inconsistent with the Evidence.

When a damages award is so grossly disproportionate to the evidence of damages that it “shocks the conscience,” the court can infer that the jury was affected by passion, caprice, prejudice, or other factors outside the evidence, and those factors affected not only the damage award but also the finding of liability. *Dillon v. Frazer*, 383 S.C. 59, 63, 678 S.E.2d 251, 253 (2009).

From Plaintiff’s and his mother’s testimony, we know that the \$27,500.00 damages figure was an estimate. *See Defs.’ Exhibit 15*. The initial amount of damage Plaintiff attributed to his computer was \$7,500.00. This number never changed even though Plaintiff testified he was not able to properly diagnose the damages until some time during the period after he filed this lawsuit on August 26, 2022, and before Christmas that same year. The remaining \$20,000.00 Plaintiff claims as damages for loss or destruction of personal property is more troublesome. Plaintiff and his mother testified on cross-examination that \$20,000.00 was an estimate presented during a phone call with Defendants on either August 7 or 8, 2022. *See Defs.’*

Exhibit 10. Katie Floyd even memorialized the contents of this conversation in an email on August 7, 2022, to Plaintiff and his mother. *Id.* Contrary to Plaintiff's argument that this is an "admission" of liability, this was merely Katie's attempt to document the details of her telephone call with Plaintiff and his mother.

Plaintiff further testified during cross-examination about the process he and his mother undertook to develop the spreadsheet he ultimately provided to Defendants on August 22, 2022. Starting with the \$20,000.00 estimate and the categories of personal property Plaintiff's mother outlined in a text exchange with Plaintiff on August 5, 2022, Plaintiff testified that they "Googled" the prices of various items and backed into the respective quantities shown on the spreadsheet.

Despite a jury charge to the contrary, it appears the jury based its actual damages award of \$230,000.00 and punitive damages award of \$462,500.24 on Plaintiff Counsel's statements during his closing argument. For "actual damages," Counsel presented an amount based on a multiplier of the amount of monthly rent (\$635) Plaintiff paid. Plaintiff Counsel characterized these damages as "non-economic damages," even though, as stated above, there was no evidence of non-economic damages presented at trial through witness testimony or trial exhibits. And "punitive damages" here were simply double the estimated amount of actual damages. The consequence was **a total damages award over 25-times the real amount of damage** conveyed to Defendants on August 22, 2022. This award finds no justification in the facts and evidence presented at trial. For these reasons, the Court should order a New Trial Absolute.

C. Punitive Damages Award

Punitive damages are warranted *only* when the defendant's conduct is willful, wanton, or in reckless disregard of the rights of others. *See Cartee v. Lesley*, 290 S.C. 333, 337, 350 S.E.2d

388, 390 (1986). The trial court must conduct a post-trial review of any punitive damages award to determine whether the award violates the defendant's right to due process. In such determination, the court considers eight factors:

- (1) defendant's degree of culpability; (2) duration of the conduct;
- (3) defendant's awareness or concealment; (4) the existence of similar past conduct; (5) likelihood the award will deter the defendant or others from like conduct; (6) whether the award is reasonably related to the harm likely to result from such conduct;
- (7) defendant's ability to pay; and finally, (8) as noted in *Haslip*, "other factors" deemed appropriate.

Gamble v. Stevenson, 305 S.C. 104, 111–12, 406 S.E.2d 350, 354 (1991) (citing *Pac. Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 20 (1991)). Based on these eight factors, no evidence justifies an award of punitive damages in this case, much less a punitive damages award of \$462,500.24. For these reasons, the Court should award a New Trial Absolute.

D. The 13th Juror Doctrine

Under the "thirteenth juror" doctrine, a trial court may grant a New Trial Absolute when it finds the evidence does not justify the verdict. *S.C. Highway Dep't v. Townsend*, 265 S.C. 253, 285, 217 S.E.2d 778, 781 (1975). This ruling has also been known as granting a new trial upon the facts. *See, e.g., Folkens v. Hunt*, 300 S.C. 251, 254, 387 S.E.2d 265, 267 (1990). Here, the Court should grant a New Trial Absolute because the evidence presented at trial does not justify the verdict.

Defendants' arguments on their Motion for JNOV also apply here. *See supra*. Along with that analysis, the Court should consider the evidence as it relates to Plaintiff's other claims: negligence and conversion. The discussion above on sections 27-40-730(d) and (f) is instructive on these issues too because an analysis of negligence and conversion requires a determination of whether Ashanti and/or Carlton were acting within the scope of employment. As explained

above, there is no evidence on which the jury could have found that Carlton was acting within the scope of his employment when he stole Plaintiff's personal property for his own benefit wholly independent of any of Defendants' business. It is clear from the amount of the verdict that jury's award of \$230,000.00 in actual damages and \$462,500.24 in punitive damages is not based on any evidence introduced by Plaintiff at trial related to his lost or damaged personal property. Instead, it was based entirely on the passion, prejudice, and arguments of counsel.

For these reasons, the Court should grant a New Trial Absolute.

NEW TRIAL NISI REMITTITUR

Finally, Defendants move, in the alternative, for a New Trial *Nisi Remittitur* in the event the Court denies their Motion for a New Trial Absolute. A motion for New Trial *Nisi Remittitur* asks the trial court to reduce the verdict because the verdict is merely excessive. *See James v. Horace Mann Ins. Co.*, 371 S.C. 187, 193, 638 S.E.2d 667, 670 (2006).

Considering the discussion above, the jury's award of \$230,000.00 in actual damages and \$462,500.24 in punitive damages is excessive, and the Court should reduce the verdict to align with the evidence presented.

CONCLUSION

In sum, based on the foregoing as well as applicable legal authorities and such other materials and authorities that may be submitted hereafter or at the hearing on this Motion, the Court should grant Defendants' Motion for JNOV on Plaintiff's SCUTPA and breach of contract claims and Motion for a New Trial Absolute on Plaintiff's conversion and negligence claims as well as any claims unresolved by Defendants' Motion for JNOV. Alternatively, the Court should grant Defendants' Motion for New Trial *Nisi Remittitur* to consider a damages award that aligns

with the evidence presented at trial. Further, Defendants respectfully request such other and further relief, both general and special, legal, or equitable, to which they may be justly entitled.

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Attorney for EMRES II South Carolina, LLC

Columbia, South Carolina
Dated: September 30, 2024

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
CASE NO. 2022-CP-40-04419

Ansel Jamahl Postell,

Plaintiff,

vs.

Campus Advantage Inc., and EMRES II
South Carolina LLC d/b/a The Rowan.

Defendant(s).

PLAINTIFF'S POST-TRIAL MOTIONS
FOR TREBLE DAMAGES,
ATTORNEY'S FEES, COSTS AND
INTEREST AND INCORPORATED
MEMORANDUM OF LAW

TO: THE HONORABLE MILTON KIMPSON, CIRCUIT COURT JUDGE & TIMOTHY VANDENBERG, COUNSEL FOR CAMPUS ADVANTAGE, INC., AND EMRES II SOUTH CAROLINA, LLC D/B/A THE ROWAN.

Plaintiff, by and through his undersigned counsel, submits these post-trial motions and incorporated memorandum in support, seeking: (1) treble damages, attorney's fees and costs in accordance with the South Carolina Unfair Trade Practices Act; and (2) interest due under an Offer of Judgment pursuant to Rule 68(b), SCRCP.

I. ADDITIONAL RELIEF SOUGHT PURSUANT TO THE SOUTH CAROLINA UNFAIR TRADE PRACTICES ACT.

The Jury in this case found that the Defendants violated the South Carolina Unfair Trade Practices Act ("SCUPTA" or "the Act"). Because of the conduct committed by the Defendants, the Act provides additional remedies to the Plaintiff. First, S.C. Code Ann. § 39-5-10 sets forth a broad definition of "trade and commerce" to include the "sale or distribution" of any "thing of value" directly or indirectly affecting South Carolina's citizens. Leases, while created by contract, grant the tenant the right to use and enjoy property. They clearly are a "thing of value," even under the strictest reading of the statute's plain meaning. *Burbach v. Investors Mgmt. Corp. Intern.*, 326 S.C. 492, 496, 484 S.E.2d 119, 121 (Ct. App. 1997).

Further, S.C. Code Ann. § 39-5-20 provides “unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.” An unfair or deceptive act affecting the public interest, as an element of an action alleging a violation of the Unfair Trade Practices Act, may be satisfied by proof of facts demonstrating the potential for repetition of the defendant's actions. *Estate of Carr ex rel. Bolton v. Circle S Enterprises, Inc.* (Ct. App. 2008) 379 S.C. 31, 664 S.E.2d 83. Here, the defendants’ conduct—more specifically—its repeated conduct was determined to be a violation of the Act and had an impact on the public interest. *Id. citing Noack Enterprises, Inc. v. Country Corner Interiors of Hilton Head Island, Inc.*, 290 S.C. 475, 480, 351 S.E.2d 347, 350-51 (Ct. App. 1986).

The purpose of the SCUTPA is to discourage unfair methods of competition and unfair or deceptive acts in the conduct of any trade or commerce and to give additional protection to victims of unfair trade practices. *Taylor v. Medecina*, 331 S.C. 575, 579, 503 S.E.2d 458, 460 (1998); *Young v. Century Lincoln-Mercury, Inc.*, 302 S.C. 320, 326, 396 S.E.2d 105, 108 (Ct. App. 1989) *rev’d in part on other grounds*, 309 S.C. 263, 422 S.E.2d 103 (1992). It is in the public interest generally to prevent unfair conduct in business. *State ex rel. McLeod v. Brown*, 278 S.C. 281, 286, 294 S.E.2d 781, 783 (1982).

In sum, following the trial, the jury found that the Defendants committed a willful violation of the Act when they unlawfully entered into Mr. Postell’s apartment unit and wrongly removed all of his personal belongings. As such, Plaintiff should receive the additional relief afforded to him under the Act.

A. Treble Damages

S.C. Code Ann. § 39-5-140(a) provides, “If the court finds that the use or employment of the unfair or deceptive method, act or practice was a willful or knowing violation of § 39-5-20¹, the court shall award three times the actual damages sustained and may provide such other relief as it deems necessary or proper. S.C. Code Ann. § 39-5-140(d) provides the statutory definition of willful as one that “occurs when the party committing the violation knew or should have known that his conduct was a violation of § 39-5-20.”

The statutory definition of willful under SCUTPA is “different from the common law . . . the standard is not one of actual knowledge, but of constructive knowledge. If, in the exercise of due diligence, a person of ordinary prudence engaged in trade or commerce could have ascertained that his conduct violates the Act, then such conduct is ‘willful’ within the meaning of the statute.” *Maybank v. BB&T Corporation*, 416 S.C. 541, 578, 787 S.E.2d 498, 517 (2016); *State ex rel. Medlock v. Nest Egg Soc. Today, Inc.*, 290 S.C. 124, 128, 348 S.E.2d 381, 384 (Ct. App. 1986).

Court testimony provided multiple opportunities for the jury to reach the conclusion that the Defendants’ behavior was willful or certainly giving rise to its constructive knowledge of its behavior willfully violating the Act. Indeed, former employee Ashanti Young testified that the Defendants had lost or misplaced other tenants’ property multiple times during her tenure at The Rowan. Former Regional Manager Nick Hooser testified in a videotaped deposition for use at trial that tenant turnover or “turn” was “hectic” with “lots of moving parts.” Mr. Hooser further provided insight into the issue of repeatability as well.

¹ S.C. Code Ann. § 39-5-20(a) provides “Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.”

7 Q Sure. In your experience in property
8 management --
9 A Uh-huh.
10 Q -- and, specifically, in the student
11 housing industry, have you seen any other instances
12 of where a student's property is misplaced or lost
13 during the turn process as no fault of the own
14 student or the own tenant?
15 A I'm sure in the past 20 years, it's
16 happened. I'm not sure if it was the exact
17 situation here.
18 Q Okay. But it's not shocking or surprising
19 to you that this kind of thing could happen?
20 A Human makes -- humans make mistakes and so
21 no.

(See Exhibit A – Transcript of Deposition For Use at Trial of Nick Hooser).

Additionally, the Plaintiff played excerpts of the deposition of the corporate representative of Campus Advantage, Inc., Melissa Hinton. During its publication, Ms. Hinton admitted that numerous employees failed to follow policy numerous times resulting in the loss of Plaintiff's property. Ms. Hinton also acknowledged that Defendants failed to properly follow the legal process of handing a tenant's personal property when it exceeds \$500.00 in value. Furthermore, former property manager, Nancy "Katie" Floyd, also testified and affirmed that the Defendants failed to follow a legal process that they were required to with respect to handling tenants' personal belongings. Simply put, Defendants knew or should have known they willfully violated the Act.

Indeed, the jury found that Campus Advantage Inc., and EMRES II South Carolina, LLC violated the South Carolina Unfair Trade Practices Act, and further found that the defendants were

willful and awarded Postell \$230,000 in actual damages and \$462,500.24 in punitive damages. Accordingly, applying the less stringent standard under the Act, the Court should also find a willful or knowing violation of the South Carolina Unfair Trade Practices Act.

Moreover, Campus Advantage, Inc., and EMRES II South Carolina, LLC, anticipating that its conduct could expose them to substantial liabilities, elected to purchase for itself a \$5,000,000 liability policy to cover legal claims, such as those asserted by the Plaintiff (**EXHIBIT B – Defendant’s Answers to Interrogatory #11**).

11. Identify all insurance companies which provide any type of liability insurance coverage to you, including but not limited to first-party liability policies, self-insured retention policies, and/or policies of excess and/or umbrella coverage and set forth the number of policies involved, the policy period dates and the amounts of liability insurance coverage provided in these policies including any deductibles.

ANSWER: QBE Specialty Insurance Corporation. Policy Number 100003400. Policy Period September 1, 2021 to September 1, 2022. Liability limit of \$5,000,000 and self-insured retention of \$75,000.

Notably, treble damages available under a statute are separate and distinct from punitive damages. *Rorrer v. P.J. Club, Inc.*, 347 S.C. 560, 569, 556 S.E.2d 726, 731 (Ct. App. 2001). Indeed, other courts have found willful violations and treble actual damage awards in similar cases, particularly where the jury also awards punitive damages. In *Maybank v. BB&T Corporation*, 416 S.C. 541, 787 S.E.2d 498 (2016), an investor brought an action against an investment advisor for, among other things, a violation of the South Carolina Unfair Trade Practices Act. There, Maybank’s theory of the case was that BB&T’s recommendation of alternative investment strategies and products generate fees and profit for the bank but caused grave financial damage to

its clients, and that Maybank relied on his advisors to advise him in their capacity as fiduciaries and they willfully and wantonly deceived him. *Maybank*, 416 S.C. at 557, 787 S.E.2d at 506.

There, the jury awarded \$3.1 million in actual damages, and \$5 million in punitive damages. Upon motion by Maybank, the court also trebled the award of actual damages from \$3.1 million to \$9.3 million and granted Maybank's motion for attorneys' fees and costs totaling \$2,654,295 in fees and costs in the amount of \$245,011. Thus, the trial court entered total judgment for \$17,199,306.00. *Id.* at 563, 787 S.E.2d at 509.

Similarly, *Global Protection Corp v. Halbersberg*, 332 S.C. 149, 503 S.E.2d 483 (Ct. App. 1998) involved claims of unfair and deceptive trade practices related to the manufacturing of glow-in-the-dark condoms, where Halbersberg's package was an exact copy of Global's package. There, the trial court trebled the actual damages from \$311,819.19 to \$935,457.57 and also awarded attorneys fees of \$311,819.19 and costs in the amount of \$2,174.62 for a total judgment of \$1,249,451.38.

Additionally, *Taylor v. Medenica*, 331 S.C. 575, 503 S.E.2d 458 (1998) involved an unfair and deceptive trade practice act claim against a medical laboratory for performance of useless tests in connection with patient treatment. There, the jury returned a verdict including, among other things, \$1 million on an Unfair Trade Practices Act claim. The trial court trebled damages in accordance with the UTPA and awarded \$500,000 in attorney's fees and \$24,068.00 in costs.

More recently, *O'Shields v. Columbia Automotive, LLC*, 435 S.C. 319, 867 S.E.2d 446 (Ct. App. 2021) involved a breach of contract claim along with an Unfair Trade Practices Act claim under North Carolina's version of the similar law. In *O'Shields*, a vehicle seller was sued following a vehicle auction when a buyer later learned that the vehicle had been "clipped" or reconstructed from two other cars. Following that trial, a jury awarded punitive damages as well

as a finding of unfair or deceptive acts by the vehicle seller. The vehicle seller appealed, and the *O'Shields* Court held that the vehicle buyer was not required to elect his remedy between punitive damages under the breach of contract claim and an award of attorney's fees under the North Carolina Unfair Trade Practices Act. The *O'Shields* Court reasoned that punitive damages were to deter similar conduct while the damages afforded under the NCUTPA statute were driven by public policy and to encourage private enforcement of the law.

Maybank, *Halbersberg*, *Medenica*, and *O'Shields* all involved unfair and deceptive statements and business practices and all involved claims that required years of litigation and negatively impacted the public's interest. In each case, judges time and time again trebled damages in accordance with the purpose and spirit of the South Carolina Unfair Trade Practices Act. Likewise, Plaintiff respectfully requests this Court treble the actual damages for the willful conduct of Campus Advantage Inc., and EMRES II South Carolina, LLC.

B. Attorney's Fees and Costs

S.C. Code Ann. § 39-5-140(a) provides: Upon the finding by the court of a violation of this article, the court shall award to the person bringing such action under this section reasonable attorney's fees and costs. "The term 'shall' in a statute means that the action is mandatory." *Johnston v. South Carolina Dept. of Labor, Licensing, and Regulation*, 365 S.C. 293, 296-97, 617 S.E.2d 363, 364 (2005) (emphasis added).

Importantly, the attorney's fees provision of the UTPA is rationally related to the policy objectives of the UTPA and allows a plaintiff who successfully pursues an action under the UTPA to recover their attorney's fees thereby encouraging individuals to pursue litigation to protect the public interest. See *Maybank v. BB&T Corporation*, 416 S.C. 541, 563, 787 S.E.2d 498, 509

(2016) (affirming trial court's decision to award \$2,654,295 in fees and costs in the amount of \$245,011); *Taylor v. Medenica*, 331 S.C. 575, 503 S.E.2d 458 (1998) (affirming trial court's decision to award \$500,000 in attorney's fees and \$24,068.00 in costs); *Global Protection Corp v. Halbersberg*, 332 S.C. 149, 503 S.E.2d 483 (Ct. App. 1998) (affirming trial court's decision to award attorneys' fees of \$311,819.19 and costs in the amount of \$2,174.62).

Undersigned counsel is not aware of any case where the jury found a violation of the South Carolina Unfair Trade Practices Act and attorney's fees and costs were not assessed against the Defendant in accordance with the statute.

Here, the jury found that Campus Advantage Inc., and EMRES II South Carolina, LLC violated the South Carolina Unfair Trade Practices Act:

2. Do you find that the Defendants was unfair or deceptive and violated the <u>South Carolina Unfair Trade Practices Act</u>? ☒ Yes (which means you have found in favor of the <u>Plaintiff</u>) ☐ No (which means you have found in favor of the <u>Defendants</u>)

Accordingly, the Court "shall" award attorney's fees in accordance with S.C. Code Ann. § 39-5-140(a). Attached herewith please find Plaintiff's **Exhibit C – Affidavit of Attorney's Fees and Costs**, detailing the efforts to prosecute the case over the past two years and necessary costs of **\$6,996.81**. As outlined in the affidavit, Plaintiff retained Todd R. Lyle, Esq. on a contingency fee arrangement whereby the firm would be paid one-third of any recovery by way of settlement and 37% of any recovery after the commencement of a contested proceeding and 40% of any recovery if the case were to go to trial, plus reimbursement of all costs incurred.

Despite the fee contract calling for 40%, Plaintiffs' counsel asks the Court to award only one-third of the judgment amount ultimately determined by the Court as attorney's fees, along with the above-stated costs. If the Court determines that the actual damages should be trebled, this amount comes to \$384,166.75 in attorney's fees. *See e.g. Global Protection Corp v. Halbersberg*, 332 S.C. 149, 503 S.E.2d 483 (Ct. App. 1998) (affirming trial court's decision to award attorneys' fees of \$311,819.19 representing one-third of the total award under counsel's contingency fee agreement).

II. AWARD OF INTEREST PURSUANT TO RULE 68(b), SCRCP – OFFER OF JUDGMENT

Rule 68(b), SCRCP provides, “if an offer of judgment is not accepted and the offeror obtains a verdict or determination at least as favorable as the rejected offer, the offeror shall recover from the offeree: (1) any administrative filing, or other court costs from the date of the offer until the entry of judgment; (2) if the offeror is a plaintiff, eight percent interest computed on the amount of the verdict or award from the date of the offer to the entry of judgment.”

On August 26, 2022, Plaintiff filed and served an offer of judgment with respect to all defendants in this matter offering to fully resolve the case for \$75,000.00. (**Exhibit D – Plaintiff's Offer of Judgment**). No response was provided to Plaintiff. In fact, some months later, defendants filed their own Offer of Judgment offering to settle the case for \$7,500.00 (**Exhibit E – Defendant's Offer of Judgment**); accordingly, Plaintiff's offer was deemed to have been rejected under the provisions of Rule 68, SCRCP.

The jury entered a verdict for the Plaintiff in the amount of \$692,500.24 on September 19, 2024. As of the date of this filing, 764 days have passed since the filing date of Plaintiff's Offer of Judgment. (**Exhibit F – Calculation of Time**). Eight percent (8%) computed on the amount of

the verdict from August 26, 2022 to the date of this filing is **\$115,960.61**. (**Exhibit G – Calculation of Interest**)

III. CONCLUSION

While the Court certainly has discretion, it has little choice to enforce the spirit and purpose of the South Carolina Unfair Trade Practices Act and must give some meaning to the jury's verdict on the UTPA claim. Under the provisions of the Act and Rule 68, SCRCP, Plaintiff requests the Court enter total judgment in the amount of **\$1,659,624.41**, which is comprised of \$690,000 (actual damages of \$230,000 trebled), \$462,500.24 in punitive damages awarded by the Jury, \$384,166.75 in attorney's fees (1/3 of the requested award), \$6,996.81 in costs to prosecute the case, and \$115,960.61 of interest under Rule 68, SCRCP.

Respectfully submitted,

LYLE LAW FIRM, LLC

s/ Todd R. Lyle

Todd R. Lyle (SC Bar ID # 102308)

LYLE LAW FIRM, LLC

305 North Lake Drive

Lexington, South Carolina 29072

803.770.0701

803.770.4427 (Direct Line)

Todd@lylelawsc.com (email)

ATTORNEY FOR THE PLAINTIFF

September 27, 2024
Lexington, South Carolina

EXHIBIT A

In the Matter of:

Ansel Jamahl Postell

VS.

Campus Advantage, Inc; et al

Nick Hooser

September 10, 2024



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P.O. Box 1296
Mt. Pleasant, SC 29465
843-849-0133
Spectrumaaa@gmail.com

IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
RICHLAND COUNTY

VIDEOTAPED DEPOSITION OF NICK HOOSER

ANSEL JAMAHL POSTELL,
Plaintiff,

vs.

CASE NO. 2022-CP-40-04419

CAMPUS ADVANTAGE, INC.;
EMRES II, SOUTH CAROLINA, LLC,
Defendants.

DEPONENT: NICK HOOSER

DATE: September 10, 2024

TIME: 9:06 A.M.

LOCATION: MCGOWAN, HOOD, FELDER & PHILLIPS, LLC
10 Shem Drive
Suite 200
Mount Pleasant, South Carolina

REPORTED BY: TRISHA RARICK

A P P E A R A N C E S

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ON BEHALF OF THE PLAINTIFF:

LYLE LAW FIRM, LLC
BY: TODD R. LYLE
305 North Lake Drive
Lexington, SC 29072
803.770.0701
todd@lylelawsc.com

ON BEHALF OF THE DEFENDANTS:

VANDENBERG LAW FIRM, LLC
BY: TIMOTHY S. VANDENBERG
4711 Forest Drive
Suite 3 PMB 116
Columbia, SC 29206
tvandenberg@vdblegal.com

ALSO PRESENT:

KEVIN A. O'QUINN, VIDEOGRAPHER

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I N D E X

EXAMINATION

Page

By MR. LYLE

5

Certificate of Reporter

19

E X H I B I T S

Page

PLAINTIFF'S EXHIBITS

1 AFFIDAVIT
2 E-MAIL

8
15

1 VIDEOGRAPHER: Now on the record at
2 9:06 a.m. on September 10th, 2024. This is the
3 video deposition of Nick Hooser taken by the
4 plaintiff in the matter of Ansel Jamahl Postell
5 versus Campus Advantage, Incorporated, et al.,
6 in the Common Pleas, in the County of Richland,
7 State of South Carolina, case number
8 2022-CP-40-04419.

9 This video deposition is being held at 10
10 Shem Creek Drive in Mount Pleasant, South
11 Carolina. Today, the court reporter is Trish
12 Rarick representing Spectrum Court Reporting,
13 and currently speaking, my name is Kevin
14 O'Quinn. I'm the legal videographer
15 representing Legal Media Charleston with office
16 located in Moncks Corner, South Carolina.

17 Counsel, please state your appearances for
18 the record.

19 MR. LYLE: Sure. My name is Todd Lyle,
20 and I'm here for Mr. Postell.

21 MR. VANDENBERG: And Timothy VanDenBerg
22 for Campus Advantage and EMRES II, South
23 Carolina.

24 NICK HOOSER,
25 having been first duly sworn, was examined and testified as

1 follows:

2 THE WITNESS: Yes.

3 EXAMINATION

4 BY MR. LYLE:

5 Q Good morning. Mr. Hooser, my name is Todd
6 Lyle. Are you okay if I call you Nick?

7 A Yes.

8 Q All right. Super. So, Nick, I just
9 introduced myself. I represent Ansel Postell with
10 respect to a case in Richland County against the
11 Rowan Apartments or, more properly, Campus
12 Advantage, Inc. and EMRES II, South Carolina, LLC.

13 This is a deposition for use at
14 trial. So unlike most depositions, you may hear me
15 say, please tell the jury, or say things like that
16 when there's really no jury in the room, but this is
17 to be played in front of a jury at an upcoming
18 trial. Does that make sense?

19 A Yes.

20 Q Okay. And so you understand that you have
21 been sworn in to tell the truth, and so this is live
22 trial testimony so to speak. Do you understand
23 that?

24 A Yes.

25 Q Okay. And, then, it's also kind of

1 important because this only happens this one time --
2 if you don't understand my question, I'm going to
3 ask you to -- to ask me to restate it so that the
4 record is preserved well. Does that make sense?

5 A Yes.

6 Q All right. Wonderful. So if you answer
7 my questions, then, we're going to understand that
8 you understood that question, right?

9 A Yes.

10 Q All right. Super. If you would, just
11 tell the jury a little bit -- just very briefly,
12 tell them your name and where you live.

13 A Nick Hooser. I live in the Charleston
14 area.

15 Q Okay. And what do you for a living? Who
16 do you work for?

17 A I work for a property management company
18 based out of Charlotte, and I work in property
19 management.

20 Q Okay. How long have you been in property
21 management?

22 A Quite a while. Maybe over 20 years.

23 Q All right. And you're familiar with
24 Campus Advantage, Inc.?

25 A Yes.

1 Q And if we say Campus Advantage going
2 forward, we'll agree that that's the same thing as
3 Campus Advantage, Incorporated?

4 A Yes.

5 Q And so you were employed by Campus
6 Advantage back in 2022; is that right?

7 A Yes.

8 Q More specifically, July-August time frame
9 of 2022?

10 A Uh-huh.

11 Q And that would be around the same time of
12 the -- the incidence giving rise to this lawsuit
13 involving Mr. Postell and his personal properties.
14 Do you agree with that?

15 A Yes.

16 Q All right. You're not at Campus Advantage
17 anymore, correct?

18 A Correct.

19 Q All right. But you left on good terms, I
20 assume?

21 A Yes.

22 Q All right. So let's talk very briefly
23 about Campus Advantage and your time while you were
24 there particularly in 2022. They manage quite a few
25 properties, correct?

1 A Yes.

2 Q In fact, the Rowan or the property EMRES
3 II, they have 1,002 beds, right?

4 A I can't remember the exact amount, but I
5 would want to say it was over 1,000.

6 Q And do you recall how many properties you
7 managed in 2022 for Campus Advantage?

8 A No.

9 Q Would you have any --

10 A It's too long ago.

11 Q -- reason to believe that it was about
12 eight properties?

13 A I can't remember.

14 Q All right. So let me just hand you what
15 I'll go ahead and mark as Exhibit 1. This is an
16 affidavit. You have seen that before?

17 (Plaintiff's Deposition Exhibit No. 1
18 was marked for identification.)

19 A Yes.

20 BY MR. LYLE:

21 Q All right.

22 A Parts of it.

23 Q Okay. But if you would, let's flip to
24 Page 3 and just look at that signature block, and if
25 you would confirm, that's your signature?

1 A Yes.

2 Q All right. And so you have no reason to
3 believe this is not the affidavit that you authored
4 back in -- I guess it's dated November of 2022. Do
5 you have any reason to believe that's not your
6 affidavit?

7 A No.

8 MR. LYLE: All right. At this time, I'd
9 like to move this affidavit into evidence as
10 Exhibit 1 of this deposition, and more
11 particularly, it will be assigned a new number
12 trial. And I would ask if there's any
13 objection for this.

14 MR. VANDENBERG: We have no objections.

15 MR. LYLE: All right.

16 BY MR. LYLE:

17 Q So looking at this affidavit, you did say
18 that's your signature. You may not remember exactly
19 authoring this, but do you have any reason to
20 believe that the contents are not accurate or they
21 were not your words at the time you signed this
22 affidavit?

23 A No.

24 Q All right. So looking at it together, I
25 just want to take look at it. There's a couple of

1 paragraphs in here. Some of the initial ones are --
2 are kind of standard language, but it sounds like
3 there is a policy regarding how you handle turn and
4 how you handle hold-over tenants; is that correct?

5 A Yes.

6 Q All right. Tell the jury what you mean by
7 turn.

8 A It's the move-out -- the period between
9 move-out and move-in.

10 Q And is that a pretty hectic time?

11 A Sure.

12 Q And Campus Advantage primarily works in
13 student housing?

14 A Yes.

15 Q And so there's a big turnover. A lot of
16 people coming and going all in a small window of
17 time; is that right?

18 A Yes.

19 Q When you do turn, it's a pretty hectic
20 long day. People working from kind of sunup until
21 sundown?

22 A Sure.

23 Q All right. Now, there's a mention of a
24 bag-and-tag policy. Can you tell me what that is?

25 A Exact, I don't -- I would need to see the

1 actual policy to tell you exactly what it is. I can
2 tell you what I think it is.

3 Q Tell me what you think it is.

4 A Just the official documentation policy of
5 any left behind or abandoned items and how to deal
6 with abandoned items.

7 Q Okay. But you don't recall what the
8 policy was when you-all instituted it in this
9 particular instance?

10 A In order to tell you exactly, you would
11 need to show me something so I can read for you.

12 Q Okay. But it relates with the -- the
13 tenant's personal property or items that would be
14 inside of their particular unit?

15 A It -- it relates to when people move out
16 and they leave items. You can't just throw them
17 away. You have to account for them. So if someone
18 was to accidentally leave something behind, they can
19 come pick it up, and you have a record of it.

20 Q It's how Campus Advantage would deal with
21 any personal property left inside of any unit?

22 A Correct.

23 Q All right. Now, going back to this
24 affidavit, it mentions that you were present for a
25 meeting where this policy was relayed to the

1 employees at Campus Advantage. Do you remember that
2 meeting?

3 A What day?

4 Q It would have been July 17th, 2022.

5 A No. I was not there on that day.

6 Q All right. So you were not present at the
7 mandatory pre-turn -- I'm looking at Paragraph 10.

8 A Uh-huh. Huh-uh.

9 Q It says, on 7-17, a mandatory pre-turn
10 staff meeting led by Katie was held to go over
11 policies and procedures returning, including a
12 detailed review of our approach to trash-outs.

13 A Yeah. I don't recall being there on that
14 day.

15 Q Okay. All right. So moving on. You
16 wouldn't have any opinion of the participation at
17 that meeting by employees, would you?

18 A I do not believe so.

19 Q If you weren't at the meeting, you
20 wouldn't be able to tell me how many participates --

21 A Yeah. No. I don't think so.

22 Q Now, were you present for the move-out day
23 on -- a week later, I guess?

24 A On what day?

25 Q Well, were you present any dates after

1 7-17 of 2022 as it relates to dealing with turn-over
2 or hold-over-tenants or bag-and-tag policy events?

3 A I was there after 7-17, '22.

4 Q All right. Do you recall anything
5 specific happening?

6 A Other than going to the property -- I
7 believe it was move-out date if I can remember
8 right. Normal, just brought food to the employees
9 for that morning because it was going to be a long
10 day, and, then, Katie held a staff meeting. And
11 other than those events, I mean, those are pretty
12 typical, move-out day.

13 Q Okay. And you do recall the events that
14 are giving rise to this lawsuit where Mr. Postell's
15 personal property was lost, misplaced, stolen?
16 Somehow taken away from him?

17 A Ask me that again.

18 Q Sure. Do you recall or remember the
19 events that give rise to this lawsuit where Mr.
20 Postell's property that was in Unit 3007-A was no
21 longer present when he returned back on August 5th?

22 A I -- I remember receiving a -- either an
23 e-mail or some type of notice. I don't know if it
24 was e-mail or phone call from Katie letting me know
25 of the incident, which, then, I informed my

1 supervisor, Anna Flores.

2 Q Okay. I'm going to hand you then what
3 we'll call a report from Katie Floyd. If you want
4 to take a look at that real quick, and do you
5 recognize your name as being CCd on that e-mail?

6 A Yes.

7 Q All right. And do you recall receiving
8 this report from Katie Floyd detailing the events
9 surrounding the loss of Mr. Postell's property? And
10 I'm not asking you if you remember the great detail
11 within this, but do you recall receiving this
12 report?

13 A I remember receiving details related to
14 the incident. Now, this is a very long e-mail. So
15 I may not remember everything that was in this
16 thing. It's very thorough, but yes. I remember
17 receiving this e-mail.

18 Q Okay.

19 A Because I was CCd on it, yeah.

20 Q Correct. So at this time, then, if you --
21 if you can authenticate it, I would move to have
22 that admitted into evidence as Exhibit 2 for this
23 deposition, and, again, whatever number that lines
24 up with at trial.

25

1 (Plaintiff's Deposition Exhibit No. 2
2 was marked for identification.)

3 MR. VANDENBERG: No objection.

4 BY MR. LYLE:

5 Q All right. So no objection from defense.
6 So we'll move this in Exhibit 2, and, again, I don't
7 want to go into the contents of it, but I just want
8 the foundation of that report so we can hand it back
9 to the jury. Do you have any reason to believe
10 anything in this report was inaccurate or fabricated
11 by Katie? Let me back up. Do you recall this
12 event, generally, and do you recall there being any
13 covering up of evidence or fabricating of evidence
14 as it relates to what happened to Mr. Postell's
15 property?

16 A Oh, no. I think Katie has a great amount
17 of integrity, and, I mean, just look at what she
18 wrote here on documentations.

19 Q So you have no reason to believe --

20 A No. I don't know exactly -- I can't
21 remember exactly what all this says, but I would not
22 see Katie doing that.

23 Q Okay.

24 A Trying to hide -- I mean, I don't know why
25 she would hide evidence with such a thorough report.

1 Q So do you recall that Mike and Trinita and
2 Carlton and Ashanti were four employees who
3 disregarded these policies as it relates to the
4 bag-and-tag and trash-outs? Do you remember that?

5 A I don't remember exactly who was involved
6 in not following the policy other than Mike and
7 Carlton.

8 Q Okay. And do you recall there being any
9 kind of termination of employment by any employees
10 of Campus Advantage following this event?

11 A I don't remember how that all went down to
12 be honest with you.

13 Q Okay.

14 A It was such a long time ago.

15 Q All right. So let me back up kind of
16 globally. Are you familiar with how many properties
17 that Campus Advantage managed around the country in
18 2022?

19 A Oh, no. I don't remember that.

20 Q All right. But going back to the student
21 housing scene. It can be a -- it can be a hectic
22 event when you have turn-over, correct?

23 A Yes.

24 Q Pretty intense? Lots of moving parts?

25 A Sure.

1 Q All right. And let me ask you this: In
2 your experience of property management, specifically
3 in student housing, have you seen any other
4 instances anywhere of where a student's property is
5 misplaced or lost during the turn process?

6 A Ask me that one more time.

7 Q Sure. In your experience in property
8 management --

9 A Uh-huh.

10 Q -- and, specifically, in the student
11 housing industry, have you seen any other instances
12 of where a student's property is misplaced or lost
13 during the turn process as no fault of the own
14 student or the own tenant?

15 A I'm sure in the past 20 years, it's
16 happened. I'm not sure if it was the exact
17 situation here.

18 Q Okay. But it's not shocking or surprising
19 to you that this kind of thing could happen?

20 A Human makes -- humans make mistakes and so
21 no.

22 Q All right. But if a student's belongings
23 or personal property goes missing when it should not
24 have, a property management company like Campus
25 Advantage, they, ultimately, should have tried to

1 make it right?

2 A Sure.

3 Q And they should try to make the student or
4 the tenant whole?

5 A I believe so.

6 Q All right. It's the right thing to do,
7 correct?

8 A Sure.

9 MR. LYLE: All right. Super. Nick, thank
10 you for your time. I really appreciate you
11 coming and doing this last minute. Please
12 answer any questions that Mr. VanDenBerg may
13 have for you.

14 MR. VANDENBERG: I have no questions,
15 Nick.

16 MR. LYLE: Thank you.

17 VIDEOGRAPHER: This will conclude the
18 video deposition of Nick Hooser. We're off the
19 record at 9:20 a.m. on September 10th, 2024.

20 (Deposition was concluded at 9:20 a.m.)

21

22

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1 STATE OF SOUTH CAROLINA)

2 COUNTY OF CHARLESTON)

3 I, Trisha G. Rarick, a Court Reporter and Notary
4 Public of the State of South Carolina at Large, do hereby
5 certify that the witness in the foregoing deposition was by me
6 duly sworn to testify to the truth, the whole truth and
7 nothing but the truth in the within-entitled cause; that said
8 deposition was taken at the time and location therein stated;
9 that the testimony of the witness and all objections made at
10 the time of the examination were recorded stenographically by
11 me and were thereafter transcribed by computer-aided
12 transcription; that the foregoing is a full, complete and true
13 record of the testimony of the witness and of all objections
14 made at the time of the examination; and that the witness was
15 given an opportunity to read and correct said deposition and
16 to subscribe the same.

17 Should the signature of the witness not be affixed to
18 the deposition, the witness shall not have availed himself of
19 the opportunity to sign or the signature has been waived.

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

23 Witness my hand, I have hereunto affixed my official
24 seal on September 10, 2024, at Charleston, Charleston
25 County, South Carolina.

26 
27 Trisha G. Rarick
28 Court Reporter

29 My commission expires:

30 January 9, 2029

31

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EXHIBIT B

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Ansel Jamahl Postell,)
)
Plaintiff)
)
 v.)
)
Campus Advantage, Inc.,)
EMRES II South Carolina, LLC,)
and Katie Floyd,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
FILE NO. 2022-CP-40-04419

**DEFENDANTS' RESPONSE TO
PLAINTIFF'S FIRST SET OF
INTERROGATORIES**

**TO: ANSEL JAMAHL POSTELL, PLAINTIFF, AND TODD R. LYLE, ESQUIRE,
ATTORNEY FOR PLAINTIFF:**

Pursuant to Rules 26 and 33 of the South Carolina Rules of Civil Procedure, Defendants Campus Advantage, Inc. ("CAI"), EMRES II South Carolina LLC ("EMRES") and Katie Floyd ("Floyd") (collectively, "Defendants") hereby answer Ansel Jamahl Postell's First Set of Interrogatories as follows:

GENERAL OBJECTIONS

1. Defendants have not completed their investigation and discovery relating to this case. The specific responses set forth below are based upon, and necessarily limited by, information now available. Should additional or different information be discovered, these answers will be supplemented accordingly.
2. Defendants object to the Interrogatories to the extent that they seek information or documents protected by the attorney-client privilege, the attorney-work product doctrine, and/or any other applicable privileges or protections. The inadvertent production of any such privileged or protected information shall not constitute a waiver of any privilege or protection applicable thereto, or to any related information or documents. Defendants request that anyone suspecting

such an inadvertent production or disclosure bring it to the attention of the undersigned counsel immediately and promptly return any such document or information.

3. Defendants object to the Interrogatories to the extent that they seek information or documents not within Defendants' possession, custody or control.

4. Defendants object to the Interrogatories to the extent that they are overly broad, unduly burdensome, vague and ambiguous, oppressive and/or are not reasonably calculated to lead to the discovery of admissible evidence.

5. Except for facts specifically admitted herein, no admission of any kind is to be implied or inferred by these responses. The fact that Defendants respond to any Interrogatories should not be taken as an admission or concession of the existence of the facts set forth or assumed by any Interrogatories, or that such answer constitutes evidence of any fact thus set forth or assumed.

6. Defendants object to providing information and documents outside of the time frame of the matters at issue in this action.

7. Defendants object to any and all "contention" or "catch-all" interrogatories as impermissible and outside the scope of Rules 26 and 33.

These General Objections shall be deemed to be applicable to and incorporated by reference into the Defendants' Answer to each Interrogatory set forth below.

INTERROGATORIES

1. Please give the names, addresses, dates of birth, driver's license numbers, state of issuance and social security numbers of all persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements. Also state whether the witness has ever been known by a name different from the name he or she is now known by, and if so, state all such names and the dates the witness was known by each of them.

ANSWER: Defendants object because this interrogatory seeks irrelevant information. Without waiving this objection, Defendants direct Plaintiff's attention to the list of witnesses below:

(a) Katie Floyd, 1051 Southern Drive, Columbia, SC 29201. None.

(b) Chris Lewis, 1051 Southern Drive, Columbia, SC 29201. None.

(c) Ashanti Young, 1051 Southern Drive, Columbia, SC 29201. Annotated copy of spreadsheet provided to Defendants by Plaintiff's mother on or about August 22, 2022.

This document is marked as privileged and is held by Counsel for Defendants.

(d) Khayla Palmer, 1051 Southern Drive, Columbia, SC 29201. None.

2. For each person known to the Defendants or their attorney to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the Plaintiff of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

ANSWER: See Answer #1, above, and responses, below:

(a) Katie Floyd. CAI policies, training, and operations. July 2022 unit turnover at Rowan.

(b) Chris Lewis. CAI policies, training, and operations. Plaintiff lease renewal. July 2022 unit turnover at Rowan. Contents of Plaintiff's automobile during Target trip on August 5, 2022.

(c) Ashanti Young. CAI policies, training, and operations. July 2022 unit turnover at Rowan. Contents of Plaintiff's residence, Unit #1507C, on July 25, 2022.

(d) Khayla Palmer. CAI policies, training, and operations. July 2022 unit turnover at Rowan.

3. Please identify all lawsuits or other civil proceedings, including any workers' compensation, bankruptcy, or social security proceedings, to which Defendants have been a party in the five preceding years where the jurisdiction or venue of such action was in South Carolina whether it be State or Federal court.

ANSWER: Defendants object because this is an overly broad, unduly burdensome, irrelevant, and a matter of public record, otherwise available to Plaintiff.

4. Set forth a list of photographs, plats, sketches, or other prepared documents in possession of the Defendants or their attorney that relate to the claim in the case.

ANSWER: Defendants object because this interrogatory seeks privileged information. Without waiving this objection, Defendants direct attention to Answer #1, above. Also, see Affidavit of Nick Hooser provided to Plaintiff's Counsel on November 7, 2022 as an exhibit to Defendants' Motion to Dismiss.

5. State whether you or your attorney have any agreements, contracts, or understanding with any person, any insurer, entity or any attorney acting on their behalf, relating to the occurrence giving rise to the Complaint, including, but not limited to, settlement agreements, covenants not to sue, and agreements not to enforce judgment, and state the name relating thereto, state the status

of such action or agreement, and provide the name of the attorney representing the adverse party and the date the Complaint in the action, if any, was filed.

ANSWER: None.

6. Do you contend that Plaintiffs have named the incorrect defendant or defendants in this matter? If so, please state the proper name of the defendants as related to the allegations made in Plaintiff's Complaint.

ANSWER: Defendants object because this interrogatory seeks information already known to Plaintiff and calls for the Defendants to make a legal conclusion. Without waiving this objection, Defendants contend that co-Defendant Katie Floyd should be dismissed as a Defendant. In support, Defendants call attention to Paragraph 5 of Plaintiff's Complaint, and Paragraph 5 of Defendants' Answer.

7. Please identify and describe every photograph or other recorded visual image, still or moving, having any relation to any of the matters at issue in this lawsuit, that have ever been obtained by Defendants or any person acting on their behalf or under their direction. Please identify the source and identity of the present custodian for each such item.

ANSWER: See Answers #1 and #7, above. Also, 3007A Recovered Items Photographs (x2) and Text Message held by Counsel for Defendants. The sources for these items are Katie Floyd and Rachelle Leaks, respectively.

8. List the names of any expert witnesses whom the Defendant proposes to use as a witness at the trial of the case.

ANSWER: None.

9. For each expert consulted in regards to the allegations in the Complaint, please state: any educational institutions attended; any publications for the last ten (10) years; all cases the

expert has been retained in for the last five (5) years; of the cases the expert has been retained, please mark the cases in which the expert was retained by the Defendants; the field you expect to qualify the expert in during trial; what the expert's opinion is regarding this case; what tangible things the expert reviewed to reach his conclusion; and, what the expert's fee is for this case.

ANSWER: See Answer #8, above.

10. Is the Defendant owned by or a subsidiary of another company, entity, or person? If so, state the full name and address of the other company, entity, or person.

ANSWER: Defendants object because this interrogatory seeks information that is irrelevant.

11. Identify all insurance companies which provide any type of liability insurance coverage to you, including but not limited to first-party liability policies, self-insured retention policies, and/or policies of excess and/or umbrella coverage and set forth the number of policies involved, the policy period dates and the amounts of liability insurance coverage provided in these policies including any deductibles.

ANSWER: QBE Specialty Insurance Corporation. Policy Number 100003400. Policy Period September 1, 2021 to September 1, 2022. Liability limit of \$5,000,000 and self-insured retention of \$75,000.

12. Please provide all details you remember regarding the conversations or communications involved in the leasing, renewing of the lease, and eventual disposition of Plaintiff's personal property that was contained in the leased premises at Defendant's apartment complex in Columbia, SC.

ANSWER: Defendants object because this is an overly broad, unduly burdensome, and improper catch-all or contention-type interrogatory that essentially asks Defendants to set forth a narrative description of their entire case with reference to every document that might possibility

be relevant to their case. *E.g., MSI v. Doosan Infracore Am. Corp.*, 323 F.R.D. 522, 528 (D.S.C. 2018) (“Contention interrogatories are overly broad and unduly burdensome on their face if they seek ‘all facts’ supporting a claim or defense, such that the answering party is required to provide a narrative account of its case.”).

13. Set forth a list of all items retrieved from the apartment unit rented by Plaintiff for which his personal property was removed by Defendants or their agents, employees or servants.

ANSWER: Defendants object because this interrogatory seeks information already known to Plaintiff and calls for the Defendants to make a legal conclusion. Without waiving this objection, Defendants reference Answer #1, above.

14. Identify all complaints made by tenants or guests who made such a complaint against the same apartment complex and the same Columbia, SC location and for which the complaint alleges the wrongful destruction or loss of the tenant or guest’s personal property. Provide the name of the person making the complaint and the last known contact information for the same.

ANSWER: Defendants object because this interrogatory calls for the Defendants to make a legal conclusion. Without waiving this objection, Defendants state that they are not aware of any complaints matching the facts of this instant case. Defendant EMRES acquired the property in April 2019, and Defendant CAI began managing the property thereafter.

15. Identify all employees, by name and title or position, of the Defendant who were present or on duty at the general location where Plaintiff was residing on the date he returned to find his apartment had been cleaned out and his personal property items were missing.

ANSWER: Defendants object because this interrogatory calls for the Defendants to make a legal conclusion. Without waiving this objection, Defendants respond, staff present or on duty on August 5, 2022:

- (a) Katie Floyd – Property Manager
- (b) Rachelle Leak – Assistant Property Manager
- (c) Christopher Lewis – Leasing Manager
- (d) Sharda Ricks – Leasing Agent
- (e) Trinita Geathers – Resident Director
- (f) Jordan Lowe – Community Assistant
- (g) Myra Salters – Community Assistant
- (h) Ashanti Young – Community Assistant
- (i) Khayla Palmer – Community Assistant
- (j) Lindsey Stanley – Community Assistant
- (k) McCayla Stanley – Community Assistant
- (l) Rendell Gilmore – Community Assistant
- (m) Gasset (Mike) Allen – Maintenance Supervisor
- (n) Christopher Bonnett – Maintenance Technician
- (o) Deonte Franklin – Maintenance Technician
- (p) Carlton Brown - Porter

16. Identify each person who conducted, or participated in, any investigation of the incident complained of in the Complaint, other than counsel for the Defendant and counsel's legal staff.

ANSWER: Defendants object because this interrogatory seeks privileged information. Without waiving this objection, Defendants respond as follows: Katie Floyd, Nick Hooser, Anna Flores, Birva Patel.

17. Identify with particularity any and all documents contained in any file created as part of any investigation into the incident, other than similar documents created by Defendant's counsel.

ANSWER: Defendants object because this interrogatory seeks privileged information.

18. Identify any policies or procedures for inspection and or "turnover" or "cleanout" of the premises for the purposes of managing the property as it relates to tenants or guests of the Columbia, SC facility.

ANSWER: See, Campus Advantage Turnover Procedures Manual.

19. Identify with specificity all training procedures utilized for the training of Defendant's [sic] employees with regard to property management and inspecting the apartments and the logistics of cleaning out apartments and turning them over to become ready for new tenants or guests. This interrogatory is intended to discover such information as video tapes shown to employees as part of training, any seminars to which employees have been sent for training, in-house training materials, audio cassettes, films, slide shows [sic] presentations and any and all other training received by any employees of the Defendant within the time period requested as to the matters identified in this interrogatory.

ANSWER: Defendants object because this interrogatory is overly broad, unduly burdensome, and seeks irrelevant information. Without waiving this objection, Defendants respond as follows: See Request for Production Response #1. See, Campus Advantage Turnover Procedures Manual and Campus Advantage Apartment Entry by Staff guide.

20. Identify the name, address and telephone number [sic] any person or entity whom you believe to be partially, or completely, responsible for the loss suffered by the Plaintiff that is the subject of this lawsuit.

ANSWER: Defendants object because this interrogatory seeks information already known to Plaintiff and calls for the Defendants to make a legal conclusion. Without waiving this objection, Defendants respond as follows: see, Plaintiff's Travelers insurance policy.

21. Identify any and all written or recorded statements made by any person regarding this incident. If any privilege is claimed with respect to any such written or recorded statement, identify the nature of the privilege, the date, time and location where the statement was taken or created, and any and all persons present at the time the statement was created.

ANSWER: Defendants object because this interrogatory seeks information already known to Plaintiff. Without waiving this objection, Defendants respond as follows: Plaintiff was deposed on December 2, 2022 at the office of counsel for Defendants. Present were: Plaintiff, Plaintiff's mother, Plaintiff's counsel, counsel for Defendants and court reporter, Doris Tompkins Brown. On December 29, 2022, Ms. Brown notified counsel for Defendants that the recording of Plaintiff's deposition was unclear and that she was not able to prepare a transcript for review. Plaintiff's counsel was informed of this on January 2, 2023 and thereafter contacted Ms. Brown, repeatedly, to request a copy of the recordings. These recordings are Ms. Brown's property and are maintained by Ms. Brown and have never been reviewed by Defendants or their counsel. On information and belief, Plaintiff's Counsel reviewed these recordings on February 13, 2023.

22. Identify any persons who have observed or recorded the Plaintiff in any fashion whatsoever from the time of the incident up to and including through the present. This interrogatory should be supplemented as appropriate up to and including the time of trial.

ANSWER: See Answer #21, above.

Respectfully submitted,



Timothy S. VanDenBerg (SC Bar No. 77472)

tvandenberg@vdblegal.com

VanDenBerg Law Firm, LLC

5111 Trenholm Road, Suite 220

Columbia, SC 29206

4711 Forest Drive, Suite 3, PMB 116

Columbia, SC 29206

Telephone: (803) 250-1832

Facsimile: (803) 470-3660

Attorney for Defendants

Columbia, South Carolina

Dated: February 15, 2023

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
Ansel Jamahl Postell,)
Plaintiff)
v.)
Campus Advantage, Inc.,)
EMRES II South Carolina, LLC,)
and Katie Floyd,)
Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
FILE NO. 2022-CP-40-04419

CERTIFICATE OF SERVICE

I, Timothy S. VanDenBerg, attorney for Defendants in the above-captioned action, certify that I have served a copy of our Responses to Plaintiff's First Set of Interrogatories and First Set of Requests for Production to the Defendants in this matter by causing a copy of the same to be delivered via USPS, addressed as follows:

Todd R. Lyle, Esquire
Reeves & Lyle, LLC
1527 Blanding Street
Columbia, SC 29201



Timothy S. VanDenBerg (SC Bar No. 77472)
tvandenberg@vdblegal.com
VanDenBerg Law Firm, LLC
5111 Trenholm Road, Suite 220
Columbia, SC 29206
4711 Forest Drive, Suite 3, PMB 116
Columbia, SC 29206
Telephone: (803) 250-1832
Facsimile: (803) 470-3660

Attorney for Defendants

Columbia, South Carolina
Dated: February 15, 2023

EXHIBIT C

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
CASE NO. 2022-CP-40-04419

Ansel Jamahl Postell,

Plaintiff(s),

vs.

Campus Advantage, Inc. and EMRES II
South Carolina, LLC d/b/a The Rowan,

Defendants.

AFFIDAVIT OF TODD R. LYLE,
COUNSEL FOR PLAINTIFF ANSEL
JAMAHL POSTELL

Personally appeared before me, Todd R. Lyle, who being duly sworn, says:

1. My name is Todd R. Lyle. I am over the age of eighteen and competent to make this affidavit. The following information is based on my personal knowledge, unless otherwise stated upon information and belief.

2. I am a citizen and resident of Lexington County, South Carolina.

3. I am the attorney of record for the above-named Plaintiff, Ansel Jamahl Postell (hereinafter "Postell").

4. I make this Affidavit in support of a jury verdict finding the defendants Campus Advantage Inc., and EMRES II South Carolina, LLC d/b/a The Rowan (hereinafter "Defendants") committed violations of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. 39-5-20 et. seq. and are liable to Postell—among other causes of action which they also found in Postell's favor.

5. I am the sole member of the Lyle Law Firm, LLC, which was formed in early 2023. Prior to forming the Lyle Law Firm, LLC, I was employed with the firm Reeves & Lyle, LLC from 2016 through 2023.

6. I am a graduate of The University of South Carolina, School of Law and was licensed to practice in South Carolina in 2015. I am licensed to practice in South Carolina state courts and the South Carolina Federal District Court. I have an active trial practice which includes the areas of litigation involving personal injury and real estate disputes and business disputes.

7. My firm was retained by Plaintiff in August 2022 to investigate and prosecute the Plaintiff's claims against the Defendants after Postell returned to his apartment unit owned and managed by defendants and learned that his entire apartment unit had been wrongly "turned" such that all of his personal property and belongings were lost, stolen or otherwise misplaced. Postell retained my firm on a contingency fee arrangement whereby my firm would be paid one-third of any recovery by way of settlement prior to commencement of a lawsuit, 37% of any recovery after filing a lawsuit and 40% of any recovery should the case go forward to a trial, plus reimbursement of all costs incurred.

8. After being retained by Postell, my firm conducted an investigation into the claims, gathered documents and evidence in support of those claims, interviewed witnesses and researched the viability of the claims in light of the varying duties of apartment owners and property management companies who manage those apartment units.

9. This matter had several unique events, including the loss of the transcript of Postell's deposition by the court report such that defendants' counsel was able to take Postell's deposition a second time.

10. Counsel for defendants vehemently denied any wrongdoing. In fact, they questioned the character and veracity of Postell's statements regarding the lost property. Counsel for defendants further denied any wrongdoing based on defendants ultimately firing an employee that they claim disregarded all policies and procedures and acted outside the scope of his employment (although trial testimony would later confirm that this fired employee acted upon the consent/permission of his supervisor when he kept certain items of property found in Postell's apartment unit).

11. In August of 2022, my firm filed the Summons and Complaint against the defendants and in the months following proceeded with written discovery and document requests with defendants. In September of 2022, defendants answered and again denied the claims asserted by Postell. Defendants further filed various motions and dispositive motions in this matter.

12. During the litigation, a total of five depositions were taken of various witnesses and parties in the case. This included video depositions and depositions for use at trial.

13. The parties participated in an unproductive mediation on July 10, 2024, with Ben McCoy, Esquire, serving as the mediator. Plainly, the parties were unable to resolve the claims with the defendants reasserting their offer of \$7,500.00 to resolve all claims.

14. After conducting additional discovery and depositions in anticipation of trial, the case was tried to verdict the week of September 16, 2024. My firm made extensive trial preparations, served trial subpoenas, prepared witnesses, organized numerous exhibits, and coordinated with court officials to ensure that court room technology would be adequate and properly functioning. During our case in chief, we put up five witnesses at trial, of which one was played through video deposition excerpts, and one was a video played of a deposition taken for use at trial.

15. To properly investigate, file, prosecute and conduct a trial of the case, my firm has presently advanced reasonable and necessary costs of \$6,996.81, which is broken down in the ledger attached hereto as an exhibit.

16. In addition to my efforts on this case, multiple other Lyle Law Firm, LLC staff members, including two paralegals and a law clerk assisted in various aspects of the investigation, prosecution, research and the trial of the case.

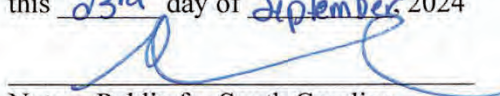
17. Based upon the substantial time necessarily devoted to this case over the past two years, and also other criteria that that may be applicable and relevant to the setting of attorney's fees, and the terms of the contingency fee agreement with Plaintiff, I ask this Court to award one-third of the judgment amount ultimately determined by the Court as attorney's fees, along with all costs incurred in the prosecution of the case in accordance with S.C. Code Ann. § 39-5-140(a) and in accordance with the factors espoused in *Jackson v. Speed*, 326 S.C. 289, 486 S.E.2d 750 (S.C. 1997),¹ along with interest on the judgment in accordance with Rule 68, SCRPC.

FURTHER THE AFFIANT SAYETH NOT.



Todd R. Lyle

SWORN to and subscribed before me
this 23rd day of September, 2024


Notary Public for South Carolina
My Commission Expires: _____

ALEXIS C. GOLDEN
Notary Public, State of South Carolina
My Commission Expires 7/10/2028

¹ Per the South Carolina Supreme Court in *Jackson v. Speed*, the court should consider the following six factors when determining a reasonable attorney's fee: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services. Further, on appeal, an award for attorney's fees will be affirmed so long as sufficient evidence in the record supports each factor. *Id* at 760.

Exhibit 1

To

Affidavit of Attorney's Fees

Cost Ledger

ANSEL POSTELL COST REPORT

<u>Date</u>	<u>Payee</u>	<u>Memo</u>	<u>Amount</u>	<u>Pmt Method</u>
8/26/2022	Richland County	S&C Filing Fee	\$ 180.32	Card
9/13/2022	Clarence Portee	Process Service of S&C	\$ 105.00	Card
3/30/2023	Richland County	Motions/Rule 40 place on roster	\$ 31.74	Card
3/30/2023	Richland County	Motions/Protective Order	\$ 31.74	Card
4/30/2024	IIC Investigations	Service Ashanti Young for Depo	\$ 90.00	Card
5/31/2024	Garber Ct Reporting	Ashanti Young Transcript	\$ 845.40	Card
6/3/2024	Anthony Proietta	Service on Nick Hooser for Trial	\$ 255.00	Card
7/29/2024	IIC Investigations	Service Ashanti Young for Trial	\$ 90.00	Card
8/20/2024	Reassurance Security	Service of Nick Hooser for Depo	\$ 70.00	Card
9/3/2024	IIC Investigations	Service of Ashanti Young for Trial	\$ 90.00	Card
9/13/2024	Howser Newman & Besley	Mediation	\$ 959.68	CK 1243
9/18/2024	Take One, LLC	Videographer Fee for Hinton Depo	\$ 500.00	CK 1244
9/20/2024	LMOC Inc.	Videographer Fee - Nick Hooser	\$ 495.00	CK 1245
9/22/2024	Spectrum Ct Reporting Serv.	Ct. Reporter Fee - Nick Hooser	\$ 198.64	Card
9/22/2024	LLF, LLC	Travel to Nick Hooser Depo	\$ 163.75	Card
9/22/2024	Litigation Suite	Trial Presentation	\$ 400.00	Card
9/22/2024	LLF, LLC	Printing Service	\$ 50.00	Card
9/22/2024	Postell	Travel to and from Trial	\$ 313.22	Card
9/22/2024	Postell	Hotel during trial	\$ 577.02	Card
9/22/2024	LLF, LLC	Travel to & from Trial	\$ 80.17	Card
9/23/2024	Garber Ct Reporting	Ct Reporter Fee - Melissa Hinton	\$ 1,470.13	Card
		TOTAL	\$ <u>6,996.81</u>	

ROA 000098

Exhibit 2
To
Affidavit of Attorney's Fees

Affidavit of George A. Taylor, Esq.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
CASE NO. 2022-CP-40-04419

Ansel Jamahl Postell,

Plaintiff(s),

vs.

Campus Advantage, Inc. and EMRES II
South Carolina, LLC d/b/a The Rowan,

Defendants.

AFFIDAVIT OF
GEORGE A. TAYLOR, ESQ.

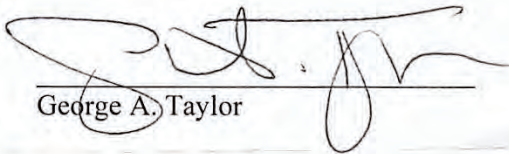
PERSONALLY APPEARED before me, George A. Taylor, who being duly sworn, says:

1. My name is George A. Taylor, an attorney licensed by the State of South Carolina and admitted and qualified to practice as an attorney in the State of South Carolina since 2011.
2. I am a member of the South Carolina Bar and my license to practice law in the State of South Carolina has been in effect and in good standing since November 14, 2011.
3. I have practiced law as a litigator in South Carolina since my admission in both the areas of civil defense litigation and Plaintiff's civil litigation, and for the last five years have practiced Plaintiff's civil litigation and workers' compensation exclusively. I am very familiar with and consider myself qualified to offer testimony regarding the prevailing rates associated with legal services in South Carolina like those offered by myself and Attorney Todd R. Lyle.
4. During my time in both of these areas of practice, I have practiced with and alongside Attorney Todd R. Lyle. I am familiar with his work. Mr. Lyle is a very skilled litigator, and I hold him in the highest regard as a civil lawyer practicing in South Carolina.
5. It is my testimony that a case with causes of action shown in the Ansel Jamahl Postell v. Campus Advantage, Inc., and EMRES II South Carolina, LLC d/b/a The Rowan matter that this is certainly a complex matter and requires expertise and skill in the area of trial law.

6. It is further my testimony that a contingency fee of 40%, with reimbursement of all costs, is warranted and customary and certainly reasonable.

7. I believe such a rate coincides with the prevailing market rates of attorneys in Richland County Court of Common Pleas of similar skill and for similar work.

FURTHER THE AFFIANT SAYETH NOT.


George A. Taylor

SWORN to and subscribed before me
this 30 day of September, 2024


Notary Public for South Carolina
My Commission Expires: _____



Exhibit 3
To
Affidavit of Attorney's Fees

Affidavit of Paul L. Reeves, Esq.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
CASE NO. 2022-CP-40-04419

Ansel Jamahl Postell,

Plaintiff(s),

vs.

Campus Advantage, Inc. and EMRES II
South Carolina, LLC d/b/a The Rowan,

Defendants.

AFFIDAVIT OF
PAUL L REEVES, ESQ.

PERSONALLY APPEARED before me, Paul L. Reeves, who being duly sworn, says:

1. My name is Paul L. Reeves, an attorney licensed by the State of South Carolina and admitted and qualified to practice as an attorney in the State of South Carolina since 1985.
2. I am a member of the South Carolina Bar and my license to practice law in the State of South Carolina has been in effect and in good standing since October of 1985.
3. I have practiced law as a litigator in South Carolina since my admission. I have been trial counsel in numerous complex matters throughout South Carolina.
4. I am very familiar with and consider myself qualified to offer testimony regarding the prevailing rates associated with legal services in South Carolina like those offered by myself and Attorney Todd R. Lyle.
5. During my time in these areas of practice, I have practiced with and alongside Attorney Todd R. Lyle. I am familiar with his work. Mr. Lyle is a very skilled litigator, and I hold him in the highest regard as a civil lawyer practicing in South Carolina.
6. It is my testimony that a case with causes of action shown in the Ansel Jamahl Postell v. Campus Advantage, Inc., and EMRES II South Carolina, LLC d/b/a The Rowan matter that this is certainly a complex matter and requires expertise and skill in the area of trial law.

PLR

ROA 000103

7. It is further my testimony that a contingency fee of 40%, with reimbursement of all costs, is warranted and customary and certainly reasonable.

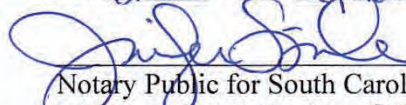
8. I believe such a rate coincides with the prevailing market rates of attorneys in Richland County Court of Common Pleas of similar skill and for similar work.

FURTHER THE AFFIANT SAYETH NOT.



Paul L. Reeves

SWORN to and subscribed before me
this 25 day of September, 2024



Notary Public for South Carolina
My Commission Expires: 05-05-27

EXHIBIT D

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
CASE NO. 2022-40-04419

Ansel Jamahl Postell,

Plaintiff(s),

vs.

Campus Advantage, Inc. d/b/a The
Rowan, EMRES II South Carolina, LLC
and Katie Floyd,

Defendants.

PLAINTIFF'S OFFER OF JUDGMENT
AS TO ALL DEFENDANTS

TO: THE ABOVE-NAMED DEFENDANTS:

Pursuant to S.C. Code Ann. § 15-35-400 and Rule 68, SCRCPP, Plaintiff hereby makes the following Offer of Judgment as to the Defendant above-named:

Plaintiff Ansel Jamahl Postell (hereinafter "Postell") offers to take judgment against Defendants Campus Advantage, Inc., d/b/a The Rowan, EMRES II South Carolina, LLC and Katie Floyd collectively (hereinafter all referred to as "Defendants") in the amount of Seventy-Five Thousand and 00/100 Dollars (\$75,000.00). This Offer of Judgment is offered and is to be applied to all damages in this matter, including all costs, fees, treble damages or attorneys' fees. If this Offer of Judgment is not accepted within twenty days after notification of this offer or prior to or on the tenth day before the actual trial date, whichever date occurs first, this offer shall be considered rejected. However, the Plaintiff reserves the right to withdraw this Offer of Judgment prior to its acceptance or prior to the date on which it would be considered rejected by giving notice to you in accordance with the service rules for motions and other pleadings outlined in the South Carolina Rules of Civil Procedure. Pursuant to S.C. Code Ann. §15-35-400(B) and Rule 68, SCRCPP, if Defendant does not timely accept this Offer of Judgment and Plaintiff obtains a verdict

or determination at least as favorable as this offer as it relates to liability from Defendants, Plaintiff shall seek to recover from Defendants: (1) any administrative, filing, or other court costs from the date of this offer until judgment; and (2) eight percent annual interest computed on the amount of the verdict or award from the date of the offer.

Within twenty days after notification, or at least ten days prior to the trial date, whichever date is earlier, you may file with the Clerk of Court a written acceptance of this Offer of Judgment and serve it upon the Plaintiff in accordance with the South Carolina Rules of Civil Procedure.

Respectfully submitted,

s/Todd R Lyle
Todd R. Lyle (SC Bar #102308)
REEVES & LYLE, LLC
Post Office Box 11126
Columbia, South Carolina 29211
(803) 929-0001
(803) 929-0927 (facsimile)
Todd@ReevesAndLyle.com (email)
ATTORNEY FOR PLAINTIFF

Columbia, South Carolina
August 26, 2022

EXHIBIT E

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	FILE NO. 2022-CP-40-04419
	)	
Ansel Jamahl Postell,	)	
	)	
Plaintiff	)	
	)	
v.	)	OFFER OF JUDGMENT
	)	
Campus Advantage, Inc., d/b/a The	)	
Rowan, EMRES II South Carolina, LLC,	)	
and Katie Floyd,	)	
	)	
<u>Defendants.</u>	)	

**TO: ANSEL JAMAHL POSTELL, PLAINTIFF AND TODD R. LYLE,
ESQUIRE, ATTORNEY FOR PLAINTIFF:**

YOU WILL PLEASE TAKE NOTICE that Defendants Campus Advantage, Inc. d/b/a The Rowan, EMRES II South Carolina, LLC, and Katie Floyd, by and through their undersigned attorney, pursuant to Rule 68 of the South Carolina Rules of Civil Procedure, hereby offers to allow Judgment to be taken against it in the above-captioned action for the sum of Seven Thousand Five Hundred and No/100ths (\$7,500.00) Dollars, which sum is inclusive of all recoverable damages, actual and punitive, and fees and costs.

If, within twenty (20) days after service of the Offer of Judgment, or at least ten (10) days prior to trial, whichever date is earlier, Plaintiff Ansel Jamahl Postell, or his attorney, may file a written acceptance of the Offer of Judgment. Upon the filing, the Court shall immediately issue the judgment and the Clerk shall enter the judgment as provided in the Offer of Judgment.

If the Offer of Judgment is not accepted within twenty (20) days after notification, or prior to or on the tenth (10th) day before the actual trial date, whichever occurs first, the

Offer shall be considered rejected and evidence thereof is not admissible, except in a proceeding after trial to determine costs, interest, attorneys' fees, and other recoverable monies. Any party may withdraw an Offer of Judgment prior to its acceptance or prior to the date on which it was considered rejected by giving notice to the offeree or her attorney as provided in these Rules. Further, if the Judgment finally obtained by the plaintiff is not more favorable than the Offer, the defendant will seek all damages and remedies permitted by Rule 68(b), SCRCP.

Respectfully submitted,

/s/ Timothy S. VanDenBerg
Timothy S. VanDenBerg (SC Bar No. 77472)
tvandenberg@vdblegal.com
VanDenBerg Law Firm LLC
4711 Forest Drive, Suite 3-116
Columbia, SC 29206
PHONE: (803) 250-1832
FACSIMILE: (803) 470-3660

Attorney for Defendants

April 01, 2024
Columbia, South Carolina

EXHIBIT F

Days Calculator: Days Between Two Dates

How many days, months, and years are there between two dates?

Count Days Add Days Workdays Add Workdays Weekday Week No

From and including: **Friday, August 26, 2022**
To and including: **Friday, September 27, 2024**

Result: 764 days

It is 764 days from the start date to the end date, end date included.
Or 2 years, 1 month, 2 days including the end date.
Or 25 month, 2 days including the end date.

Alternative time units

- 764 days can be converted to one of these units:
- 66,009,600 seconds
 - 1,100,160 minutes
 - 18,336 hours
 - 764 days
 - 109 weeks and 1 day
 - 209.32% of a common year (365 days)

August 2022						
6 days included						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

September 2022						
30 days included						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

October 2022–August 2024	
October 2022–December 2022: 92 days included	
Year 2023: 365 days included	
January 2024–August 2024: 244 days included	

September 2024						
27 days included						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

☐ = First day included (Aug 26, 2022) ☐ = Last day included (Sep 27, 2024)

Make a New Calculation

- Make adjustment and calculate again
- Start again with a new calculation between two other dates
- New calculation, with both date and time included



Time & Date Calculator App for iOS

See how long remains before a deadline or exactly when those 30 days are up.

EXHIBIT G


[Calculators](#) > [Financial](#) > [Interest & APR](#) > Simple Interest Calculator $A = P(1 + rt)$
[Basic Calculator](#)

Simple Interest Calculator $A = P(1 + rt)$

Simple Interest Calculator

Solve for: Total P+I (A) ▾Where: $A = P(1 + rt)$ Principal (P): \$ Rate (R): %
per yearTime (t):

Clear

Calculate

Answer:

 $A = \$808,460.85$ $I = A - P = \$115,960.61$ **Equation:** **$A = P(1 + rt)$** **Calculation:**

First, converting R percent to r a decimal
 $r = R/100 = 8\%/100 = 0.08$ per year.

Putting time into years for simplicity,
 $764 \text{ days} / 365 \text{ days/year} = 2.093151$ years.

Solving our equation:

$$A = 692500.24(1 + (0.08 \times 2.093151)) = 808460.8455885$$
 $A = \$808,460.85$

The total amount accrued, principal plus

This simple interest calculator calculates an accrued amount that includes principal plus interest. For interest only, use the [simple interest calculator](#).

Simple Interest Equation (*Principal + Interest*)

 $A = P(1 + rt)$

Where:

- A = Total Accrued Amount (principal + interest)
- P = Principal Amount
- I = Interest Amount
- r = Rate of Interest per year in decimal; $r = R/100$
- R = Rate of Interest per year as a percent; $R = r \times 100$
- t = Time Period involved in months or years

From the base formula, $A = P(1 + rt)$ derived from $A = P + I$ and since $I = Prt$ then $A = P + I$ becomes $A = P + Prt$ which can be rewritten as $A = P(1 + rt)$

Note that rate r and time t should be in the same time units such as months or years. Time conversions that are based on day count of 365 days/year have 30.4167 days/month and 91.2501 days/quarter. 360 days/year have 30 days/month and 90 days/quarter.

Simple Interest Formulas and Calculations:

interest, from simple interest on a principal of \$692,500.24 at a rate of 8% per year for 2.093151 years (764 days) is \$808,460.85.

[How could this calculator be better?](#)

Share this Answer Link: [help](#)

Paste this link in email, text or social media.

https://www.calculatorsoup.com/calculators/financial/simple-interest-plus-principal-calculator.php?given_data=find_A&P=692%2C500.24&R=8.0&t=764&time_t=day+365&given_data_last=find_A&action=solve

[Get a Widget for this Calculator](#)

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Use this simple interest calculator to find A, the Final Investment Value, using the simple interest formula: $A = P(1 + rt)$ where P is the Principal amount of money to be invested at an Interest Rate R% per period for t Number of Time Periods. Where r is in decimal form; $r = R/100$; r and t are in the same units of time.

The accrued amount of an investment is the original principal P plus the accumulated simple interest, $I = Prt$, therefore we have:

$A = P + I = P + (Prt)$, and finally **$A = P(1 + rt)$**

- Calculate Total Amount Accrued (Principal + Interest), solve for A
 - $A = P(1 + rt)$
- Calculate Principal Amount, solve for P
 - $P = A / (1 + rt)$
- Calculate rate of interest in decimal, solve for r
 - $r = (1/t)(A/P - 1)$
- Calculate rate of interest in percent
 - $R = r * 100$
- Calculate time, solve for t
 - $t = (1/r)(A/P - 1)$

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Furey, Edward "[Simple Interest Calculator \$A = P\(1 + rt\)\$](#) " at

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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

CASE NO. 2022-CP-40-04419

Ansel Jamahl Postell,

Plaintiff,

vs.

Campus Advantage, Inc., and EMRES
II South Carolina, LLC,

Defendants.

**MEMORANDUM IN RESPONSE TO
DEFENDANTS' POST-TRIAL MOTIONS**

The Plaintiff submits this memorandum in the above-captioned action in response to the Defendants' post-trial motion(s) filed September 30, 2024. The Defendants have not shown entitlement to a judgment notwithstanding the verdict or to a new trial on any basis. Their motion(s) should be denied.

EVIDENCE OF UNFAIR TRADE PRACTICES SUPPORTED THE VERDICT

A claimant under the Unfair Trade Practices Act must show: (1) the other party violated S.C. Code Ann. § 39-5-20 by engaging in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or deceptive act affected public interest; and (3) the claimant suffered damages as a result. Wright v. Craft, 372 S.C. 1, 23, 640 S.E.2d 486, 498 (Ct. App. 2006). Evidence supporting each element was adduced at the trial of this case.

The Unfair Trade Practices Act specifically defines by statute that, under the Act, "[t]rade' and 'commerce' shall include the . . . distribution of *any services* and any property, tangible or intangible, . . . and *any* other article, commodity or *thing of value* wherever situate, and shall include any trade or commerce directly or indirectly affecting the people of this State." S.C. Code Ann. § 39-5-10(b) (emphasis added). "The statute's use of the words 'shall include' clearly suggests the legislature did not intend to limit 'trade' and 'commerce' to only the listed

transactions.” Baker v. Chavis, 306 S.C. 203, 208-09, 410 S.E.2d 600, 603 (Ct. App. 1991). “[T]he UTPA ‘should be given a liberal construction.’” McTeer v. Provident Life and Accident Ins., 712 F. Supp. 512, 515 (D.S.C. 1989) (quoting Connolly v. People’s Life Ins. Co., 294 S.C. 355, 359, 364 S.E.2d 475, 477 (Ct. App. 1988)).

As the Defendants apparently concede, the Unfair Trade Practices Act applies to residential lease situations. Indeed, the language below appears to dispose of the Defendants’ argument that an Unfair Trade Practices Act violation could not have occurred here:

The landlords also assert the UTPA does not apply to the breach of a private contract such as the one the Burbachs had with IMC. They argue the UTPA does not apply because the Burbachs’ private relationship with IMC did not create a public interest. We disagree.

Residential leases are things of value which directly affect the citizens of this state. The fact that our legislature has regulated the landlord-tenant relationship by enacting the SCRLTA supports this conclusion. See S.C.Code Ann. §§ 27-40-10 to 27-40-940 (1991 & Supp. 1996). While landlord-tenant relationships are frequently governed by contract, landlords have certain statutory duties, as do tenants. These duties protect the public interest in that they create a framework that governs landlord-tenant relationships regardless of the private arrangements parties have made between themselves.

Moreover, the conduct of the landlords is capable of repetition. “[U]nfair or deceptive acts or practices in the conduct of trade or commerce have an impact upon the public interest if the acts or practices have the potential for repetition.” Noack Enterprises, Inc. v. Country Corner Interiors of Hilton Head Island, Inc., 290 S.C. 475, 480, 351 S.E.2d 347, 350-51 (Ct.App.1986), *cert. dismissed*, 294 S.C. 235, 363 S.E.2d 688 (1987).

Burbach v. Investors Mgmt. Corp. Internat’l, 326 S.C. 492, 484 S.E.2d 119 (Ct. App. 1997).

Here, the Defendants knew that the Plaintiff had a valid lease for his unit but, knowing that, sent their employees to remove all of Plaintiff’s personal belongings. Their procedures were insufficient to prevent something like the trashing of Plaintiff’s personal property from happening—thus making it capable of repetition—and are what caused it to happen in this case. The Defendants’

representations that the Plaintiff had a valid lease were deceptive, lulling him into believing his property was safe where he had left it. The Defendants' actions—entering into a new lease with the Plaintiff and then acting like they hadn't and then removing his personal belongings—were certainly unfair. Indeed, those actions were immoral, unethical, and oppressive, see Gentry v. Yonce, 337 S.C. 1, 522 S.E.2d 137 (1999); the Defendants, in possession of all the information that showed that they had no right to do what they did, both went back on their word and also essentially stole the Plaintiff's things.¹ The Defendants' actions caused the Plaintiff damages that include an ascertainable loss of money or property as well as significant mental suffering.

The Defendants' conduct was also willful for purposes of the Unfair Trade Practices Act. The Act, in S.C. Code Ann. § 39-5-140, provides for a private right of action for damages and provides that “[f]or the purposes of this section, a willful violation occurs when the party committing the violation knew or should have known that his conduct was a violation of Section 39-5-20[,]” i.e., an unfair or deceptive act in trade or commerce. The Defendants' post-trial motion repeatedly states what the Defendants should have known to do instead of what they did.

The Defendants' citation to S.C. Code Ann. § 27-40-730(d)—one supposes offered for the idea that they could have believed what they were doing was lawful—does not aid them in their motion. The Defendants agree that, on the facts of this case, S.C. Code Ann. § 27-40-730(d) did not give them the legal right to dispose of the Plaintiff's personal belongings. The bad conduct does not have to be willful under the definition found in S.C. Code Ann. § 39-5-140(d) to violate the Unfair Trade Practices Act—though, here, it is.

¹ The Defendants make much in their motion about the Plaintiff's testimony on the stand about what he thought was unfair about their actions. The Plaintiff himself does not *need* to understand what satisfies which elements of his causes of action. That is what he has a lawyer for. The question is whether evidence of this unfairness exists, not whether the natural person who is the Plaintiff understood at trial what constitutes it.

The Defendants' immoral, unethical, and oppressive trade practices also affected people other than the Plaintiff. Unfortunately for the public, this conduct was not a "one-off" but was repeated with other tenants (thus demonstrating its capability of repetition). The following excerpt from the examination of witness Ashanti Young illustrates this impact on the public interest:

Q: Let me ask you this . . . do you recall in your time at Campus Advantage there being other instances of the system not being accurate . . . and . . .

A: Correct.

Q: OK. Do you recall other instances of the system not being accurate such that tenants, like Mr. Postell, had their stuff taken or misplaced or otherwise missing?

A: Correct.

Q: That happened while you were at Campus Advantage?

A: Correct.

Q: While you were working for Campus Advantage at the Rowan Apartments?

A: Correct.

Q: And it happened multiple times?

A: Correct.

EMPLOYEES ACTED WITHIN COURSE AND SCOPE OF THEIR EMPLOYMENT

The Defendants contend they cannot be held liable for Carlton's unauthorized taking of and damage to the Plaintiff's electronics because Carlton did so in a way that deviated from the instructions he was given by his employer. The Defendants misunderstand the law of *respondeat superior*.

Our Supreme Court, in a decision that remains good law on this point since it was rendered in 1871, put it well, as follows:

It would be a difficult undertaking to adduce a single case where the master was not held bound for the tortious acts of his servant, done in the course of his employment. That it was not authorized, or even if it had been forbidden, does not affect the right of redress against the master by a party injured by the unauthorized or forbidden act, for the consequence to the third party is the same, and is to be attributed to the fact that the master has placed the servant in a position where he may do unauthorized acts. On what principle of fairness could it be contended that either the error or folly of employing an incompetent or careless servant, should bring damage to a stranger, while the master, who put him in a position where he might commit the wrong, should be free from all obligation to respond to the injury? The appointment of such improper person by the master induced the wrong, and if it was committed in the course of his employment, that is, while the relation of master and servant actually existed in the particular service in the discharge of which the servant was engaged, the master is held to answer. He cannot be excused because he did not know of it or disapproved of it, or even had forbidden it, for, notwithstanding his conviction of the impropriety of the act, as shown by his forbidding it, he nevertheless was so careless and negligent, in the selection of his agent, as to subject the public to the chance of its infliction.

To confine the liability of the master only to such acts of his servant, in the course of his employment, as he may have authorized, would give to an irresponsible agent a license to commit torts against the persons of those who, by the nature of his employment, must be brought in contact with him, without any reasonable prospect of pecuniary redress, and would materially affect the subordination of the servant so necessary to the maintenance of the superior condition which the master holds in relation to him. When the community deal with a corporation of the character of this defendant, with diversified departments, and various branches of business incident to the general purpose of its organization, "public policy and convenience" require that they should be responsible for the acts of commission or omission by their agents while in the course of their employment.

Redding v. S.C. R. Co., 3 S.C. 1, 6-7 (1871). "The 'course of the employment,' in the sense in which it is used in regard to the duties imposed by the particular service, is not to be understood as restricted and confined to the prescribed duties set apart for the performance of the servant." Id. at 7.

These legal principles have held up since 1871. In 1986, our Court of Appeals observed that

under the doctrine of *respondeat superior*, the principal is liable in addition to the agent, not by reason of his consent to be liable, but by operation of law. This is most plainly illustrated in those cases where the agent acts against the express instructions of his principal, but within the scope of his employment: the principal is still liable.

S.C. Ins. Co. v. James C. Green & Co., 290 S.C. 171, 348 S.E.2d 617 (Ct. App. 1986).

Here, Carlton was authorized by the Defendants to take the Plaintiff's things out of the Plaintiff's apartment. Carlton was acting within the course and scope of his employment when he took them for his own use, because he was employed by the Defendants to take them out of the Plaintiff's possession. It is not at all true, much less clear, that "[t]he evidence, however, leads to only one conclusion: Carlton was acting well outside the scope of employment." (Def. Mot. for JNOV or New Trial p. 6.) The only evidence adduced on this point was to the effect that he *was* acting within the course and scope of his employment.

THE LAW MAKES THE DEFENDANTS LIABLE UNDER THE LEASE CONTRACT

As an initial matter, the Plaintiff notes that the Defendant did *not* move at the close of the Plaintiff's case for a directed verdict on any cause of action other than for violation of the Unfair Trade Practices Act. The Defendants attempted to broaden this motion at the close of their own case to incorporate the breach of contract cause of action, but the time to make a motion directed at that cause of action had already passed. Rule 50, SCRCP.

To be eligible to make a motion for judgment notwithstanding the verdict, the moving party has to have made substantively the same motion, on the same grounds, as a directed verdict motion at the close of his opponent's case *and* at the close of his own case (*and* at the close of any rebuttal case). Id.; Stephens v. CSX Transp., Inc., 415 S.C. 182, 781 S.E.2d 534 (2015); RFT Mgmt. Co.,

L.L.C. v. Tinsley & Adams, L.L.P., 399 S.C. 322, 732 S.E.2d 166 (2012); Benton & Rhodes, Inc. v. Boden, 310 S.C. 400, 426 S.E.2d 823 (Ct. App. 1993). South Carolina courts strictly apply the rule that a judgment notwithstanding the verdict may not be granted unless the moving party moved for a directed verdict at the close of the opponent's case and at the close of all the evidence. See, e.g., Hendrix v. Eastern Distribution, Inc., 316 S.C. 34, 446 S.E.2d 440 (Ct. App. 1994), *aff'd in part, vacated in part*, 320 S.C. 218, 464 S.E.2d 112 (1995). A motion for judgment notwithstanding the verdict is a renewal of a directed verdict motion; as such, it cannot raise grounds beyond those that were raised in the directed verdict motion. Stroud v. Elliott, 316 S.C. 242, 449 S.E.2d 261 (Ct. App. 1994); Roland v. Palmetto Hills, 308 S.C. 283, 417 S.E.2d 626 (Ct. App. 1992).

In their too-late motion directed at the breach of contract claim, the Defendants point to a provision in the lease that they say exculpates them from liability. It is not that simple. The law requires that the court *not* construe the provision as applying to exculpate the Defendants *themselves*.

An exculpatory clause, our supreme court has held, is to be strictly construed against the party relying thereon. An exculpatory clause will never be construed to exempt a party from liability for his own negligence “in the absence of explicit language clearly indicating that such was the intent of the parties.” South Carolina Elec. & Gas Co. v. Combustion Eng'g, Inc., 283 S.C. 182, 191, 322 S.E.2d 453, 458 (Ct. App. 1984) (quoting Hill v. Carolina Freight Carriers Corp., 235 N.C. 705, 71 S.E.2d 133, 137 (1952)).

McCune v. Myrtle Beach Indoor Shooting Range, Inc., 364 S.C. 242, 612 S.E.2d 462, 465 (Ct. App. 2005). Such explicit language is absent in the lease. Without language in the lease stating the exculpatory clause applies to liability for the landlord's *own* acts, this provision may not be construed as applying to the Defendants' own conduct at issue in this case. Id.

Plus, as discussed above and as the Defendants concede in their motion, the circumstances under which they were statutorily exempted from liability for what they did to the Plaintiff's personal property were not present in the facts of this case. They are liable, and the contractual provision they invoke cannot save them.

WHERE DEFENDANTS' LIMITED DIRECTED VERDICT MOTION PUTS THEM

Because of the procedural steps the Defendants did and did not take at trial, success on their motion for judgment notwithstanding the verdict is impossible, regardless of the merits of what they argue now (which fail for other reasons, as discussed above).

The Defendants made and preserved a directed verdict motion (and, thus, a motion for judgment notwithstanding the verdict) only as to the Unfair Trade Practices Act cause of action. The jury's verdict, given in a form unobjected to by the Defendants, renders a general damages verdict that distinguishes only between actual and punitive damages and does not render separate awards for each of Plaintiff's several causes of action. "Where at least one issue supports a jury's general verdict involving two or more issues, the verdict will not be reversed." Anderson v. S.C. Dept. of Pub. Transp., 317 S.C. 280, 454 S.E.2d 353, 354-55 (Ct. App. 1995), *aff'd*, 322 S.C. 417, 472 S.E.2d 417 (1996).

Because of the limited nature of their directed verdict motion, the Defendants *cannot* now prevail on their motion for judgment notwithstanding the verdict. Id.

NO DEMONSTRATION THAT ANY "MISCONDUCT" CHANGED THE OUTCOME

The Defendants' motion takes some liberties with what actually occurred during the trial in its recitation of what it believes to be misconduct by Plaintiff's counsel. That aside, though, even if the Defendants were right about everything of which they complain in this regard, that

would not make the conduct misconduct, i.e., would not bring it within some legal prohibition against certain behavior.

Moreover, though, it would not matter. The Defendants have not connected any of the supposed misconduct to the verdict at which they direct their motion.

Simply put, there is no valid complaint that the actions of the other party during trial, through counsel or otherwise, were prejudicial. Of course they were. Doing things to prejudice the other party's position is what trial is *for*. See State v. Lee, 399 S.C. 521, 528, 732 S.E.2d 225, 228 (Ct. App. 2012). Simply calling something prejudicial is a far cry from demonstrating that it worked unfair prejudice to the party and most probably caused an improper verdict.

The Defendants complain about a lot of things that happened that they did not like, but they point to no rules, statutes, or other law prohibiting them. They do not articulate how any of those things worked any unfairness upon them, much less how that unarticulated unfairness caused the verdict about which they now complain. Absent a demonstration that 1) some improper action was taken (and not cured) at trial, that 2) the improper action unfairly prejudiced the Defendants, and that 3) the verdict was most likely caused by the prejudice created by the improper action, the Defendants have nothing in this regard that entitles them to any relief at all, much less a new trial. See, e.g., Hennes v. Shaw, 397 S.C. 391, 405, 725 S.E.2d 501, 509 (Ct. App. 2012).

THE JURY WAS WITHIN ITS RIGHTS TO FIND THE DAMAGES IT DID

The jury was presented with evidence that the Plaintiff lost property and, quite naturally, incurred emotional/psychological damage and mental suffering. This is a compensable actual damage. It is evident that the jury believed the property to be worth more than what Defendants thought, or that the jury believed the mental suffering damages to be substantial, or both. The jury is allowed to do that. That does not mean a new trial is warranted.

The court must give substantial deference to the jury's determination of damages. Rush v. Blanchard, 310 S.C. 375, 379, 426 S.E.2d 802, 805 (1993) (citing Brabham v. S. Asphalt Haulers, Inc., 223 S.C. 421, 430, 76 S.E.2d 301, 306 (1953)); Harrison v. Bevilacqua, 354 S.C. 129, 140, 580 S.E.2d 109, 115 (2003). This requirement of deference arises from the South Carolina Constitution, which provides that "the right of trial by jury shall be preserved inviolate." S.C. Const. art. I, § 14. Every party to a civil jury trial "is entitled to the constitutional privilege of the fair judgment of a jury" and a court must "not interfere with the verdict of a jury simply because it is greater [or less] than its own estimate." Brabham, 223 S.C. at 430, 76 S.E.2d at 306.

The Defendants complain about *weight* of estimates of property loss, but they do not complain that there was no evidence of such loss. The Defendants complain about *weight* of emotional damage testimony, but they do not contend there was none. Indeed, there was testimony about the quite significant psychological blow that the unexpected taking of the Plaintiff's things—for a college student, a great deal of all he owned—dealt to the Plaintiff.

It appears that the Plaintiff and his attorney were able to convey to the jurors the depth of the harm caused by the Defendants' callous disregard of the Plaintiff's rights. We say this not because we believe we did some great job, but because it is obvious that the jury understood those things.

That the Defendants think the jury's valuation is high does not mean there was an error entitling them to a new trial of any sort. Id. The law of South Carolina is that "the trial judge should grant a new trial based on excessiveness of the verdict only if the amount is not merely different from that which he would have awarded but is so grossly excessive so as to shock the conscience of the court and clearly indicates the figure was the result of caprice, passion, prejudice, partiality, or other improper motives." Wall v. Suits, 318 S.C. 377, 458 S.E.2d 43, 46-47 (Ct. App. 1995).

The Defendants do not clear this high bar. The purpose of a new trial motion is not to punish the plaintiff for doing well.

NOTHING OBLIGES THE COURT TO ORDER A NEW TRIAL HERE

As there is evidence to support the jury's damages verdict, it is not so grossly excessive as to require a new trial. The Defendants invoke the thirteenth juror doctrine, but no circumstances ever *require* a judge to grant a new trial under that doctrine. No circumstances *require* a judge to grant a new trial *nisi*, either. In the circumstances in which they are available, which are not present here, they are always optional.

CONCLUSION

The Defendants have received a verdict they do not like. It is also, apparently, one they did not expect. That does not entitle them to a new trial. Under established legal principles, the jury verdict must and should stand.

Respectfully submitted,

LYLE LAW FIRM, LLC

s/ Todd R. Lyle

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ATTORNEY FOR THE PLAINTIFF

Columbia, South Carolina
October 10, 2024

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
ANSEL JAMAHL POSTELL,	)	Civil Action No. 2022CP4004419
	)	
Plaintiff,	)	
	)	
vs.	)	MOTION TO DISMISS
	)	
CAMPUS ADVANTAGE, INC., AND	)	
EMRES II SOUTH CAROLINA, LLC	)	
D/B/A THE ROWAN,	)	
	)	
Defendants.	)	
	)	
	)	

Defendants Campus Advantage, Inc. and Emres II South Carolina, LLC, d/b/a The Rowan (collectively, “Defendants”) hereby respond in opposition to Plaintiff’s Post-Trial Motion for Treble Damages, Attorney’s Fees, and Costs. As discussed more thoroughly below, this Court should deny Plaintiff’s Motion in its entirety.

FACTUAL BACKGROUND

The Honorable Milton G. Kimpson tried this case from September 16 through 19, 2024. The Jury ultimately returned a verdict in Plaintiff’s favor and found both Defendants liable for: (1) negligence; (2) breach of contract; (2) conversion of chattels; and (4) a violation of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10 *et seq.* The Jury awarded Plaintiff \$230,000.00 in actual damages and \$426,500.24 in punitive damages. Plaintiff filed his Post-Trial Motion for Treble Damages, Attorney’s Fees, and Costs on October 1, 2024. Plaintiff asserts he is entitled to treble the actual damages awarded by the Jury and recover reasonable attorney’s fees and costs because the jury found Defendants violated the South Carolina Unfair Trade Practices Act. Plaintiff’s request is flawed in several respects.

LEGAL ANALYSIS

The South Carolina Unfair Trade Practices Act (“the Act”) prohibits “unfair methods of competition and unfair or deceptive acts in the conduct of any trade or commerce . . .” S.C. Code Ann. § 39-5-20. “To recover in an action under the UTPA, the plaintiff must show: (1) the defendant engaged in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or deceptive act affected public interest; and (3) the plaintiff suffered monetary or property loss as a result of the defendant's unfair or deceptive act(s).” *RFT Mgmt. Co. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 337, 732 S.E.2d 166, 174 (2012). Under the Act, a Court **may** treble the actual damages if “the court finds that the use or employment of the unfair or deceptive method, act or practice was a willful or knowing violation . . .” S.C. Code Ann. § 39-5-140.

1. No evidence supports the Jury’s finding that Defendants violated the Act.

Like Plaintiff’s Case-in-Chief at trial, Plaintiff’s Motion for treble damages is devoid of any evidence supporting the Jury’s finding that Defendants actually violated the Act. To date, Defendants are still left guessing as to how they violated the Act. As Plaintiff so aptly points out in his Motion, “[t]he purpose of the UTPA is to discourage unfair methods of competition and unfair or deceptive acts in the conduct of any trade or commerce.” *Taylor v. Medecina*, 331 S.C. 575, 579, 503 S.E.2d 458, 460 (1998).

Before this Court can consider Plaintiff’s request for treble damages, the Court must determine whether the Jury’s finding was supported by evidence.¹ Plaintiff clings to the

¹ Before considering Plaintiff’s Motion at all, the Court must also consider Defendants’ Motion for Judgment Notwithstanding the Verdict and for a New Trial Absolute, or in the alternative, a *New Trial Nisi Remittitur*, filed on September 30, 2024. Defendants expressly incorporate by reference the arguments made in that Motion as if fully set forth here.

*Burbach*² case to support his claim that Defendants violated the Act. But that reliance is misplaced. Plaintiff testified the promise of money was the only deceptive act that violated the Act—a position the Court already conceded was insufficient to justify a finding Defendants violated the Act. Without a legitimate violation of section 39-5-20, the provisions within section 39-5-140 are inapplicable to this action. Plaintiff’s own failure to identify an actual violation of the Act requires this Court to deny Plaintiff’s current Motion.

2. No evidence justifies the Court trebling actual damages.

Pursuant to the applicable statutory provision, the Court may treble the actual damages caused by the unlawful or deceptive act **only if** the violation was a “willful or knowing violation.” S.C. Code Ann. § 39-5-140(a). “For the purposes of this section, a willful violation occurs when the party committing the violation knew or should have known that [the] conduct was a violation of § 39-5-20.” S.C. Code Ann. § 39-5-140(d). It is paramount that a party must present some evidence to a court to demonstrate a willful violation before the court may consider an award of treble damages, attorney’s fees, and costs under the Act. *See generally Top Value Homes v. Harden*, 319 S.C. 302, 460 S.E.2d 427 (Ct. App. 1995) (explaining that the trial court did not err in refusing to treble damages despite evidence the seller failed to disclose a prior fire in the mobile home to the purchaser, because there was no evidence the lack of disclosure was one in a willful or knowing manner).

Here, no evidence exists to justify an award of treble damages under section 39-5-140(a). Not only has Plaintiff failed to identify the actual violation of the Act, but he has failed to submit any evidence establishing “the violation” was willful or knowing. Plaintiff claims the Jury found Defendants acted willfully in the jury verdict, but a review of the verdict contradicts that

² *Burbach v. Inv. Mgmt. Corp.*, 326 S.C. 492, 484 S.E. 2d 119 (1997).

position. Nowhere on the verdict form does the Jury find that either Defendant willfully or knowingly violated the Act. Even so, that determination is well outside the Jury's purview and is reserved solely for the Court. Plaintiff's failure to identify a willful violation of the Act with legitimate evidence requires this Court to deny Plaintiff's present Motion.

The statutory definition of willful has been construed by our Court of Appeals to mean: "if, in the exercise of due diligence, a person of ordinary prudence engaged in trade or commerce could have ascertained that his conduct violates the Act, then such conduct is willful." *Haley Nursery Co. v. Forrest*, 298 S.C. 520, 381 S.E.2d 906 (1989) (quoting *State v. Nest Egg Soc'y Today, Inc.*, 290 S.C. 124, 348 S.E.2d 381 (Ct. App. 1986)). In *Haley Nursery*, the Supreme Court upheld the trial court's decision to not treble damages based upon the plain language of the statute. *Haley Nursery Co.*, 298 S.C. at 525.

The *Haley* defendant ordered springcrest peach trees but received springbrite peach tree instead. *Id.* The defendant refused to satisfy the bill for the delivered trees and the plaintiff filed a collection action. *Id.* The defendant then brought a counterclaim for a violation of the unfair trade practices act based on the delivery mistake. *Id.* The jury found in favor of the defendant on the UTPA counterclaim and the defendant moved for treble damages, attorney's fees, and costs. *Id.* The trial court refused to treble the actual damages but did award reasonable attorney's fees and costs. *Id.* The defendant appealed the decision and argued the trial court erred by refusing to treble the actual damages. *Id.* The Supreme Court of South Carolina held there was no evidence the plaintiff committed a willful violation of the UTPA because the evidence confirmed the plaintiff relied on a third-party tree supplier to provide them with the correct peach tree variant before delivering to the defendant. *Id.* The Court found this was standard practice in the tree supplying industry and, therefore, confirmed there was no willful violation of the UTPA. *Id.*

Defendants in this action are like the *Haley* plaintiff. Plaintiff has not established a violation of the Act to date. What is more, the evidence confirms Defendant Campus Advantage's actions were typical for the industry. South Carolina law grants a landlord the authority to remove personal property in certain situations. *See* S.C. Code Ann. § 27-40-730. Moreover, Defendant Campus Advantage had policies and procedures in place to protect personal property left behind by tenants (or Plaintiff in this situation). There is no evidence in the record to support Plaintiff's position that Defendants willfully violated the Act. As a result, Plaintiff's Motion for treble damages must be denied.

3. Trebling damages in this case would constitute a double recovery by Plaintiff.

"The doctrine of election of remedies involves a choice between two or more different and coexisting modes of procedure and relief afforded by law for the same injury." *Save Charleston Found. v. Murray*, 286 S.C. 170, 333 S.E.2d 60 (Ct. App. 1985). "Its purpose is to prevent double redress for a single wrong." *Charleston Found.*, 286 S.C. at 175. "When an identical set of facts entitles the plaintiff to alternative remedies, he may plead and prove his entitlement to either or both; however, the plaintiff may not recover both." *Id.* at 175 (citing to *Baeza v. Robert E. Lee Chrysler, Plymouth, Dodge, Inc.*, 279 S.C. 468, 309 S.E.2d 763 (Ct. App. 1983)).

Plaintiff's request for treble damages should be denied by this Court for multiple reasons. First, Plaintiff must elect his remedy. The verdict form fails to parse out which damages are related to which cause of action. The actual damages within the meaning of the Act are \$27,500.00 in alleged lost property. The remaining actual damages relate to unsubstantiated assertions of anxiety without a single medical bill being placed into evidence. Plaintiff's request

to treble the \$230,000.00 into \$690,000.00 requires the Court to ignore the doctrine of election of remedies and permit Plaintiff to recover damages well outside the scope of the Act.

More importantly, the Jury returned a verdict that included punitive damages. Treble damages under the Act and punitive damages accomplish the same goal: to punish Defendants. Trebling the actual damages while also allowing the punitive damages to stand would be yet another double recovery for the Plaintiff. Our Supreme Court has explicitly considered this situation and found a plaintiff cannot recover both punitive and treble damages. “We agree with [the] contention that [plaintiff] was not entitled to recover both punitive and treble damages. An award of punitive damages resulting from an act that may also result in liability for multiple damages is not allowed, for it would result in a double recovery for one wrongful act.” See *Adamson v. Marianne Fabrics, Inc.*, 301 S.C. 204, 391 S.E.2d 249 (1990). Therefore, Plaintiff is not entitled to both treble damages and punitive damages.

Even if he was and assuming somehow Plaintiff shows this Court a willful violation of the Act as required by South Carolina law (he can’t), the proper amount of damages to be trebled would be the \$27,500.00, not \$230,000.00. Plaintiff proceeded to trial on five separate causes of action: (1) negligence; (2) conversion; (3) breach of contract; (4) Unfair Trade Practices Act violation; and (5) ouster. The Jury found Defendants liable under the negligence, conversion, breach of contract, and unfair trade practices act claims. The Jury ultimately awarded \$230,000.00 in actual damages. It is clear from the verdict form that the Jury did not determine the damages associated with each cause of action. At trial, Plaintiff testified that he lost approximately \$27,500.00 in property damage. Despite admitting no records or bills into evidence, Plaintiff also testified that he was anxious after his property was disposed of, presumably (somehow), leading to the Jury’s \$230,000.00 actual damages award. Thus, the

proper amount of damages to be trebled would be \$27,500.00, not the amount awarded for “anxiety” by the Jury.

4. Even if Plaintiff established a violation of the Act, the Court must further inquire into Plaintiff’s request for attorney’s fees.

Again assuming Plaintiff gets past Defendants’ Motion for Judgment Notwithstanding the Verdict and show that Defendants violated the Act, the Court must still consider the amount of attorney’s fees requested under the 6-part test outlined in *Jackson v. Speed*, 326 S.C. 289, 486 S.E.2d 750 (1997). The Court should also focus only on what fees were incurred **because** of the violation of the Act. The Act itself does not permit Plaintiff to recover every fee incurred throughout this litigation. And Defendants contend that, once considered, Plaintiff’s request for \$384,166.75 in this case is entirely unreasonable.

CONCLUSION

Based on the above arguments and the arguments explained more fully in Defendants’ Joint Motion for Judgment Notwithstanding the Verdict and for a New Trial Absolute, or in the alternative, a New Trial *Nisi Remittitur*, filed on September 30, 2024, this Court should deny Plaintiff’s Motion for Treble Damages, Attorney’s Fees, and Costs.

[SIGNATURES ON FOLLOWING PAGE]

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ATTORNEYS FOR DEFENDANTS

October 10, 2024

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
CASE NO. 2022-CP-40-04419

Ansel Jamahl Postell,

Plaintiff,

vs.

**Campus Advantage, Inc., and EMRES
II South Carolina, LLC,**

Defendants.

**MOTION TO RECONSIDER
AMOUNT TO BE TREBLED**

YOU WILL PLEASE TAKE NOTICE that the Plaintiff hereby moves before this court pursuant to Rules 52(b) and 59(e), SCRCPP, as well as pursuant to all other applicable law, in the above-captioned action for an order that alters or amends the amount of the Plaintiff's actual damages trebled in the court's order filed May 20, 2025. While a monetary or property loss is an element of a cause of action for unfair trade practices under S.C. Code Ann. § 39-5-140, the damages able to be recovered and trebled include all actual damages and are not limited to monetary or property losses.

As grounds for this motion, the Plaintiff notes the following:

1. The court limited the trebling of Plaintiff's actual damages to "\$27,500, the value of his lost personal property listed on the spreadsheet he produced for Defendants[,]" rather than all of the actual damages determined by the jury. The Plaintiff takes issue only with this one aspect of the court's order and notes the order is well-reasoned and correct in its other respects.
2. The court's order correctly notes that "[r]ecovery under S.C. Code Ann. 39-5-140(a) is available to a person 'who suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of an unfair or

deceptive method, act ...’ (emphasis added).” The order departs from the law, however, in its next statement: “[o]n its face, therefore, the plain language of this statutory provision limits recovery thereunder to the value of lost ‘money or property.’”

3. What S.C. Code Ann. § 39-5-140(a) states is as follows:

Any person who suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of an unfair or deceptive method, act or practice declared unlawful by Section 39-5-20 may bring an action individually, but not in a representative capacity, to recover actual damages. If the court finds that the use or employment of the unfair or deceptive method, act or practice was a willful or knowing violation of Section 39-5-20, the court shall award three times the actual damages sustained and may provide such other relief as it deems necessary or proper. Upon the finding by the court of a violation of this article, the court shall award to the person bringing such action under this section reasonable attorney's fees and costs.

(Emphasis added.)

4. What this statute says, in pertinent part, is that someone who has suffered an ascertainable loss of money or property as the result of an unfair trade practice has the right to bring an action, and, in that action, the person may recover his “actual damages” – which would include, but are not limited to, the loss of money or property that makes him eligible to bring the cause of action. Id.
5. Were it otherwise, the legislature could easily have (and surely would have) made the statute say that “Any person who suffers any ascertainable loss of money or property, real or personal, as a result of . . . may bring an action . . . to recover that money or property.” *That* or similar language would have limited the damages recoverable along the lines the court ordered. But that is not what the statute states. Id. The statute states

what is recoverable and treble-able are a plaintiff's "actual damages" and "actual damages sustained." Id.

6. Respectfully to the court, the Payne v. Holiday Towers, Inc., 283 S.C. 210, 321 S.E.2d 179 (Ct. App. 1984), case cited in the court's order speaks only to what constitutes economic damages and does not address what damages are able to be recovered or trebled under S.C. Code Ann. § 39-5-140(a). Also, the Defendants cited no authority in their post-trial motions when they claimed that the trebled amount should be limited along lines the court ended up following. Respectfully to the Defendants, they cited no such authority, abandoning their argument, because there is no such authority.
7. Indeed, the Payne case cited by the court states that the Unfair Trade Practices "Act does not define the term 'actual damages,' we hold that the term means common law damages." Payne, 283 S.C at 216. Other case law also bears out that the recoverable and treble-able actual damages under the Unfair Trade Practices Act are not limited to the money or property loss; rather, "[a]ctual damages under the UTPA include special or consequential damages that are a natural and proximate result of deceptive conduct" – not limited to a loss of money or property. Collins Holding Corp. v. Defibaugh, 373 S.C. 446, 646 S.E.2d 147 (Ct. App. 2007).
8. An ascertainable loss of money or property made the Plaintiff eligible to bring an unfair trade practices cause of action. They are not a limitation on what damages may be trebled; those are the "actual damages sustained." S.C. Code Ann. § 39-5-140(a).
9. The Plaintiff is entitled to have his actual damages trebled – all of them the jury determined he sustained. Id.

10. This motion is also supported by the record and may be further supported by any memoranda that the Plaintiff may submit.

The undersigned certifies that consultation about the matter subject of this motion would have served no useful purpose.

Respectfully submitted,

LYLE LAW FIRM, LLC

s/ Todd R. Lyle

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ATTORNEY FOR THE PLAINTIFF

Columbia, South Carolina
May 29, 2025

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
CASE NO. 2022-CP-40-04419

Ansel Jamahl Postell,

Plaintiff,

vs.

Campus Advantage Inc., and EMRES II
South Carolina LLC d/b/a The Rowan.

Defendant(s).

PLAINTIFF'S MEMORANDUM IN
SUPPORT OF ATTORNEYS FEES,
COSTS AND INTEREST

TO: THE HONORABLE MILTON KIMPSON, CIRCUIT COURT JUDGE & TIMOTHY
VANDENBERG, COUNSEL FOR CAMPUS ADVANTAGE, INC., AND EMRES II
SOUTH CAROLINA, LLC D/B/A THE ROWAN.

Plaintiff, by and through his undersigned counsel, submits this memorandum in response to this Court's recent order whereby the parties were asked to appear to determine the award of attorney's fees.

I. Background.

This matter was tried before the Honorable Milton Kimpson in Richland County beginning September 16, 2024 and ending September 19, 2024. At the conclusion of the trial, the jury rendered a verdict awarding \$230,000 in actual damages and \$462,500.24 in punitive damages to the Plaintiff. The parties then filed post-trial motions. Then this Court issued its Order addressing those motions on May 20, 2025. Relevant to this memorandum, this Court ordered, in part, that a hearing be set to determine to extent to which Plaintiff was entitled to an award of attorney's fees under the South Carolina Unfair Trade Practices Act (SCUPTA). Specifically from the Order, "[w]hile the Court believes that Plaintiff is entitled to an award of attorney's fees under the UTPA, given the needed evaluation under *Jackson v. Speed*, 326 S.C. 289, 486 S.E.2d 750 (1997), the Court defers ruling on attorney's fees until the parties have an opportunity to appear."

II. Attorney's Fees

Plaintiff's previously filed post-trial motion included an affidavit of attorney's fees and costs and Plaintiff would crave reference to the same. As outlined in that Affidavit, Plaintiff retained Todd R. Lyle, Esq. on a contingency fee arrangement whereby the firm would be paid 33% of any recovery by way of settlement and 37% of any recovery after the commencement of a contested proceeding and 40% of any recovery if the case were to go to trial, plus reimbursement of all costs incurred.

The following conditions also apply to this Retainer Agreement:

1. Attorneys will use reasonable care and skill in investigating Clients' claim and Client agrees to fully cooperate with Attorneys. Neither Attorney nor Clients will settle the case without the other's approval.
2. Clients will pay Attorneys for their services:
 - a. 33 % of any and all amounts recovered from each and any defendant prior to filing suit.
 - b. 37 % of any and all amounts recovered from each and any defendant prior to trial. For the purposes of this contract, the term "trial" shall include the actual date that the case is first placed on a trial roster.
 - c. 40 % of any and all amounts recovered from each and any defendant if the case goes to trial
 - d. 45 % of any and all amounts recovered from each and any defendant if an appeal is taken by any party or if Clients obtain the rights to and pursue any excess action against any insurer of any defendant
 - e. In the event that a judgment or settlement provides that payments shall be made to Clients over time, this sum shall be added to the cash component of the settlement. The entire sum shall be the total "amount recovered" and Attorneys shall receive their percentage of such amount as provided above.
 - f. IN THE EVENT OF NO RECOVERY, CLIENT SHALL OWE ATTORNEYS NOTHING FOR SERVICES RENDERED SUBJECT TO THE PROVISIONS

Despite the retainer contract calling for a 40% fee, Plaintiff's counsel asked the Court to award only 33% of the judgment amount as attorney's fees, along with the previously-stated costs and seeks this award in accordance with the Jackson v. Speed factors.

A. Jackson v. Speed

According to Jackson v. Speed, the court should consider the following six factors when determining a reasonable attorney's fee: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of

compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services. See 326 S.C. 289, 486 S.E.2d 750 (1997).

Here, the nature, extent and difficulty in bringing this matter to a jury trial in Richland County speaks for itself. Counsel for Plaintiff attended and took at least five depositions, including travel and depositions that were video-taped for use at trial as well as a corporate deposition under Rule 30(b)(6), SCRCPP. Additionally, the undersigned did significant industry research and case law research to bring the claims as shown in the Complaint. Indeed, this was a significantly complex defendant with a complicated corporate structure. Moreover, in addition to the laborious pre-trial preparation, the Defendants vigorously defended the case and consistently denied liability throughout the entire matter. Lastly, the case took three full days and included various written submissions to address these various complex legal issues.

Second, the undersigned did not keep an exact count of hours spent on this case because the law firm was hired on a contingency fee agreement; however, significant hours were spent litigating and preparing this case for trial. As previously stated, at least five depositions were prepared for and conducted, including a corporate deposition of the defendant under Rule 30(b)(6), SCRCPP. Additionally, the trial consisted of at least three days including all pre-trial proceedings and preparation of witnesses and presentations, which included sophisticated technology use in the court room. Each of these aspects required significant time and resources.

Third, in its post-trial motion, the undersigned previously submitted an affidavit showing that the undersigned lawyer was and is in good standing and would refer to the same. Fourth, the undersigned has shown that its law firm was hired strictly on a contingency fee relationship such that no fee was earned without a meritorious outcome in favor of plaintiff. Again, it bears noting

that the undersigned was retained under an agreement that entitles the firm to a 40% contingency fee, but for the purposes of this matter, the undersigned is requesting an award of only 33%.

Fifth, the verdict or result of the trial speaks for itself. Sixth, the undersigned previously submitted affidavits of other lawyers, Paul Reeves, Esquire and George Taylor, Esquire attesting to the fact that a 40% contingency is customary for plaintiff representation in a contingency fee arrangement. The undersigned would again reference these previous filings in this matter.

Attorney's fees awarded at 33% of the total damages is **\$246,675.08**. This is based on the jury's verdict of \$230,000 in actual damages (\$285,000 after the \$27,500 economic damages are trebled) and \$462,500.24 in punitive damages.

III. **Award of Interest Pursuant to Rule 68(b), SCRCF – Offer of Judgment**

Plaintiff previously submitted in its post-trial motions Plaintiff's Offer of Judgment and the subsequently filed Defendants' Offer of Judgment. As a result of Defendants' rejecting Plaintiff's Offer of Judgment, Plaintiff respectfully requests that interest be added based on the 1012 days between the Offer's rejection and today's date.

Specifically, the jury entered a verdict for the Plaintiff in the amount of \$692,500.24 on September 19, 2024. As of the date of this filing, 1012 days have passed since the filing date of Plaintiff's Offer of Judgment on August 26, 2022.

Days Calculator: Days Between Two Dates
How many days, months, and years are there between two dates?

Count Days Add Days Workdays Add Workdays Weekday Week No

From and including: **Friday, August 26, 2022**
To and including: **Monday, June 2, 2025**

Result: 1012 days
It is 1012 days from the start date to the end date, end date included.
Or 2 years, 9 months, 8 days including the end date.
Or 33 months, 8 days including the end date.

Alternative time units
1012 days can be converted to one of these units:

- 87,436,800 seconds
- 1,457,280 minutes
- 24,288 hours
- 1012 days
- 144 weeks and 4 days
- 277.26% of a common year (365 days)

Eight percent (8%) computed on the amount of the verdict from August 26, 2022 to the date of this filing is **\$153,602.26**.

Simple Interest Calculator $A = P(1 + rt)$

Simple Interest Calculator

Calculate: **Total P+I (A)** ▼

Where $A = P(1 + rt)$

Principal (P): \$ **692,500.24**

Rate (R): % **8**
per year

Time (t): **1012**
days (365/Yr) ▼

Clear **Calculate**

Answer:

$A = \$846,102.50$

$I = A - P = \$153,602.26$

IV. CONCLUSION

While the Court certainly has discretion, it has little choice to enforce the spirit and purpose of the South Carolina Unfair Trade Practices Act and must give some meaning to the jury's verdict on the UTPA claim. Under the provisions of the Act and Rule 68, SCRPC, Plaintiff requests the Court enter total judgment in the amount of **\$1,154,774.39**, which is comprised of actual damages of \$285,000 (non-economic damages of \$202,500, and economic damages of \$27,500 which is trebled), \$462,500.24 in punitive damages as awarded by the Jury, \$246,675.08 in attorney's fees (33% of the requested award as above-described), \$6,996.81 in costs to prosecute the case, and \$153,602.26 of interest under Rule 68, SCRPC. (calculations below).

	Actual		
	Non-Economic	\$ 202,500.00	
	Economic (Trebled)	\$ 82,500.00	
	Total Actual	\$ 285,000.00	
	Punitive	\$ 462,500.24	
	Total Damages	\$ 747,500.24	
	Atty Fee (33%)	\$ 246,675.08	
	Costs	\$ 6,996.81	
	OOJ Interest	\$ 153,602.26	(8% at 1012 days)
	TOTAL JUDGMENT	\$ 1,154,774.39	

Respectfully submitted,

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s/ Todd R. Lyle

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ATTORNEY FOR THE PLAINTIFF

June 2, 2025
Lexington, South Carolina

STATE OF SOUTH CAROLINA**COUNTY OF RICHLAND****IN THE COURT OF COMMON PLEAS****CASE NO. 2022-CP-40-04419****Ansel Jamahl Postell,****Plaintiff,****vs.****Campus Advantage, Inc., and EMRES
II South Carolina, LLC,****Defendants.****MOTION TO RECONSIDER
AMOUNT OF PLAINTIFF'S
ATTORNEY'S FEES AWARD**

YOU WILL PLEASE TAKE NOTICE that the Plaintiffs hereby moves before this court pursuant to Rules 52(b) and 59(e), SCRCP, as well as pursuant to all other applicable law, in the above-captioned action for an order that alters or amends the amount of the Plaintiff's attorney's fees awarded in the court's order filed June 10, 2025.

As grounds for this motion, the Plaintiff notes the following:

1. The court limited the attorney's fees awarded to the Plaintiff to 33 percent of the amount of the damages the court trebled, which the court found were the damages recovered under the South Carolina Unfair Trade Practices Act's civil action section, S.C. Code Ann. 39-5-140(a).
2. In so doing, the court applied a limitation that does not exist under the law. The court also failed to award all of the Plaintiff's reasonable attorneys' fees for this action, which are 33 percent of the entire amount of the jury verdict, plus the amount added by trebling under S.C. Code Ann. 39-5-140(a).
3. The Plaintiff's attorney's fees in this case are not susceptible of segregation as to what was done concerning the unfair trade practices cause of action and other causes of

action. All of the Plaintiff's attorney's fees relate to all of the Plaintiff's causes of action, including the unfair trade practices cause of action.

4. The limitation applied by the court – limiting to a percentage of only the amount the court determined was recovered on the unfair trade practices cause of action and not taking into account that the attorney's fees the Plaintiff has incurred relate to the entire verdict recovered, including the amount increased by trebling – is not a lawful one. It has been rejected at least twice by the state Supreme Court.
5. In Taylor v. Medenica, 331 S.C. 575, 582, 503 S.E.2d 458, 462 (1998), a bedrock unfair trade practices case, the Court held that “there is no requirement that an attorney's fee be less than or comparable to a party's monetary judgment” and rejected a challenge to the award based on the idea that it should be limited by the amount of damages recovered under S.C. Code Ann. 39-5-140(a). The Supreme Court observed that “[t]his Court has approved an award of attorney's fees where the fee substantially exceeded the actual recovery.” Taylor, 331 S.C. at 582.
6. Austin v. Stokes-Craven Holding Corp., 387 S.C. 22, 57, 691 S.E.2d 135, 153 (2010), was a case brought with several causes of action, including one under the Automobile Dealers' Act (strongly analogous to the South Carolina Unfair Trade Practices Act) but also including common law claims such as fraud. The Supreme Court held that the prevailing plaintiff's attorneys' fee award should be based on his recovery on all his causes of action, not just the one under the Dealer's Act that authorized the attorneys' fees. Id. The Court held that an award based on the total recovery, unsegregated by cause of action, “in its entirety would be consistent with the precedent of this Court”

and would further the policy aim of encouraging actions under the Dealer's Act. Id.
The Unfair Trade Practices Act has that same policy aim. See Taylor, 331 S.C. at 582.

7. Respectfully, the Plaintiff must note that the limitations the court imposed on the Plaintiff's attorney's fee award are contrary to law, are contrary to a policy aim of this state, and deprive the Plaintiff of the attorney's fee award to which he is entitled. The court should reconsider the amount awarded and award the Plaintiff his full attorney's fees – which the court has already found are reasonable. This is required under S.C. Code Ann. 39-5-140(a).
8. This motion is also supported by the record and may be further supported by any memoranda that the Plaintiff may submit.

The undersigned certifies that consultation about the matter subject of this motion would have served no useful purpose.

Respectfully submitted,

LYLE LAW FIRM, LLC

s/ Todd R. Lyle

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ATTORNEY FOR THE PLAINTIFF

Columbia, South Carolina
June 19, 2025

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	FILE NO. 2022-CP-40-04419
	)	
Ansel Jamahl Postell,	)	
	)	
Plaintiff	)	
	)	
v.	)	MOTION TO DISMISS
	)	
Campus Advantage, Inc.,	)	
EMRES II South Carolina, LLC,	)	
and Katie Floyd,	)	
	)	
<u>Defendants.</u>	)	

PLEASE TAKE NOTICE that Defendants, by and through their undersigned attorney, hereby move the Court for an Order dismissing the claim filed in the above-captioned case pursuant to Rule 12(c) or, alternatively, for Summary Judgment pursuant to Rule 56, South Carolina Rules of Civil Procedure.

Defendants assert that there are no genuine issues of material fact in dispute: due to the intervening actions of a former employee of Defendant Campus Advantage, Inc., Plaintiff's personal property was removed from his residence and thrown away. Defendants worked with Plaintiff to replace these items until the filing of this lawsuit asserting claims – claims unsupported by the facts as plead.

This Motion is based on the pleadings in this case, the applicable statutory and common law, and the enclosed Exhibits attached hereto and made a part hereof. For all the foregoing reasons, Defendants request that Plaintiff's Complaint be dismissed *with prejudice*, with leave allowed solely for the determination of Plaintiff's verified damages from the loss of his property.

Respectfully submitted,

/s/ Timothy S. VanDenBerg
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Attorney for Defendants

Columbia, South Carolina
Dated: November 07, 2022

EXHIBIT A

ELECTRONICALLY FILED - 2022 Nov 07 1:44 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4004419

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	FILE NO. 2022-CP-40-04419
	)	
Ansel Jamahl Postell,	)	
	)	
Plaintiff	)	
	)	
v.	)	MEMORANDUM OF LAW
	)	IN SUPPORT OF DEFENDANTS'
	)	MOTION TO DISMISS
	)	
Campus Advantage, Inc.,	)	
EMRES II South Carolina, LLC,	)	
and Katie Floyd,	)	
	)	
<u>Defendants.</u>	)	

PLEASE TAKE NOTICE that Defendants, by and through their undersigned attorney, submit this Memorandum of Law in support of their Motion to Dismiss filed pursuant to Rule 12(c) or, alternatively, their Motion for Summary Judgment, pursuant to Rule 56, South Carolina Rules of Civil Procedure. As discussed more fully below, Defendants assert that there are no genuine issues of material fact in dispute. Accordingly, Plaintiff's claims should be dismissed, *with prejudice*, and this matter continued solely for verifying the content and replacement value of Plaintiff's lost property.

STATEMENT OF FACTS

Plaintiff first entered into a one-year lease agreement with Defendant EMRES II South Carolina LLC ("EMRES" or "Landlord") on July 6, 2021 for a term ending July 25, 2022. Plaintiff leased Unit 3007A, a 3-bedroom, 3-bathroom unit at Landlord's property at 1051 Southern Drive in Columbia, SC 29201 ("Rowan").

The truncated email exchange produced at Exhibit A to Plaintiff's Complaint is part of a longer series of email threads between Plaintiff's mother and the Rowan. After the end his school year at Benedict College, Plaintiff moved home to be with his family for the summer, leaving

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behind some of his belongings in Unit 3007A. Towards the end of May 2022, Plaintiff contacted staff at the Rowan to request a transfer to a new unit, effective at the beginning of the new lease term on July 26, 2022. To this end, staff prepared a “transfer lease” in OnSite, Defendants’ property management system, and the former site manager, Terrance Jackson, updated Plaintiff’s status on the “turn board”, a management tool used to track unit leasing status. Plaintiff’s “transfer” status on the turn board was still in effect when Mr. Jackson resigned on June 24, 2022.

Plaintiff and his father traveled back to Columbia the weekend of July 2, 2022 to tour the proposed transfer unit. Finding it unacceptable, Plaintiff decided not to move and signed a “renewal lease” for Unit 3007A on July 6, 2022 and his transfer lease was cancelled in OnSite. By this point in time, Defendant Katie Floyd (“Katie”) had assumed the role as site manager at the Rowan. The primary focus at that time was making preparations for “Turn” when the majority of units in the student housing industry undergo large-scale turnover as students return to their respective campus. Since Katie arrived at the Rowan in the midst of Turn, she and her regional manager, Nick Hooser, developed a strategy that would allow for an efficient leasing status assessment for all bedspaces as well as any required turnover maintenance and repair. These efforts are further described in detail at Exhibit B.

The loss of Plaintiff’s personal property was discovered on August 5, 2022 when Plaintiff returned to Columbia in advance of his fall semester at Benedict College. Rowan staff accompanied Plaintiff to Target that evening to purchase essential items - bedding, linens and toiletries – to start the process of replacing or compensating him for his lost property. To this end, Plaintiff’s mother sent a list and valuation of items on August 18, 2022, that same day as local station WLTX began a week-long story on property maintenance issues at the Rowan. The following week, this lawsuit was filed.

STANDARD OF REVIEW

Rule 12(c) allows a party to move for judgment on the pleadings “[a]fter the pleadings are closed but within such time as not to delay the trial.” SCRCP 12(c). The standard is almost identical to the standard employed in considering a Rule 12(b)(6) motion, with the key difference being that on a 12(c) motion, the court “consider[s] the answer as well as the complaint” and “documents incorporated by reference in the pleadings”. *Fitchett v. Cty. of Horry, S.C.*, C/A No. 4:10-cv-1648-TLW-TER, 2011 WL 4435756, at *3 (D.S.C. Aug. 10, 2011) (citations omitted).

A motion for summary judgment shall be granted where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Staubes v. City of Folly Beach*, 500 S.E.2d 160 (1998). A motion for summary judgment shall be rendered forthwith in the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *Standard Fire Insurance Co. v. Marine Contracting and Towing Co.*, 392 S.E.2d 460 (1990).

In determining whether any triable issues of fact exist, as would preclude summary judgment, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the non-moving party. *Koestar v. Carolina Rental Center, Inc.*, 443 S.E.2d 392 (1994). A party opposing a properly supported motion for summary judgment may not rest on the mere allegations or denials of the pleading, but must set forth or point to specific facts showing there is a genuine issue of material fact. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A party’s response to the motion must set forth specific facts, admissible in evidence, showing there is a genuine issue for trial. *Moody v. McLellan*, 295 S.C. 157, 367

S.E.2d 449 (Ct. App. 1988). If that party does not respond, summary judgment should be entered against that party. *Id.*

DISCUSSION

I. PLAINTIFF WAS NEVER EXCLUDED FROM UNIT 3007A.

SC Code Ann. § 27-40-660 describes ouster as the situation when “a landlord unlawfully removes or excludes the tenant from the premises, or willfully diminishes services to tenant by interrupting or causing interruption of essential services.” Here, Plaintiff has remained in possession of Unit 3007A at all times relevant to these proceedings. Furthermore, the essential services (e.g., sanitary plumbing or sewer services; electricity; gas, where it is used for heat, hot water or cooking; running water, and reasonable amounts of hot water and heat) provided to his unit have never been interrupted. SC Code Ann. § 27-40-210(17).

II. DEFENDANTS LACKED THE INTENT REQUIRED FOR CONVERSION.

Defendants never asserted a right to ownership of Plaintiff’s property. As detailed herein, Defendants employed a strategy, supported by policies, procedures, and training, to safeguard a tenant’s right to possession of real property and the contents therein. Here, the intervening act of a former employee resulted in the loss of Plaintiff’s personal property. Plaintiff knows this. The police officers who investigated this loss, but who were unable to pursue charges because of Plaintiff’s unwillingness to file a complaint, know this as well.

III. PLAINTIFF HAS NOT ESTABLISHED A PRIMA FACIE CASE FOR AN UNLAWFUL TRADE PRACTICE.

It is well-established that the lease of real property is a trade practice as might fall under cognizance of the SC Unfair Trade Practices Act. Plaintiff’s Complaint, however, merely makes this allegation without providing any facts – facts that, if assumed to be true, might substantiate

such a claim. Instead, Plaintiff's Complaint in § 15 refers to Defendants "acts or omissions" and, in § 29, to "[t]he actions of the Defendants" as the Defendants' "regular business practices", without actually providing any substantive details.

IV. DEFENDANTS HAVE NOT VIOLATED THE TERMS OF THE LEASE.

As described above, Plaintiff has never been denied possession of Unit 3007A. Plaintiff paid required rent for – and the Defendants provided access to, and possession of – Unit 3007A along with all of the essential services in support of Plaintiff's possession.

V. PLAINTIFF'S LOSS WAS ATTRIBUTED TO THE INTERVENING ACT OF A FORMER EMPLOYEE.

Plaintiff has failed to substantiate a *prima facie* claim of negligence under any theory put forth in his Complaint. As described in detail above, the loss of Plaintiff's personal property is due to the unilateral actions of a former employee, actions in direct contravention to Defendants' policies, procedures, and training

CONCLUSION

Based on the foregoing reasons, Defendants respectfully request that Plaintiff's Complaint be dismissed *with prejudice*, with leave allowed solely for the determination of Plaintiff's verified damages from the loss of his property.

Respectfully submitted,

/s/ Timothy S. VanDenBerg
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Facsimile: (803) 470-3660

Attorney for Defendants

Columbia, South Carolina
Dated: November 07, 2022

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

**IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
CASE NO. 2022-CP-40-04419**

Ansel Jamahl Postell,

Plaintiff,

vs.

**Campus Advantage Inc., EMRES II
South Carolina LLC and Katie Floyd.**

Defendant(s).

**PLAINTIFF'S MEMORANDUM IN
OPPOSITION TO THE ROWAN
DEFENDANTS' MOTION TO DISMISS**

This matter is before the court pursuant to a Motion to Dismiss filed by Defendants Campus Advantage, Inc., EMRES II South Carolina, LLC and Katie Floyd who operate the Rowan Apartments (the "Rowan Defendants"). Plaintiff Ansel Jamahl Postell ("Postell") files this Memorandum in Opposition to the Rowan Defendants' Motion to Dismiss.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

On July 6, 2021, Postell entered into a 12-month lease with the Rowan Defendants to lease the premises also known as "The Rowan," located just off of Bluff Road, in Columbia, South Carolina. This particular property is managed by Campus Advantage, Inc., based out of Austin, Texas. According to its homepage on its website, Campus Advantage, Inc. "specializes in creating successful communities in the student housing industry through our property management, investment and consulting services."

This original lease ended on July 25, 2022. On July 6, 2022, Postell signed a new twelve-month lease to renew his tenancy of the same apartment.

				
PARTIES AND LEASED PREMISES				
Owner EMRES II South Carolina, LLC		Address 1051 Southern Dr. Columbia, SC 29201		Phone (803) 255-0170
Resident Ansel J. Postell		Address [REDACTED]		Phone [REDACTED]
Email Address yungajp@icloud.com				
Unit 3007A		Floorplan 3x3.5 - 2000 sq/ft		
Street Address 1051 Southern Dr.	City Columbia	State SC	ZIP 29201	County Richland
LEASE TERM				
Type ☐ Move-In ☒ Renewal		Period Twelve (12) Installments	Start Date 7/26/2022	End Date 7/25/2023
			Date Signed July 6, 2022	
RENT				
Payable To		Address		Phone

On July 14, 2022, Postell's mother sent an email to Defendant Katie Floyd after having received notice from The Rowan Defendants that Postell had erroneously been placed on a list of tenants supposedly moving out of his apartment. Postell's mother also explained that Postell renewed his lease for another year. On July 17, 2022, Postell's mother sent an email to several Campus Advantage, Inc. employees, including Katie Floyd, notifying them of her intent to send in the renewal and rental payments. On July 19, 2022, Postell's mother mailed a payment for the first six months of the new lease.

On August 5, 2022, Postell departed his home in the Atlanta-Georgia area and returned to The Rowan ready to begin his next semester where he is an honors student at Benedict College. Postell arrived at his apartment and was horrified when he found his door to his bedroom slightly open, and the room completely emptied of all of his personal property. Postell immediately notified Campus Advantage, Inc. employees of this. To their credit, Katie Floyd and another employee of Campus Advantage, Inc., Christopher Lewis, took Postell to Target where they purchased several

basic necessities for Postell. It is uncontroverted that The Rowan Defendants caused Postell's personal property to become lost, destroyed or missing. An email from Katie Floyd confirms this.

Good evening,
 Thank you for your email regarding this issue and allowing Chris and me the opportunity to rectify this unfortunate event.
 Regarding the series of events, this is correct:
 All items from Unit 3007A (Ansel's apartment) were removed. Unfortunately, the removed items were not stored correctly and only some items have been recovered at this time.
 From our telephone conversation today, the initial (not final) quote for replacing all items is starting at \$20,000. While this remains an estimate, it is the minimum amount of financial reimbursement needed to cover the known items that were disposed of improperly.
 Additionally, it remains unknown if the computer tower can be repaired or if the parts will need to be replaced. Once confirmed, you will let us know so that we can make next steps in the preparation.
 If anything else is needed in the meantime, please let Chris or me know.
 Thank you,
Katie Floyd
 She / Her / Hers*
 General Manager
KFloyd@RowanApartments.com
 803.836.8438 – Office

Following this event, Postell was asked to provide a list of all his personal property that was lost, missing or destroyed. Postell and his mother complied and provided Katie Floyd with a spreadsheet totaling approximately \$25,000 of personal property. Included on this list was a custom-built computer put together by Postell over the past several years. Postell is an avid computer technician, and he routinely used this computer to run high-processing software such as various media editors, like Adobe Premiere Pro, Adobe After Effects and Photoshop. Postell also runs a part-time business as a stock trader and used his computer to run programs such as Ninja Trader and Rithmic Trader Pro. As a result of this loss, Postell has yet to replace his completely destroyed computer.

LEGAL STANDARD

“In reviewing a grant of summary judgment, the trial court must apply the standard set forth in 56(c), SCRCP. *Turner v. Milliman*, 392 S.C. 116, 121-22, 708 S.E.2d 766, 769 (2011). Summary Judgment is only appropriate “if the pleadings, depositions, answers to interrogatories and admission on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” *Rule 56(c)*, SCRCP. “In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party.” *Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 329-30, 673 S.E.2d 801, 802 (2009). “At the summary judgment stage of litigation, the court does not weight conflicting evidence with respect to a disputed material fact.” *S.C. Prop & Cas. Guar. Ass’n v. Yensen*, 345 S.C. 512, 518, 548 S.E.2d 880, 883 (Ct. App. 2001). *Allwin v. Russ Cooper Associates, Inc.*, 825 S.E.2d 707, 712 (S.C. Ct. App. 2019), reh’g denied (Apr. 19, 2019), cert. denied (Sept. 18, 2019).

ARGUMENT

The Rowan Defendants’ motion to dismiss should be denied as there are genuine issues of material fact as to each of the causes of action set forth in Postell’s Complaint. Mainly, by The Rowan’s own admission, liability is certain, and the real issue of fact lies in the determination of damages.

I. Unlawful Ouster

The Rowan Defendants argue that they never unlawfully removed or excluded Postell from his apartment. They further argue that Postell remained in possession of his apartment at all relevant times. While there is little caselaw interpreting S.C. Code Ann. 27-40-660 as it would apply in this

matter, “ouster” has been defined as “putting one out of possession.” *Sudduth v. Sumeral*, 61 S.C. 276, 39 S.E. 534 (1901). Here, The Rowan may not have diminished essential services such as water or sewer; however, The Rowan Defendants *reclaimed possession* from Postell when they completely removed the entirety of Postell’s personal property. This ouster was further enhanced when Katie Floyd acknowledged in an email to Postell’s mother that Postell’s property was ruined because it was not stored correctly.

Regarding the series of events, this is correct:
All items from Unit 3007A (Ansel’s apartment) were removed. Unfortunately, the removed items were not stored correctly and only some items have been recovered at this time.

In that same email, Floyd further admitted that Postell’s property was disposed of improperly.

the minimum amount of financial reimbursement needed to cover the known items that were disposed of improperly.

Indeed, while The Rowan Defendants may not have denied essential services, such as water and sewer, to Postell, the acts or omissions of The Rowan Defendants essentially caused Postell to become constructively ousted from the apartment that Postell lawfully rented. Postell no longer had any of his clothing or personal property. These facts clearly would allow a jury to determine whether The Rowan Defendants committed unlawful ouster when they lost or destroyed all of Postell’s personal property.

II. Conversion

The Rowan Defendants argue that they never asserted a right to ownership of Postell’s property. This, again, is a question of fact and is properly decided by a jury. “Conversion is the

unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the alteration of the condition or the exclusion of the owner's rights.” *Hawkins v. City of Greenville*, 358 S.C. 280, 297, 594 S.E.2d 557, 566 (Ct. App. 2004). “Conversion may arise by some illegal use or misuse, or by illegal detention of another's personal property.” *Regions Bank v. Schmauch*, 354 S.C. 648, 667, 582 S.E.2d 432, 442 (Ct.App. 2003).

The Rowan Defendants were not authorized to remove Postell’s property from his lawfully rented apartment. The Rowan Defendants did just that when they completely cleaned out his apartment. These defendants further denied him the use of his personal property when they caused his property to become destroyed or lost. Agents, servants or employees of The Rowan Defendants admittedly removed Postell’s personal property. Thus, they denied Postell of its use.

III. Unfair Trade Practices

The Rowan Defendants argue that Postell has not proven a prima facie case for the cause of action for unfair trade practices. While it is noteworthy that discovery is ongoing, it is important to highlight the current jurisprudence on this issue. Indeed, residential leases are things of value which directly affect the citizens of this state. *Burbach v. Investors Mgmt. Corp. Intern.*, 326 S.C. 492, 497, 484 S.E.2d 119, 121 (Ct. App. 1997). The fact that our legislature has regulated the landlord-tenant relationship by enacting the SCRLTA supports this conclusion. *Id.* While landlord-tenant relationships are frequently governed by contract, landlords have certain statutory duties, as do tenants. These duties protect the public interest in that they create a framework that governs landlord-tenant relationships regardless of the private arrangements parties have made between themselves. *Id.*

Moreover, the conduct of the landlords is capable of repetition. “[U]nfair or deceptive acts or practices in the conduct of trade or commerce have an impact upon the public interest if the acts or practices have the potential for repetition.” *Noack Enterprises, Inc. v. Country Corner Interiors of Hilton Head Island, Inc.*, 290 S.C. 475, 480, 351 S.E.2d 347, 350–51 (Ct.App.1986), cert. dismissed, 294 S.C. 235, 363 S.E.2d 688 (1987).

While discovery is ongoing and Postell has not yet taken a deposition of The Rowan Defendants, it is noteworthy that The Rowan Defendants have shamelessly admitted that they failed to follow their own policies. Indeed, by The Rowan Defendants’ own admission, they failed to follow a policy that they specifically created to avoid repeated harms to their tenants and have pointed this out in their filed affidavit which purportedly supports their Motion to Dismiss. Specifically, former employee of The Rowan, Nicholas Hooser, states in his affidavit that he helped institute a policy to avoid erroneously destroying their tenants’ property.

9. That, on 7/13/2022, I distributed the CAI “bag & tag” policy (regarding the preservation of items left behind by former tenants) to all site managers under my purview.

Mr. Hooser further stated that “no trash-outs” should occur at any of the apartments.

12. That, during this kick-off meeting, I told staff that no trash-outs or bag and tags would occur that day since they were scheduled for later in the week and that failure to comply with Turn policies and procedures would result in immediate termination.

13. That, on 8/5/2022, Plaintiff reported to Rowan staff that all the contents of his unit (3007A) were missing.

14. That, soon after receiving this report, Rowan staff discovered that a majority of the contents of Plaintiff's unit had been trashed-out.

In sum, the Rowan Defendant admit that they instituted a policy. They admit they failed to follow their own policy. Their failure was the proximate cause of Postell's damages. Moreover, Postell experienced the type of harm that this policy was purportedly designed to prevent. As such, there is clearly enough evidence to allow Postell to further pursue this cause of action as this deals with a residential lease agreement and because there is sufficient evidence that this type of behavior can easily be repeated by these defendants.

IV. Breach of Contract

Relying on a similar argument that Postell was not denied the use or possession of his apartment, The Rowan Defendants also argue that they did not breach any material terms of the lease. By law, any lease in South Carolina is to follow the South Carolina Residential Landlord Tenant Act. This carries a requirement of good faith and fair dealing. See S.C. Code Ann. 27-40-220. Here, it is disingenuous to argue that The Rowan Defendants did not breach any material term of a lease governed under the South Carolina Residential Landlord Tenant Act when these landlords admittedly lost or destroyed the vast majority of Postell's personal property.

As such, it is a question of fact whether The Rowan Defendants' conduct rises to the level of a breach of the lease agreement. Therefore, a jury should decide this.

V. Negligence

The Rowan Defendants seek to avoid liability by claiming that a former employee of the defendants acted out of order and that this was an intervening or superseding cause. As a threshold

matter, Postell should be allowed to seek relief under the theory that management of The Rowan Defendants failed to hire or supervise or train employees and that this failure was the proximate cause of Postell's damages. Simply put, these defendants cannot cloak themselves of liability when they were ultimately responsible for hiring and supervising their employees. This is common sense.

Beyond this, and as previously discussed, Nicholas Hooser, a former employee of The Rowan Defendants, states in his affidavit that employees of the Defendants failed to follow a policy of the Defendant company. While it can easily be argued that employees of the Defendants are agents for that Defendant, it is also worth noting that The Rowan Defendants are equally liable for failing to follow their own policy.

In *Miller v. City of Camden*, the Supreme Court addressed the issue of when a legal duty of care is created by an actor's voluntary assumption or undertaking of such a duty: "The common law ordinarily imposes no duty on a person to act. If an act is voluntarily undertaken, however, the actor assumes the duty to use due care. While the law imposes this duty on a volunteer, the question whether such a duty arises in a given case may depend on the existence of particular facts." 329 S.C. 310, 314-15, 494 S.E.2d 813, 815 (1997).

Here, the facts are shown in Nicholas Hooser's affidavit in that the policies were created to avoid the erroneous destruction or loss of their tenants' personal property. In the matter at hand, Postell was a tenant at The Rowan and management for The Rowan Defendants lost Postell's personal property, in part, by failing to follow those policies set forth by Nicholas Hooser. As such, Postell has more than clearly met his burden to determine whether there is a genuine issue of material fact as to whether The Rowan Defendants were negligent when they lost or destroyed his personal property.

CONCLUSION

For the above-mentioned reasons, the undersigned respectfully requests that this Court deny the Defendants' motion to dismiss.

Respectfully Submitted,

s/Todd R. Lyle (SC Bar #:102308)

REEVES & LYLE, LLC

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Columbia, South Carolina 29211

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(803) 929-0927 (facsimile)

todd@reevesandlyle.com (email)

ATTORNEY FOR PLAINTIFF

Lexington, South Carolina
June 14, 2023

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
CASE NO. 2022-

Ansel Jamahl Postell,

Plaintiff(s),

vs.

**Campus Advantage, Inc. d/b/a The
Rowan, EMRES II South Carolina, LLC
and Katie Floyd,**

Defendants.

SUMMONS
(JURY TRIAL DEMANDED)

TO: THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer thereto upon the attorney for the Plaintiff at his office, Post Office Box 11126, Columbia, South Carolina, 29211, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within such time, judgment will be rendered against you for the relief demanded in the Complaint.

Respectfully submitted,

s/Todd R Lyle
Todd R. Lyle (SC Bar #102308)
REEVES & LYLE, LLC
Post Office Box 11126
Columbia, South Carolina 29211
(803) 929-0001
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Todd@ReevesAndLyle.com (email)
ATTORNEY FOR PLAINTIFF

Columbia, South Carolina
August 25, 2022

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
CASE NO. 2022-

Ansel Jamahl Postell,

Plaintiff(s),

vs.

**Campus Advantage, Inc. d/b/a The
Rowan, EMRES II South Carolina, LLC
and Katie Floyd,**

Defendants.

COMPLAINT
(JURY TRIAL DEMANDED)

The Plaintiffs, complaining of the Defendants above named, would respectfully show unto this Court, the following:

1. Plaintiff Ansel Postell (hereinafter “Postell”) is a citizen and resident of Richland County, South Carolina.

2. Upon information and belief, Defendant Campus Advantage, Inc., is a Delaware corporation duly operating under South Carolina laws and conducts business as the property manager under the name, “The Rowan” or “Rowan Apartments” (hereinafter “Management”).

3. Defendant EMRES II South Carolina, LLC (hereinafter “Owner”) is a Delaware corporation duly operating under South Carolina laws.

4. Upon information and belief, Defendant Katie Floyd (hereinafter “Floyd”) is a citizen and resident of Richland County, South Carolina.

5. At all times relevant to this complaint, Defendant Floyd is the General Manager for Defendant Management and Defendants Floyd Management were acting as an agent, servant or employee of Defendant Owner and further were acting within the scope of its authority.

6. On or about July 6, 2021, Plaintiff entered into a lease at The Rowan Apartments, located in Columbia, SC. This lease was set to expire some time in July of 2022.

7. On July 11, 2022, Defendant Floyd sent an email to Postell with instructions relating to a Move-Out Day to occur on or about July 25, 2022. Postell sent this email to his mother, Shawndolena Postell who promptly emailed back and forth with Katie Floyd to confirm that Postell's lease would be renewed and that the Move-Out Day instructions were inapplicable to Postell (see Exhibit A)

8. On July 25, 2022, the payment sent by Postell's mother on July 18, 2022 posted and cleared her bank account, in the amount of \$3,810.00, which constituted 6 monthly lease payments in order to fulfill the terms of renewing the lease of the apartment.

9. On August 5, 2022, Postell returned to Columbia, South Carolina to begin another semester of college where Postell is an honors student at Benedict College.

10. Postell returned to his apartment and was shocked to find that his apartment had been completely emptied of all his personal belongings.

11. Postell immediately notified his mother who then contacted the management at Rowan Apartments to try and rectify the situation.

12. On August 7, 2022, Defendant Floyd wrote to Postell's mother and admitted that Postell's personal belongings were improperly removed and also not stored correctly and were therefore ruined or destroyed. (see Exhibit B).

13. Christopher Lewis, the Leasing and Marketing Manager of The Rowan Apartments as well as Defendant Floyd engaged in several calls and emails with Postell's mother over the following weeks wherein Postell's mother provided a list of personal property that was regrettably

lost or stolen. Throughout this process Floyd or Lewis assured Postell and his mother that the items would be replaced or just compensation would be given to Postell.

14. Postell's mother continued to reach out to Floyd and/or Lewis to no avail. On August 23, 2022, after having not received any meaningful plan or proposition to rectify the problem, Postell and his mother took the only other option and retained legal counsel.

15. As a result of the Defendant's acts or omissions resulting in the lost or stolen items, Postell and his mother have been forced to suffer the worry and fear of having to replace each of these items as well as the cost of doing the same.

16. Furthermore, having to deal with the replacement of certain items has caused an enormous burden on Postell and has required so much of his time that Postell was unable to attend classes at Benedict College for several of the first few days of semester, placing his semester's performance in jeopardy and also risking several scholarships and benefits for which Postell had previously earned.

17. On August 18, Postell provided an itemized list of missing or damaged personal property items and requested compensation to replace or repair the items that were lost, stolen or damaged. Defendants have failed to respond to Postell's request.

FOR A FIRST CAUSE OF ACTION
(Unlawful Ouster - §27-40-660)

18. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

19. The Defendants' unlawful ouster of the Plaintiff resulted in a violation of SC Code Ann. §27-40-660 and has caused the Plaintiffs damages.

20. The Plaintiff is entitled to damages pursuant to that statute, including all applicable damages under the SC Landlord Tenant Act, and an award of reasonable attorney fees.

FOR A SECOND CAUSE OF ACTION
(Conversion of Chattels)

21. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

22. The Defendants' unauthorized retention and exercise of the rights of ownership of the tenants' property as well as the loss and damage of his personal property deprived the Plaintiff of its use and benefit and constituted a conversion of the amount wrongfully retained, lost, stolen or damaged.

23. As a result, the Plaintiff is entitled to damages as determined by this Court.

24. The acts of the Defendants should also be punished by an appropriate award of punitive damages.

FOR A THIRD CAUSE OF ACTION
(Unfair Trade Practices)

25. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

26. Defendants are engaged in the business of renting or managing rental or residential real property to tenants within the State of South Carolina. The Defendants have repeatedly rented other residences in South Carolina, to tenants other than the Plaintiff, both before and after the Plaintiff's tenancy.

27. The actions of the Defendants in unlawfully ousting the tenants, as well as losing, stealing or otherwise converting the Plaintiff's personal property and denying him use of the property were unfair or deceptive acts in conduct of trade or commerce.

28. Because the Defendants continued rental of residences, the actions of the Defendants, which are alleged in this complaint, have the potential for being repeated by the Defendants.

29. The actions of the Defendants reflect the Defendants' regular business practices, in that similar actions have been taken by the Defendants with regard to other tenants in South Carolina.

30. As a result of the actions of the Defendants, the Plaintiff has suffered loss of the benefit of the bargain; the loss of that personal property; legal fees; and the costs of this lawsuit.

31. The Plaintiff is entitled to three times the actual damages, and a reasonable award of attorney fees under S.C. Code Ann §39-5-140 (2006) ("The South Carolina Unfair Trade Practices Act.")

FOR A FOURTH CAUSE OF ACTION
(Breach of Contract)

32. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

33. The Plaintiff and Defendants have entered into a lease agreement (see Exhibit C). The terms of the lease also have requirements of the landlord or owner.

34. The acts or omissions of the Defendants constitute a breach of this lease agreement and the resulting damages to the Plaintiff were caused by the Defendants' breach.

FOR A FIFTH CAUSE OF ACTION
(Negligence)

35. The Plaintiff would reallege the previous allegations as if fully set forth therein.

36. The Defendants and each of them were negligent, careless, reckless, willful, wanton and grossly negligent in their contact with the Plaintiff in the following particulars.

- a. In failing to properly hire qualified agents, servants and employees
- b. In failing to supervise the defendants' agents, servants and employees.
- c. In failing to properly train the agents, servants and employees.

d. In retaining the agents, servants and employees who participated in the wrongful ouster and conversion of the Plaintiffs' personal property.

e. In failing to exercise the level of care necessary under the circumstance then and their prevailing.

37. The acts and omission of the defendants were the proximate cause of the Plaintiff's injuries.

38. As a result of the acts and omissions of the Defendants, the Plaintiff has suffered actual damages in an amount that is to be determined by a jury.

WHEREFORE, having fully set forth this complaint, the Plaintiff prays for judgment against the Defendants for actual damages, treble damages and punitive damages in an amount to be determined by a jury, for costs and expenses and attorney's fees as allowed by statute, and such other and further relief as this Court deems just and proper.

Respectfully submitted,

s/Todd R Lyle
Todd R. Lyle (SC Bar #102308)
REEVES & LYLE, LLC
Post Office Box 11126
Columbia, South Carolina 29211
(803) 929-0001
(803) 929-0927 (facsimile)
Todd@ReevesAndLyle.com (email)
ATTORNEY FOR PLAINTIFF

Columbia, South Carolina
August 25, 2022

EXHIBIT A

Todd Lyle

From: Shawndolena Arnold <sarnold1569@yahoo.com>
Sent: Wednesday, August 24, 2022 5:35 PM
To: Arnold-Postell, Shawndolena
Subject: Fw: This should not be coming to me Move-Out Day and Turn Information

CAUTION: This email originated from outside of DHS. DO NOT click links or open attachments unless you recognize and/or trust the sender. Please select the Phish Alert Report button on the top right of your screen to report this email if it is unsolicited or suspicious in nature.

Sent from Yahoo Mail for iPhone

Begin forwarded message:

On Wednesday, July 20, 2022, 1:17 PM, Trinita Geathers <tgeathers@rowanapartments.com> wrote:

Thank you, we will be looking for it!

From: Shawndolena Arnold <sarnold1569@yahoo.com>
Sent: Wednesday, July 20, 2022 1:16 PM
To: Trinita Geathers <tgeathers@rowanapartments.com>; Katie Floyd <KFloyd@rowanapartments.com>; Christopher Lewis <clewis@rowanapartments.com>
Subject: Re: This should not be coming to me Move-Out Day and Turn Information

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good Afternoon as a heads up. Thanks the check was mailed yesterday to the attention of Rachelle Leak.

Sent from Yahoo Mail for iPhone

On Monday, July 18, 2022, 10:07 AM, Trinita Geathers <tgeathers@rowanapartments.com> wrote:

It would go to Rachelle Leak, she's the bookkeeper.

From: Shawndolena Arnold <sarnold1569@yahoo.com>
Sent: Monday, July 18, 2022 10:03 AM
To: Trinita Geathers <tgeathers@rowanapartments.com>; Katie Floyd <KFloyd@rowanapartments.com>; Ansel Postell <yungajp@icloud.com>; Christopher Lewis <clewis@rowanapartments.com>
Subject: Re: This should not be coming to me Move-Out Day and Turn Information

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Can you please provide a POC or should it come to you?

Thanks so much for the follow up.

Sent from Yahoo Mail for iPhone

On Monday, July 18, 2022, 8:43 AM, Trinita Geathers
<tgeathers@rowanapartments.com> wrote:

Hey Ms. Arnold,

You can send payment to The Rowan, 1051 Southern Dr,
Columbia SC 29201

From: Shawndolena Arnold <sarnold1569@yahoo.com>
Sent: Sunday, July 17, 2022 5:39 PM
To: Katie Floyd <KFloyd@rowanapartments.com>; Ansel Postell
<yungajp@icloud.com>; Christopher Lewis
<clewis@rowanapartments.com>; Trinita Geathers
<tgeathers@rowanapartments.com>
Subject: Re: This should not be coming to me Move-Out Day and Turn
Information

CAUTION: This email originated from outside of the organization. Do not click
links or open attachments unless you recognize the sender and know the
content is safe.

Thanks for the clarification Katie. I would like to send a check for a 6
month payment on behalf of Ansel Postell at apt 3007A this week.
Payment will be for August 2022 through January 2023

I also sent this question to Trinita and Christopher.

Please provide me with the Point of Contact name and a mailing address
as I would like to put this in the mail this week.

Thanks in advance.

If you have questions please contact me at 4042176614 Shawndolena
Arnold-Postell..

Sent from Yahoo Mail for iPhone

On Thursday, July 14, 2022, 9:15 PM, Katie Floyd
<KFloyd@rowanapartments.com> wrote:

Good evening,

Thank you for your email.

The second sentence of the email states that our records have you renewing your lease with us. I have also highlighted the two parts where the renewal was acknowledged.

The remainder of the email details information that is important for all renewed residents to review, as operations at the property will be adjusted for the next few weeks. I wanted to communicate information proactively to those renewed residents since they will be impacted.

Once the email has been reviewed in its entirety, please let me know if there are any additional questions regarding the applicable information it contains.

Thank you,

Katie Floyd

She / Her / Hers*

General Manager

KFloyd@RowanApartments.com

803.836.8438

www.rownapartments.com

The Rowan • 1051 Southern Dr • Columbia, SC 29201

[Why do I include my pronouns?](#)



From: Shawndolena Arnold <sarnold1569@yahoo.com>

Sent: Thursday, July 14, 2022 6:16 PM

To: Ansel Postell <yungajp@icloud.com>; Katie Floyd <KFloyd@rownapartments.com>; Christopher Lewis <clewis@rownapartments.com>; Trinita Geathers <tgeathers@rownapartments.com>

Subject: Re: This should not be coming to me Move-Out Day and Turn Information

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good Afternoon Katie,

Ansel Postell has renewed his lease for apt 3007A for the upcoming year. He should not be receiving this email. Please speak with Christopher about the below as well as his lease renewal.

Feel free to give me a call at 404/217-6614. I have sent a previous email to Christopher and Trinita regarding this concern.

EXHIBIT B

On Sunday, August 7, 2022, 6:52 PM, Katie Floyd <KFloyd@rowanapartments.com> wrote:

Good evening,

Thank you for your email regarding this issue and allowing Chris and me the opportunity to rectify this unfortunate event.

Regarding the series of events, this is correct:

All items from Unit 3007A (Ansel's apartment) were removed. Unfortunately, the removed items were not stored correctly and only some items have been recovered at this time.

From our telephone conversation today, the initial (not final) quote for replacing all items is starting at \$20,000. While this remains an estimate, it is the minimum amount of financial reimbursement needed to cover the known items that were disposed of improperly.

Additionally, it remains unknown if the computer tower can be repaired or if the parts will need to be replaced. Once confirmed, you will let us know so that we can make next steps in the preparation.

If anything else is needed in the meantime, please let Chris or me know.

Thank you,

Katie Floyd

She / Her / Hers*

General Manager

KFloyd@RowanApartments.com

803.836.8438 – Office

EXHIBIT C



LEASE CONTRACT

CERTIFIED LEASE SOUTH CAROLINA

PARTIES AND LEASED PREMISES

Owner EMRES II South Carolina, LLC	Address 1051 Southern Dr. Columbia, SC 29201	Phone (803) 255-0170
Resident Ansel J. Postell	Address [REDACTED]	Phone [REDACTED]
Email Address yungajp@icloud.com		
Unit 3007A	Floorplan 3x3.5 - 2000 sq/ft	
Street Address 1051 Southern Dr.	City Columbia	State SC
	ZIP 29201	County Richland

LEASE TERM

Type ☐ Move-In ☒ Renewal	Period Twelve (12) Installments	Start Date 7/26/2022	End Date 7/25/2023	Date Signed July 6, 2022

RENT

Payable To The Rowan	Address 1051 Southern Dr., Columbia, SC 29201	Phone (803) 255-0170
Office Hours Monday - Friday 10am - 7pm; Saturday 10am - 5 pm; Sunday 1 - 5 pm	Due On 1st	Late On 6th
	Fax () -	

CHARGES

Late Payment	\$100.00	Dishonored Payment	\$35.00	Transfer Charge	\$300.00
Reletting Charge	\$250.00				

CONCESSIONS

1. Monthly Concession: July 26, 2022 - July 25, 2023 - \$85.00	\$85.00

(Concessions not applied for full lease term are not factored into Installment Payments)

INSTALLMENT PAYMENTS		DEPOSITS		FEES	
Rent	\$720.00	Security Deposit	\$0.00	Application Fee	\$60.00
Monthly Concession	(\$85.00)	TOTAL SECURITY DEPOSIT	\$0.00	TOTAL ONE-TIME FEES	\$60.00
TOTAL INSTALLMENT	\$635.00	(Paid - \$0.00)			

THIS RESIDENTIAL LEASE CONTRACT (this "Agreement") is made and entered into as of the **6th** day of **July, 2022**, by and between Owner of Residential Community ("Owner") and **Ansel J. Postell** (hereinafter collectively "Residents"). Owner hereby leases to Residents the premises at **1051 Southern Dr., Columbia, SC 29201** (the "Leased Premises"), located within **The Rowan** (the "Residential Community"), for use exclusively as a private residence, and not for any other purpose. The Leased Premises may also include the rental of parking, storage and garage spaces, if applicable, which will be designated and included in a separate written agreement. Residents' performance of their obligations contained in this Agreement may be guaranteed by a third party. Any third-party guarantee agreements will be included with and attached to this Agreement. Owner's representatives, agents, affiliates, successors, assigns, employees, officers, and directors are hereby incorporated by reference to benefit from any and all waivers, releases, and limitations of liability made by Residents hereunder.

This Agreement is governed by the South Carolina Residential Landlord and Tenant Act, Section 27-40-10, et. seq., of the Code of Laws of South Carolina, 1976, as amended (the "Act").

Any individual(s) assigned by Owner to share the Leased Premises with Residents, or to occupy another bedroom of the same apartment as Residents, under a separate Residential Lease Contract, shall be referred to hereinafter as "co-resident(s)." Unless otherwise specified in this Agreement, Residents acknowledge and agree that this Agreement is for the lease of a bed space or bedroom and not a specifically numbered apartment, which may be shared with co-residents. Residents have the

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	FILE NO. 2022-CP-40-04419
	)	
Ansel Jamahl Postell,	)	
	)	
Plaintiff	)	
	)	DEFENDANT’S ANSWER AND
v.	)	AFFIRMATIVE DEFENSES
	)	
Campus Advantage, Inc.,	)	
EMRES II South Carolina, LLC,	)	
and Katie Floyd,	)	
	)	
<u>Defendants.</u>	)	

Defendants Campus Advantage, Inc. (“CAI”), EMRES II South Carolina, LLC (“EMRES” or “Landlord”), and Katie Floyd (“Floyd”) (collectively, “Defendants”) hereby respond to the allegations of the Complaint of Plaintiff, Ansel Jamahl Postell (“Plaintiff” or “Postell”), in accordance with the paragraphs thereof, as follows:

GENERAL DENIAL

Each and every allegation of the Complaint that is not hereinafter specifically admitted is **denied** and strict proof thereof is demanded.

**AS TO INTRODUCTORY PARAGRAPHS ON
JURISDICTION, VENUE, AND FACTUAL BACKGROUND**

1. Paragraph 1 of the Complaint is a legal conclusion to which no response is required. To the extent a response is required, Defendants admit that Plaintiff provided a copy of a South Carolina driver’s license when applying to lease property from EMRES located at 1051 Southern Drive, Columbia, SC 29201 (“Rowan” or “the Rowan”) and that he still resides in Unit 3007A at the Rowan.

2. Denied as stated. CAI is a national property management company that provides services in support of the Rowan.

3. Admitted.

4. Denied as stated. Defendant Floyd is a resident of Barrow County, Georgia.

5. Denied as stated. Defendant Floyd is employed by CAI, a national property management company that provides services in support of the Rowan. At all times relevant to this matter, Floyd was acting within the scope of her authority as a CAI employee.

6. Admitted.

7. Paragraphs 7-17 are denied as stated and contain legal conclusions to which no response is required. To the extent a response is required, Defendants admit that, during the time in question, they were working with Plaintiff and his mother, who was the Guarantor to his lease agreement, on matters related to the renewal of his lease at the Rowan. Defendants removed the contents of Plaintiff's unit at the end of his prior lease period, which ended July 25, 2022, when Defendant was mistakenly added to the tenant move-out list. Defendant discovered this error when informed of the same by Plaintiff on or about August 5, 2022. For the next several weeks, Defendant worked with Plaintiff and his mother to identify the missing or damaged contents in order to compensate Plaintiff for his loss. Defendants continued their efforts to resolve this until served with Notice of the instant suit. The timing of the apparent breakdown in negotiations alluded to in Paragraph 14 of Plaintiff's Complaint coincides with several days of unfavorable news reports in local media about the Rowan.

AS TO THE FIRST CAUSE OF ACTION
(Unlawful Ouster §27-40-660)

8. Defendants reinstate and incorporate by reference the foregoing paragraphs as if set forth herein verbatim.

9. Paragraphs 18-20 are Denied as stated and contain legal conclusions to which no response is required. To the extent a response is required, Plaintiff's renewal lease term for Unit 3007A with

Landlord commenced on July 26, 2022 and will run until July 25, 2023. As noted in Paragraph 8 of his Complaint, Plaintiff has already paid the first six installments of his lease contract. To date, Plaintiff is still in possession of Unit 3007A and has been at all times relevant to these proceedings. Furthermore, at no time have Defendants denied to Plaintiff any essential services, as they are defined at SC Code Ann. § 27-40-210(17).

AS TO THE SECOND CAUSE OF ACTION
(Conversion of Chattels)

10. Defendants reinstate and incorporate by reference the foregoing paragraphs as if set forth herein verbatim.

11. Paragraphs 21-24 are Denied as stated and contain legal conclusions to which no response is required. To the extent a response is required, Defendants admit that the contents of Plaintiff's unit were removed with the intent to store them for later retrieval by Plaintiff.

AS TO THE THIRD CAUSE OF ACTION
(Unfair Trade Practices)

12. Defendants reinstate and incorporate by reference the foregoing paragraphs as if set forth herein verbatim.

13. Paragraphs 25-31 are Denied as stated and contain legal conclusions to which no response is required.

AS TO THE FOURTH CAUSE OF ACTION
(Breach of Contract)

17. Defendants reinstate and incorporate by reference the foregoing paragraphs as if set forth herein verbatim.

18. Paragraphs 32-34 are Denied as stated and contain legal conclusions to which no response is required.

AS TO THE FIFTH CAUSE OF ACTION
(Negligence)

19. Defendants reinstate and incorporate by reference the foregoing paragraphs as if set forth herein verbatim.

20. Paragraphs 35-38 are Denied as stated and contain legal conclusions to which no response is required. To the extent a response is required, Defendants admit that the intervening act by a former employee of CAI resulted in the permanent loss to some of Plaintiff's personal property.

AS TO THE FIRST "WHEREFORE" CLAUSE

1. Denied.

FIRST AFFIRMATIVE DEFENSE

The Complaint, and each and every cause of action contained therein, fails to state facts sufficient to constitute a cause of action and should, therefore, be dismissed.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's recovery for any damages allegedly sustained by them must be reduced to the extent that they had the ability and opportunity to mitigate their damages in this action, but have failed or refused to make reasonable and adequate efforts to do so.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's damages, if any, may be limited by the after-acquired evidence rule.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrines of laches, waiver, and/or estoppel.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrine of unclean hands.

SIXTH AFFIRMATIVE DEFENSE

Defendants reserve the right to rely upon such other affirmative defenses as the evidence may show through the course of Discovery and reserves the right to amend this Answer to assert any such defenses.

WHEREFORE, having fully answered Plaintiff's Complaint, Defendants respectfully requests that this Court grant it the relief sought below:

1. Dismiss Plaintiff's Complaint in its entirety with prejudice;
2. Order Plaintiffs to pay Defendants' costs, expenses, and attorney's fees reasonably incurred in the defense of this action; and,
3. Render to Defendants any additional relief that the Court deems just and proper.

Respectfully submitted,

s/ Timothy S. VanDenBerg
Timothy S. VanDenBerg (SC Bar No. 77472)
tvandenberg@vdblegal.com
VanDenBerg Law Firm, LLC
5111 Trenholm Road, Suite 220
Columbia, SC 29206
4711 Forest Drive, Suite 3, PMB 116
Columbia, SC 29206
Telephone: (803) 250-1832
Facsimile: (803) 470-3660

Attorney for Defendants

Columbia, South Carolina
Dated: September 28, 2022

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
2) FIFTH JUDICIAL CIRCUIT
3) 2022-CP-40-04419
4)
COUNTY OF RICHLAND)

5 ANSEL JAMAHL POSTELL,)
6)
7 Plaintiff,)

8) TRANSCRIPT OF RECORD
9 vs.)

10 CAMPUS ADVANTAGE, INC. and)
11 EMRES II, SOUTH CAROLINA,)
12 LLC, d/b/a THE ROWAN,)
13 Defendants.)

14 September 16, 18, & 19, 2024

15 Columbia, South Carolina

16 B E F O R E:

17 HONORABLE MILTON G. KIMPSON, JUDGE

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

19 Todd R. Lyle, Esquire
20 Attorney for the Plaintiff

21 Timothy S. VanDenBerg, Esquire
22 Attorney for the Defendants

23 Lisa G. Amick
24 Court Reporter
25

INDEX OF WITNESSES**Ms. Arnold (9-16-24)**

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E X H I B I T SPLAINTIFF'S

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1 COURT'S

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1 THE COURT: My intent is just to go over the pre-
2 trial matters for a second. If you'll introduce yourselves,
3 Plaintiff.

4 MR. LYLE: Thank you, Your Honor. Todd Lyle here on
5 behalf of the Plaintiff, Mr. Ansel Postell.

6 THE COURT: Mr. Postell, how are you this morning?

7 MR. POSTELL: Good. How about yourself?

8 THE COURT: Good, very good. And I wanted to make
9 sure that I had your name correct, so Mr. Lyle, thank you for
10 pronouncing it. Yes, sir.

11 MR. VANDENBERG: Good morning, Your Honor. Timothy
12 Vanderburg on behalf of the two Defendants, Campus Advantage
13 Incorporated and EMRES II, South Carolina, LLC.

14 THE COURT: Thank you. Now, I've got pretrial briefs
15 and thank you for that. I did want to, from both of you, so
16 thank you for that. I wanted to go over first the various
17 motions in limine and then we're going to take a few minutes
18 and hopefully go over the voir dire. Am I correct that we
19 probably will call the jury by 1:00, 1:30? Or is that
20 completely up to me?

21 CLERK: That's completely up to you, Your Honor.

22 THE COURT: Okay. Alright. Good enough. Y'all bear
23 with me, I was at the Administrative Law Court for 7 years, and
24 of course, there were no juries, so this is a pleasant
25 experience. Let me start with the Plaintiff's motion in

1 limine. Mr. Lyle, if you'll kind of tell me, I've got it in
2 front of me. The first thing you want to exclude is statements
3 made from the alleged roommate of Mr. Postell to anyone
4 associated with the Defendants?

5 MR. LYLE: That's correct, Your Honor. The
6 Defendant's pretrial brief mentions the name, first time I've
7 ever heard them, two roommates, one is a Joseph Green, and the
8 other one was someone Gamble. They have not been listed as
9 witnesses before, they've never been disclosed to me on
10 discovery responses to interrogatories, and so while we
11 certainly would work with it if we needed to, I believe it's
12 blatant hearsay as to the heart of the issue. You know, to
13 better understand the facts of this case, it deals with the
14 inadvertent or intentional trash out of Mr. Postell's apartment
15 at The Rowan Apartments a couple weeks before he returned to
16 start on his semester at Benedict College. And so there are
17 some references to some roommates, and to be clear, these
18 aren't roommates like they shared a room, these are roommates
19 like there are a triplex, they have a common area, but
20 apparently one of them told some employees of the Defendant
21 that he in fact moved out which they're going to likely use to
22 help to bolster the reason why they went ahead and disregarded
23 the property list and trashed out the room. And so those two
24 names, again, had not been disclosed until this pretrial brief,
25 they've never been given to me and they're blatant hearsay. So

1 we would ask that there be any, any reference to what this
2 alleged roommate had said needs to be strictly warned of
3 any witness who might would take the stand for the
4 Defense.

5 THE COURT: And these persons are not on the
6 Defendant's witness list?

7 MR. LYLE: They're not, Your Honor.

8 THE COURT: So they will not be called to ---

9 MR. LYLE: I certainly ---

10 THE COURT: --- testify?

11 MR. LYLE: --- wasn't plan on calling them and I
12 would object to them being called by the Defendant based on the
13 fact that they've never been disclosed until now.

14 THE COURT: Of course, your client could tell us who
15 his roommates were, is that right?

16 MR. LYLE: Well, he, he would say he didn't even know
17 them or didn't have any personal relationship with them. But
18 again, those names were not even mentioned until the pretrial
19 brief. But I have Defendant's responses to Plaintiff's
20 interrogators and supplemental responses to the supplemental
21 interrogatories and again, those names are not mentioned. And
22 I would further point out they're not even mentioned on the
23 witness list of the Defendant's pretrial brief.

24 THE COURT: Thank you. Yes, sir. And what I prefer
25 to do is instead of going back and forth on one, tell me why

1 these, if these statements are to be offered, why they aren't
2 hearsay?

3 MR. VANDENBERG: Sure. So I guess on the first
4 point, one of the, I'm guessing the proposed exhibits is both
5 on our exhibit list and his exhibit list contained therein is a
6 list of the roommates, Mr. Postell's roommates, so he is
7 correct, they're not our witnesses, but you know, the fact that
8 we have discussed their names, most recently took several
9 depositions where that exhibit was introduced into evidence, so
10 it's clearly right on there. If it didn't come up in prior
11 discovery questions, it may just be because I didn't ask that
12 question. But as far as the other issues, the relevance and
13 hearsay, so relevance, I mean, one of the core issues in this
14 case is about the alleged contents that were in Mr. Postell's
15 room.

16 THE COURT: Yes, sir.

17 MR. VANDENBERG: And you know, the, Timothy Green,
18 what he saw, what he heard and then what he said in the
19 presence of my client's employees is entirely relevant,
20 certainly, just on that one particular issue about what exactly
21 were the contents in Mr. Postell's room. Of course, it's
22 hearsay, but you know, he, several exceptions to the hearsay
23 would apply here. I mean, he said it in the presence of a
24 couple of employees, one whose deposition was taken, and I
25 believe that's what he was referring to is it's in her

1 deposition transcript separately, you know, during the course
2 of the investigation into this matter. The, both roommates,
3 Timothy Green and Joseph Gamble were interviewed by our client
4 representative and general manager at the time who is on our
5 witness list and it was, you know, her, and she, you know,
6 documented that in her report both, you know, in the exhibit
7 that I mentioned and also, you know, internally in materials
8 that were either attorney client or work product otherwise
9 privileged materials. But so there are by my account at least
10 four witnesses who either observed, either, I guess, heard what
11 in this case Mr. Green said, documented that during, you know,
12 various, you know, investigations or in depositions came up
13 during the recent 30(b)(6) deposition of my client, and of
14 course, any hearsay is kind of out the window when you have a
15 30(b)(6) deponent, and so it was discussed there. It was also
16 as I referenced in the transcript deposition of the former
17 general manager, so at least four witnesses, actually, the
18 fourth would be, it was also discussed in the presence of the
19 general manager, the leasing manager, Christopher Lewis, and
20 when they were interviewing one of the witnesses for this
21 matter. So for those variety of reasons we would oppose this
22 motion, Your Honor.

23 THE COURT: I don't, I think for the testimony to the
24 extent, just my review is arguably relevant, so that's not an
25 issue and I appreciate your kind of highlighting why the

1 Plaintiff is not necessarily surprised, but I am concerned
2 about the hearsay nature of this. So I, as it stands right
3 now, I'm going to reserve, I'm not going to, I'm going to
4 reserve rulings until it comes up at trial and I would expect
5 an objection, but my first belief and concern was about
6 hearsay. So we'll deal with it as it comes up.

7 MR. VANDENBERG: Okay. Thank you.

8 THE COURT: Yes, sir. Motion in limine to exclude
9 evidence of Plaintiff filing a renter's insurance claim
10 regarding the incident or subject.

11 MR. LYLE: Thank you, Your Honor. And I put this in
12 here just because it's been mentioned numerous times by various
13 employees of the Defendants wanting to know why my client never
14 filed a claim on his insurance policy. We would state that
15 based on collateral source rule it's not admissible, but to the
16 extent one of his witnesses may stumble and decide to bring
17 that up to include himself because it was put on the exhibit
18 list, the insurance binder, I would ask this Court to instruct
19 Defendant that their 5 million dollar liability policy is fair
20 game and can be instructed and told to the jury as well, so
21 we're fine with it coming in, it just needs to go both ways.
22 And again, I would ask this Court to give a strict instruction
23 that there can be no curative instruction, and that oops, if
24 there's any mention of his State Farm renter's policy, then
25 that one single mention by any of his witnesses or himself

1 would wide open that door for the contents of their binder and
2 their policy on their 5 million dollar coverage.

3 THE COURT: Thank you. Mr. VanDenBerg?

4 MR. VANDENBERG: Your Honor, a couple of things. So
5 as I read, as I read through the motion, I see in the opening
6 paragraph there is a reference to the fact, the fact that
7 Plaintiff filed a renter's insurance claim related to the
8 damages. That's news to us, Your Honor. Normally, these
9 renter's claims need to take place within, you know, several
10 days, 48 to 72 hours, typically ---

11 MR. LYLE: And Your Honor, let me just clear that up.
12 There was no claim filed. That would be any mention of him
13 having filed a claim, that's not us admitting we filed a claim.
14 There's been no claim filed, that was his deposition testimony
15 and that's still the case.

16 THE COURT: Thank you.

17 MR. VANDENBERG: So that takes out a couple of my
18 concerns. But fundamentally it is I believe the collateral
19 source rule would be maybe applicable in the event that he
20 actually had filed a claim. And then you know, we would be
21 discussing, you know, we would then be maybe concerned about,
22 you know, some consideration of offset. So that's not the case
23 here, he hasn't filed a claim, there's no, you know, we're not
24 concerned about a windfall. But to Mr. Lyle's point, you know,
25 what we are fundamentally concerned about is the, his decision

1 not to pursue a claim, not to file, related to this, not file a
2 police report. So those things, you know, we plan on bringing
3 those up through witness testimony because it does show, and
4 again, you know, it goes to the heart of what we believe is our
5 case which is, you know, the alleged contents in his room were
6 not as alleged. And so ---

7 THE COURT: But now, help me. Let's suppose he had
8 filed a renter's insurance claim and recovered, would that
9 recovery go to lessen the damages if your, if he recovered
10 damages?

11 MR. VANDENBERG: I don't think so, I think that's,
12 and to your point, I mean, I think that's where the collateral
13 source rule would apply, so, you know, but that's, you know, of
14 course that's just a hypothetical like if there had been a
15 claim filed. But that's not, that is not the intent with, you
16 know, that we would be discussing that, you know, through our
17 witness testimony. It's the fact that this is what, you know,
18 typically, in these matters where there's allegations of theft
19 that this is the normal course of events, I mean, my client,
20 they're in this business, you know, for decades, this is
21 typically what we see. I think that is what a reasonable
22 person would expect and would want to know the answer to is to
23 why that didn't occur. So ---

24 THE COURT: I'm inclined not to allow any discussion
25 about insurance whether he filed a claim or not. I will take a

1 look at this over our lunch hour just to see if I see anything
2 differently, but I'm inclined to grant the motion in limine
3 with regard to insurance. Now, is there something else about a
4 police report? I saw, since Mr. VanDenBerg mentioned that.

5 MR. LYLE: Thank you, Your Honor. There's a lot of
6 mentions of that and we're fine, I in fact removed the portion
7 of my motion in limine to strictly ask them to forbid any
8 conversation of it. I think it's, to the extent they want to
9 bring it in, we're okay with that. The part that I take issue
10 with, Your Honor, is again, Defendant's pretrial brief was
11 filed late Friday afternoon and in it mentions some text
12 messages between the apartment manager, Katie Floyd, and the
13 Richland County Sheriff's Deputy. Again, that's the first time
14 that deputy's name has ever been mentioned, it's not been
15 disclosed on any of the Defendant's responses to
16 interrogatories or supplemental interrogatories. I have a copy
17 of those here if Your Honor would like to see them, but that's
18 just brand new news to me, and that again is an out of Court
19 statement offered for the truth of the matter related to
20 wherever the contents are or any conversations between this
21 deputy whose name again was just disclosed to me on Friday and
22 that apartment manager. So I would, I'd also ask there to be
23 an instruction given that there be no mention of these text
24 messages between this Richland County Deputy who's again, just
25 now being disclosed.

1 THE COURT: Mr. VanDenBerg, what do you say about
2 that?

3 MR. VANDENBERG: Your Honor, I believe if Mr. Lyle
4 looks back at the deposition transcript for, you know, Ashanti
5 Young, that's where the issue, I believe, first came up and it
6 was a discussion during her testimony about the fact that, you
7 know, police were contacted. Mr. Lyle asked her a series of
8 questions related to, is typical about, you know, these
9 deputies being, police being called, you know, with these
10 allegations of theft. So I believe if he draws his attention
11 back to her deposition transcript, he may find mention of not
12 just the fact that, that, you know, deputies from Richland
13 County were present, but also their names as well, Your Honor.

14 MR. LYLE: Your Honor, this is not an Easter egg hunt
15 for me. I've got served requests for production and
16 specifically states this would be responsive to that and until
17 today it's never been produced to me. Again, the guy's name's
18 never been disclosed, and so just some rare mention of an
19 interaction with a police officer in a deposition of a former
20 employee who does not name him by name, nor provides any
21 contents of those text messages, he's disclosed on his trial
22 report that it's going to be the text messages between this now
23 named deputy and department manager, Katie Floyd, not the
24 person who's deposition that I took, he's mentioning Ashanti
25 Young who's a former employee. So again, it's not been

1 produced, the officer's name is only disclosed via his pretrial
2 brief, and so that's a blatant violation of discovery, Rules
3 32, 3, 4, 5, 6, 7, all of them. So I would ask that number
4 one, there be no, you know, there'd be an instruction to not
5 mention any of these text messages or reference to this
6 Richland County Sheriff's Department Officer.

7 THE COURT: Mr. VanDenBerg, were you about to ---

8 MR. VANDENBERG: Sure, Your Honor. We, so, I mean,
9 this material was disclosed, you know, about two years ago
10 during the first, you know, our first response. We're not
11 trying to hide anything, I mean, there was plenty of time
12 within the intervening two years and he clearly brought it up
13 during deposition of one of our witnesses. So I don't think
14 it's a mystery, I mean, if there were some concern about his
15 identity, we're not calling him as a witness, I mean, it would
16 be, I mean, I can't even think of, you know, other than, I
17 mean, I think it comes in anyway, you know, it's during other
18 testimony, but it's just, you know, it's, I just don't
19 understand the concern to begin with. But it's, but again,
20 it's, I believe it's probably, I can't remember if it was
21 raised during the 30(b)(6), and these are video, you know,
22 depositions. And so I don't think, it didn't come up during
23 the second former employee, Nick Hooser, I have to look back
24 and see if it came up during the 30(b)(6) deposition, I don't
25 think it did. But again, it's, you know, we're not, we haven't

1 tried to hide anything, we're not trying to hide anything, it's
2 just ---

3 THE COURT: Mr. Lyle, what I heard you say is that
4 you removed, release the fact that Plaintiff didn't call the
5 police from your motion in limine, did I hear you correctly?

6 MR. LYLE: We had originally ask that there be no
7 mention of the failure to file a police report. There's a
8 possibility that we'll publish the deposition excerpts from the
9 Defendant's 30(b)(6) witness at which point it's kind of almost
10 impossible to carve that section out, and I don't know that in
11 and of itself is that prejudicial, we're prepared to discuss
12 that or work around that. The part I take primarily issue with
13 is that as an exhibit, he's got listed text messages between
14 the apartment manager, Katie Floyd, and this Richland County
15 Deputy, and I don't have his name in front of me, but this is
16 the first time I've ever heard that name. And so I suspect
17 he's going to try to hand up an exhibit or give his exhibit to
18 the jury of text messages between the former apartment manager
19 and some Richland County Deputy who I've never heard his name
20 and never seen these text messages before. So just that there
21 was some fainting interest to any kind of a police officer
22 being there at The Rowan, I don't see how that in the wildest
23 imagination would lead me to the conclusion that he could all
24 of a sudden bring in documents that have not been produced that
25 were responsive to requests for production. So again, I would

1 ask that there be no mention of text messages between Katie
2 Floyd and this Richland County Deputy, and certainly no
3 publication or admitting of evidence related to these text
4 messages that I've never seen, I still today have not seen.

5 THE COURT: Mr. VanDenBerg, last word before I, have
6 you just revealed this officer, have you just revealed these
7 text messages?

8 MR. VANDENBERG: No. They're in our discovery
9 responses, Your Honor, so I mean, it's ---

10 MR. LYLE: Your Honor, I have his discovery
11 responses, I'd be happy to hand them to you if you'd like to
12 see them. There's no text messages between the deputy and
13 Katie Floyd, and there's certainly no mention of this deputy's
14 name.

15 THE COURT: Yes, sir?

16 MR. VANDENBERG: I mean, I don't, I'm not sure if I
17 have my discovery response with me, but if I do I can probably
18 dig it out, but it's in there.

19 THE COURT: I'm going to exclude text messages.

20 MR. LYLE: Thank you, Your Honor.

21 THE COURT: Now, I'm referring to the text messages
22 that Mr. Lyle has just described, there may be some other ones,
23 so this ruling just goes to those text messages. You said this
24 Katie, what's her last name, Floyd?

25 MR. LYLE: Katie Floyd, Your Honor. Specifically,

1 it's the item that he's got listed as an exhibit, as a trial
2 exhibit in his pretrial brief.

3 THE COURT: Alright. Motion in limine to prohibit
4 Defense counsel from asking leading questions of their own
5 clients. Yes, sir?

6 MR. LYLE: Thank you, Your Honor. That's really
7 self-explanatory and I understand the mode of operation is your
8 Courtroom, I would just like a general reminder that we follow
9 the rules mode and order and that the Defendant's counsel do
10 the best job they can from prohibiting from leading. And I've
11 cited the cases there but understand that's a lot more loose
12 and that's part of the omnibus.

13 THE COURT: Yes, sir, any response?

14 MR. VANDENBERG: I can't, I mean, what I would
15 suggest, Your Honor, is that, you know, if there is a moment in
16 time during this trial that I inadvertently ask a leading, and
17 I don't think, I mean, during his case, I guess we have my, you
18 know, one of my clients' former employees that's on his witness
19 list, I didn't ask any questions during these video
20 depositions, so there's no concern there about any leading
21 questions. It seems kind of a silly motion to me, Your Honor.
22 If I inadvertently ask a leading question, I mean, I just, I
23 don't understand really the concern about this, Your Honor.

24 THE COURT: That's fine, Mr. VanDenBerg. I'm going
25 to not, I'm going to deny the motion in limine, we will deal

1 with these issues as they come up in trial. I realize, Mr.
2 Lyle, that I have the ability to say no cross examination, but
3 I'm not going to do that this morning. Motion in limine to
4 exclude any reference to improper basis for verdict. Mr. Lyle?

5 MR. LYLE: Thank you, Your Honor. And really, this
6 is part of this omnibus, we just kind of use these in all
7 trials that I've been a part of, but 4, 5, and 6 speak to the
8 heard of general conjecture or argument that Defense counsel
9 will make, you know, number 4 basically deals with, if you
10 will, Your Honor, I can put 4, 5, 6, and 7 together. 4
11 basically just says, you know, any kind of burden on the
12 taxpayers of, in Richland County if they were to render a
13 verdict. I cited as evidence their disclosure of an insurance
14 policy of the covered limit of 5 million which we would
15 certainly say this case has no breadth of anywhere near.
16 Number 5 is in speculation that, you know, based on what would
17 happen should the Plaintiff win the lawsuit, it's moved under
18 401, 403(6), any disparaging comments about the tort system and
19 or personal injury Plaintiffs or lawyers, 7, any kind of
20 argument about taxation on a recovery by a client. And then
21 number 8, any monetary reward under the, you know, under our
22 law that can't necessarily undo any harm or injury. Number 9's
23 a little different and I can stop there.

24 THE COURT: Yeah, I'd like you to stop there. And
25 Mr. VanDenBerg, I am inclined to deny that motion and we just

1 deal with it if it comes up unless you just want to say
2 something.

3 MR. VANDENBERG: I don't think I need to say
4 anything, Your Honor.

5 THE COURT: Thank you. So we're denying 5, 6, 7, 8
6 in your motion in limine, but we will look for objections if
7 those issues come up. Number 9, motion in limine regarding
8 apologies and or being sorry. I am interested in your basis
9 for that.

10 MR. LYLE: Thank you, Your Honor. At this point the
11 Defense has taken the position that the losses incurred by my
12 client were a result of a rogue employee who was fired, in
13 fact, there's an affidavit as part of their motion to dismiss
14 that was heard by the Honorable Judge Newman, Clifton Newman,
15 and in that he tried to basically say they did no wrong because
16 they had an employee that acted outside of the scope and they
17 fired him. We believe there's plenty of evidence for negligent
18 hiring and supervision training and all sorts of other cause of
19 action that we list in our complaint. But thus far, there's
20 been no apologies ever before I got involved, there's been no
21 offer, there was simply, hey, give us a list of what went
22 missing and then once we provided the list, or once my clients
23 did before I was hired, they kind of went tightlipped and left
24 it at that. So thus far for them to, I'm just asking for a
25 motion in limine for them to all of a sudden walk in and say

1 we're sorry, go easy on us when that's never been utter once
2 this entire two-year litigation process.

3 THE COURT: Yes, sir?

4 MR. VANDENBERG: So I think the only reason I, a
5 couple of reasons for just opposing this generally, one, this
6 seems another kind of silly motion to be making, but on top of
7 that the, you know, I checked the transcripts, one of my
8 concerns about these motions in limine is, you know, I, if
9 these video depositions are shown, my client wants the entirety
10 of these depositions shown, not little excerpts, not edited
11 because, you know, for a variety of reasons. So I did go back
12 and check, you know, to the best of my ability this weekend to
13 see, I don't see any reference, and I think Mr. Lyle is
14 accurate, I don't think there has been any utterance of I want
15 to apologize, I'm sorry, etcetera. So I'm not as concerned
16 about what might work within the deposition transcript or the
17 video depositions, but, you know, I can instruct my witnesses,
18 you know, if we put on a defense, Your Honor, that, you know,
19 try to avoid, you know, saying these words, but I think it's
20 another thing that we can take up at, in the event that that's
21 ---

22 THE COURT: That's my first reaction. That motion's
23 denied, but we will take it up if it happens.

24 MR. LYLE: Thank you, Your Honor. I think the last
25 topic's very short; it speaks for itself. But we just move to

1 exclude any reference or suggestion that Plaintiff has not
2 called to testify any witness who was equally available to both
3 parties in this case on the basis of, again, 401, 403, and
4 United States versus Brooks which is a Fourth Circuit, 1991
5 case.

6 THE COURT: Mr. VanDenBerg?

7 MR. VANDENBERG: Yeah. I think, so, I think, the
8 only thing I could think of that might be relevant here is in
9 the event, and it might just confuse the jury, if during the
10 Plaintiff's case, they show excerpts of, you know, these video
11 depositions and then during our case, you know, we show the
12 entire video deposition. And so they may need an instruction
13 like, you know, from the bench that, you know, please don't
14 draw any negative inferences why you only saw a little bit of
15 this and then now we're seeing the entirety. So other than
16 that, I don't know if there's a real concern about this. I
17 can't, I tried to think of a situation where I would just
18 spontaneously say something like this and I can't, it just
19 doesn't seem like something that I would say. I just don't
20 think it's relevant other than maybe in that limited situation
21 where the jury might want to understand why that is the case.

22 THE COURT: I'm inclined to deny that motion, but if
23 in the event something comes up, I am amenable and open to
24 considering the instruction.

25 MR. LYLE: Thank you, Your Honor.

1 THE COURT: You're welcome. Mr. VanDenBerg, I'd like
2 to go to your motion in limine then we'll get to the voir dire
3 and then hopefully you all can get out and get some lunch as
4 well before we start.

5 MR. VANDENBERG: Your Honor, we had raised during
6 the, I guess, we didn't file any motion in limine specifically
7 related to the deposition transcript of Katie Floyd because
8 it's a good possibility that if we present a defense that
9 she'll be called as a witness, she's on our witness list, no
10 surprise. And of course, you know, she's here, she's able to
11 be impeached with her own deposition transcript. I do struggle
12 to see how her deposition transcript might be used during the
13 Plaintiff's case. If she's not a witness, she's not there to
14 be impeached, she's, you know, her deposition was given, this
15 was an issue we raised a month ago was that, you know, she gave
16 her deposition in her capacity as in a Defendant, and so, you
17 know, reading her transcript into, I mean, that type of
18 situation where the Plaintiff will read her deposition
19 transcript into the record during their case, I still don't
20 think that's, because again, she's, she's, now she's only a
21 witness and again, she, her previous involvement in the case
22 other than as a witness was as a Defendant, and so once she was
23 dismissed, I just don't see how unless and until she is called
24 as a witness for the Defense that her deposition transcript
25 becomes pertinent.

1 THE COURT: And she was acting on behalf of the
2 employer, is that right, of the ---

3 MR. VANDENBERG: She was, Your Honor, she worked for,
4 at the time she actually, she had already left when she gave
5 her deposition transcript, but she gave her deposition in her
6 individual capacity as a Defendant not, you know, as, and this
7 is of course why, you know, one of the reasons that Mr. Lyle
8 took, then did send out proper notice for a 30(b)(6) deposition
9 of my client, one of my clients which was taken on the 6th, a
10 little over a week ago, Your Honor. So that was the proper way
11 to get in testimony on behalf of, you know, a representative of
12 my client.

13 THE COURT: What do you say to that?

14 MR. LYLE: Your Honor, I would, I'd first point out
15 that Katie Floyd was listed as a Defendant in this case at the
16 early on stage because we were unaware whether she acted inside
17 or outside of the scope of her employment. I will mention that
18 just last month upon counsel for Katie Floyd's motion, we
19 consented to her being dismissed.

20 THE COURT: I saw that.

21 MR. LYLE: That does not change whether or not her
22 testimony is relevant to the causes of action against the
23 corporate Defendants because she was the acting property
24 manager at that time. So just because she's no longer a named
25 Defendant does not change the relevance or the importance of

1 her testimony. It just simply now would be used as, under Rule
2 32(a) which Your Honor I'm sure is aware of, says that we're
3 allowed to use any deposition for any purpose of an adversarial
4 party which we would argue as the property manager of that
5 Defendant that would make it a relevant deposition for us to
6 use. And we have in fact cited several lines and pages that we
7 would wish to publish ---

8 THE COURT: Now, ---

9 MR. LYLE: --- and we plan to do that in our case in
10 chief.

11 THE COURT: But Mr. Lyle, isn't his, and correct if
12 I'm wrong, isn't his argument that he's going to call her as a
13 witness?

14 MR. LYLE: Well, Your Honor, he can do that in his
15 case in chief, but he's made it clear to me that she's
16 unavailable, she's outside a hundred miles and resides in
17 Georgia. And in fact, a month ago when we were on the trial
18 roster, he said she wasn't coming which is why we had to drive
19 down to Charleston and do a video deposition for use at trial,
20 and why we did a 30(b)6 deposition of this Courtroom Defendant.
21 We only did those because he made it clear to me that he wasn't
22 going to cooperate and have Ms. Floyd come because he said he
23 no longer had control over her because she's not employed by
24 them anymore. So whether he calls her in his case in chief,
25 that's his decision, but the Plaintiff has the burden, and so

1 under Rule 32(a), we're allowed to use that testimony for any
2 reason we want to and publish it. And I would also point out,
3 Your Honor, that, and I have, reference to a case, it's Morin
4 versus Innegrity, and I can give you the cite here momentarily
5 ---

6 THE COURT: Is that case in your materials?

7 MR. LYLE: No, Your Honor. I only looked it up in
8 response to his pretrial ---

9 THE COURT: Yes, sir. If you'll give me the cite,
10 please.

11 MR. LYLE: So one cite's going to be State Farm and
12 Casualty Co. versus Barrett which is 340 S.C 1 and it lays out
13 very clearly the exclusion of deposition excerpts and takes you
14 through specifically what Rule 32(a) requires and how it
15 requires an objection to be filed or presented within one day
16 after having received those notices of designations. So I
17 would say, Your Honor, he's waived any right to object to the
18 publishing of these depositions and excerpts because he's
19 failed to object, and doing so on the day of trial is
20 insufficient. But I think that's just a technicality, I think
21 in and of itself it's, under Rule 32(a)5, we're allowed to use
22 this for any purpose whatsoever and it's an adversarial party
23 and it's a witness that was adversarial just when we took the
24 deposition as the former property manager of the still acting
25 Defendant, and so I think it's very clear in the rules that

1 we're allowed to publish it. And he is welcome to call Ms.
2 Floyd in his case in chief and refute anything we published.
3 But I don't believe it would be fair for us to sit back and
4 have to make a decision based on whether or not the Defendant
5 chooses to strategically call a witness or not. We can't,
6 unless Your Honor would like to go ahead and say that we're
7 allowed to call her and publish that in reply, but that's a
8 gamble on my part and I would want Your Honor to let me know
9 that I can do that. If he chooses not to call her and can
10 publish it in reply, then we'd be fine to do that as well.

11 THE COURT: And what was her role in the company?

12 MR. LYLE: She was the property manager, the head
13 property manager for The Rowan. So she was basically the
14 number one responsible person to The Rowan without being
15 responsible for other locations. And I'm happy to let him
16 correct me if I'm wrong, I understand they had regional
17 presidents, vice presidents who manage multiple or oversee
18 multiple locations, but Katie Floyd was the sole person
19 responsible only for that location.

20 THE COURT: Thank you. Mr. VanDenBerg, anything
21 before I rule?

22 MR. VANDENBERG: So Your Honor, I mean, her entire
23 transcript is hearsay, and I think that was the issue that we
24 discussed with Judge Newman a month ago. I think her capacity,
25 I mean, in addition to the, her role was as the general manager

1 for that site, but, you know, one of the reasons that we
2 delayed the trial from last month was so that he could take the
3 deposition not just under 30(b)6, but also of Katie's boss
4 which was Nick Hooser. So he took his deposition last week on
5 the 10th, I guess, you know, we have that transcript, we have
6 his video deposition. There are any number of questions that
7 could have been asked, in fact, one of the exhibits that was
8 admitted in evidence during his deposition was, was his
9 investigation email. So I think, you know, I mean, whether or
10 not it was adequately covered, I think that's an opportunity to
11 delve into those issues. It might have also been discussed
12 during her deposition, but yeah, I think that the reason that
13 we discussed this last week was primarily her, excuse me, a
14 month ago was primarily because of the fact that her entire
15 deposition transcript is hearsay.

16 THE COURT: And when you appeared before, I think you
17 said Judge Newman, did he rule on this issue ---

18 MR. VANDENBERG: Jocelyn Newman.

19 THE COURT: --- he or she, did she rule on this
20 issue?

21 MR. VANDENBERG: She did not. She said we'll save
22 that for the trial Judge.

23 THE COURT: I'm inclined to allow the deposition.
24 32(a)2 seems to suggest that deposition of anyone who at the
25 time of taking the deposition was an officer, director or

1 managing agent, I don't necessarily know what managing agent
2 means, but if she's the property manager, I think that may fall
3 within it. Now, Mr. Lyle, I'm going to leave it up to you. If
4 you want to use it during your case in chief, or if you want to
5 reserve it for reply, I'm fine with that, but I'm going to
6 allow the deposition. Mr. VanDenBerg, you, and maybe I'm,
7 maybe I read this somewhere else, but you wanted to use, to the
8 extent any excerpts of video depositions, you wanted to include
9 the entire deposition?

10 MR. VANDENBERG: That's correct, Your Honor. That
11 was really our primary concern as far as an evidentiary issue
12 is, is that, you know, that these depositions, if they're
13 shown, that they should be shown in their entirety. We think
14 for a variety of reasons, but some we already mentioned, I
15 think if time is the only issue, I think efficiency certainly
16 would be ---

17 THE COURT: And that was my next question. How long
18 are these depositions?

19 MR. VANDENBERG: The 30(b)6 is, first there's like
20 two parts, the first is just under two hours, the second is
21 about 40 minutes, all good information. And again, this is,
22 you know, it's the deposition he took of my client, and I think
23 it was, you know, we'd like the entirety of that deposition
24 shown. Second one I think is about 10 minutes, Mr. Hooser's
25 deposition, I don't think there's any concern there, but again,

1 you know, we intend to show the entire deposition in the event
2 that Mr. Lyle does not. But if you rule, you know, against us,
3 but I think that's just, you know, we, we can plan around that,
4 we know, I mean, it's, you know, it's easy because you know how
5 long it's going to take, you can schedule breaks, but I think
6 it's all good testimony.

7 THE COURT: So I've got one that's going to last two
8 hours and 40 minutes, another 10 minutes, any others?

9 MR. LYLE: So Your Honor, first off, there's two
10 different depositions here, one of them is of Nick Hooser who
11 is the former regional vice president. We drove down to
12 Charleston and took that deposition which I noticed, videotaped
13 and noticed it for use at trial. I fully intend to play that
14 in its entirety, it's 14 minutes.

15 THE COURT: Okay.

16 MR. LYLE: I intend to play that. The deposition of
17 the corporate Defendant under 30(b)6 was a Melissa Hinton, that
18 was not noticed as a deposition for use at trial. It was
19 videotaped because it was done via Zoom and it was noticed as a
20 videotape, but it was a discovery deposition, and I did notice
21 in my pretrial brief designations to publish certain aspects of
22 it, it maybe totals 25 maybe 30 minutes of different excerpts
23 at its relevant points. Again, under Rule 32 and again under
24 the same cite that I previously had, I noticed that
25 designation, there was no objection to it and to play it in its

1 entirety is again the same. What's even further a problem
2 because it's his corporate Defendant, he can't just say they're
3 unavailable because he didn't want to bring them and then play
4 a video which is chock full of hearsay, mentions to, the police
5 report mentions to insurance and all these other things that
6 Your Honor's already ruled on. So I would take issue with just
7 stepping back and hitting play because it's got a lot of
8 nonrelevant stuff, there's just a lot, you know, tell me where
9 you grew up and where you live and what do you do now, stuff
10 that's just not relevant to this case. And so I'd first off
11 would want that, if Defendant's counsel wants to play that
12 video, I would very much want it to be on Defendant's time so
13 the jury's not mad at me for playing a three hour video after I
14 just published 20 or 30 minutes of excerpts that are relevant
15 to the point. And I haven't spliced it, under the rule of
16 completeness, if he wants to take my deposition excerpts and
17 pull an extra page or two before or after to give it context, I
18 am happy with that, but my intent was to not bore the jury to
19 sleep for three hours of a discovery deposition which is full
20 of discovery type questions and was not taken as notices for
21 use at trial like the one for Mr. Hooser was which is directly
22 to the point and has questions like please tell the jury,
23 etcetera. This is just a three hour, very boring deposition
24 full of things that are objectionable for my side for him to be
25 able to play and I would think that if Your Honor would look at

1 Rule 32 again, again, he can't make his own witness unavailable
2 and then just sit back and play a video on a discovery
3 deposition. If he wants to bring a corporate Defendant to the
4 Courtroom to give her own side of the story then she can, but
5 he can't just play the video of a discovery deposition just
6 because I pulled out some pieces and parts. If he wants to do
7 that in his case in chief subject to my objections on the
8 hearsay and the other relevance issues, then Your Honor's
9 welcome to let him do that in his case in chief, but in my case
10 in chief I would ask that he not be allowed to just respond by
11 playing the whole video.

12 THE COURT: I understand. Yes, sir?

13 MR. VANDENBERG: Your Honor, I mean the nature, like
14 as I said before, I mean, the nature of these 30(b)6
15 depositions is like you're calling someone who is not a fact
16 witness and the expectation is you prepare them, you know, some
17 of that information in this case, the majority of the
18 information that they review is hearsay. So I mean, to now,
19 you know, to have taken this deposition to get, you know, some
20 pertinent points that will aid, you know, I guess seemingly aid
21 the Plaintiff's case and now, you know, now raise the flag that
22 it's this hearsay and objectionable, it's, I mean, that's not
23 the case, Your Honor.

24 THE COURT: What do you say to his argument
25 that this witness will mention some things that I have

1 already ruled should not come in?

2 MR. VANDENBERG: Your Honor, that was our concern to
3 begin with, all these motions in limine. So, you know, if
4 there is a point in time where she, could he maybe edit that
5 part out, Your Honor, but that's the only thing that I can
6 think of is, I mean, because, and again, that was our concern
7 as I raised about these motions in limine is to try to, you
8 know, pick apart the things that were said during her
9 deposition.

10 THE COURT: I understand. I am going to allow you to
11 play the deposition as part of your case in chief.

12 MR. VANDENBERG: Okay.

13 THE COURT: I would prefer that you for the things
14 that I definitely said should be excluded, if you can have
15 someone work on editing that. I'm not going to comment on Mr.
16 Lyle's point about putting the jury to sleep, I'm going to
17 watch them to make sure that they don't go to sleep.

18 MR. VANDENBERG: And Your Honor, I think that as far
19 as like the mention of police, I think it was the, you know,
20 the, your ruling was about the text message, not about, you
21 know, this mention of the police, you know, being called.

22 THE COURT: Correct. I don't have, what I actually
23 believe Mr. Lyle said was that he was not going to oppose
24 mention of whether or not the Plaintiff called the police, am I
25 correct?

1 MR. LYLE: That's correct, Your Honor. We're
2 prepared to address that in our case in chief.

3 THE COURT: Correct. So the only thing, so to the
4 extent there is some reference in the 30(b)6 to whether the
5 Plaintiff did or did not call the police, that's not excluded.
6 The only thing I'm excluding is the content of these text
7 messages between Ms. Floyd and this Richland County Deputy.

8 MR. VANDENBERG: Yes, Your Honor. I don't recall if
9 that was one of the exhibits that was presented to, maybe Mr.
10 Lyle can address that, but I don't recall if that text message
11 was one of the exhibits that was included in his deposition of
12 Ms. Hinton. So that's one issue, I just, I don't recall it, I
13 can look quickly and see if that was the case, so really it's
14 just as far as editing the video, you know, it's just this
15 issue about the insurance claim. It's, is it, and it's
16 referenced to the failure to file an insurance claim and any
17 exhibit that was used.

18 THE COURT: Any exhibit that contains these text
19 messages.

20 MR. VANDENBERG: Okay. Thank you.

21 MR. LYLE: Your Honor, if I may, too, there's one
22 point, it's under my trial exhibits, it's number 15, there is a
23 redacted version that I have, it's a Teams message, Microsoft
24 Teams ---

25 THE COURT: Yes.

1 MR. LYLE: That's not a text message. There's a
2 Teams message that's very relevant, but there's one line at the
3 very end that I've redacted the last sentence out of which says
4 exactly that, the roommate came in, said he was moving out, and
5 so her sentence says he was not marked as renewed on me and
6 Carlton's list the day we went in. That's the end of the
7 sentence followed by a statement that I would want moved out.
8 And so I have that redacted on the exhibit that I plan on
9 giving to the jury. I have another redacted version, but I,
10 based on the prejudicial nature and it being hearsay, this
11 roommate, suitemate, whatever you want to call him, that's
12 existing in a Teams message, but based on Your Honor's prior
13 ruling, I would ask that the redacted version be published and
14 admitted into evidence assuming, I believe we had talked about
15 consenting to some of this, but to the extent we haven't, if a
16 proper foundation is laid then this Teams message can be
17 admitted.

18 THE COURT: As I recall, I was withholding any
19 information about this statement about this alleged roommate,
20 but ---

21 MR. VANDENBERG: You're correct, Your Honor.

22 THE COURT: I'm concerned about the hearsay nature.
23 Now, help me, Mr. Lyle, at what point, well, we'll just
24 Take that issue up when it comes up in trial. I am very
25 concerned about whether any of that is hearsay, but if you'll

1 object to it at the correct time.

2 MR. LYLE: Thank you, Your Honor.

3 THE COURT: Now, I need to get the voir dire,
4 but anything else in terms of motions in limine? Mr.
5 VanDenBerg?

6 MR. VANDENBERG: Nothing, Your Honor.

7 MR. LYLE: If I could just clarify, on your ruling to
8 allow him to play that video in full in his case in chief. Is
9 that contingent upon me publishing any video of this same
10 witness or would your ruling allow him to play it carte
11 blanche? And the reason I ask that question is if I choose not
12 to publish any of that testimony then I would ask for
13 clarification on your ruling because I would argue that, again,
14 he's not allowed to just publish a discovery deposition in lieu
15 of bringing a witness because I think Rule 32 says, I think the
16 only reason, if Your Honor maybe can clarify his ruling, I
17 think the only reason you're allowed to do that is under the
18 rule of completeness you're allowed to say the other part of
19 the part that I published, so ---

20 THE COURT: You are correct, it's the rule of
21 completeness. So I ---

22 MR. LYLE: Okay.

23 THE COURT: It would seem logical to me that in the
24 event you did not use those excerpts, that he would not be able
25 to use the full deposition pursuant to the rule of

1 completeness, but I'll hear from you, sir. What would you say
2 to, well, let's suppose he decides not to use the excerpts?

3 MR. VANDENBERG: Sure. I mean, my witness lives, you
4 know, beyond the statutory limits, so she is unavailable, she's
5 traveling outside the state, she's up in the State of Ohio this
6 week, so she, she is unavailable.

7 THE COURT: So, Mr. Lyle, if you choose not to use
8 those excerpts, we will not listen to the deposition.

9 MR. LYLE: And if I may clarify, if I choose not to
10 play it any videos but do want to publish just a transcript
11 page or two, does that open that door?

12 THE COURT: Now, publish a transcript page or two
13 from this ---

14 MR. LYLE: From the same witness. In other words, if
15 I put a page or two on the screen, question and answer, does
16 that open the door to allow him to play an entire three-hour
17 video?

18 THE COURT: He may not want to do that, but ---

19 MR. LYLE: But you're going to allow it?

20 THE COURT: --- I'm going to allow him ---

21 MR. LYLE: Okay.

22 THE COURT: If you use those excerpts, I'm going to
23 allow him to ---

24 MR. LYLE: Thank you, just wanted to clarify, thank
25 you, Your Honor.

1 THE COURT: That's quite alright, and I appreciate
2 that, it's better to deal with it now than later. And if
3 anything else comes up, but again, I, certainly I've kind of
4 reserved some rulings based on what comes up at trial, we'll
5 deal with it then. Let's talk quickly about voir dire. Give
6 me one second. Unfortunately, I've got lots of paper up here,
7 I want to make sure I'm getting the right thing. Mr. Lyle?

8 MR. LYLE: Yes, Your Honor.

9 THE COURT: Now, and I know Mr. VanDenBerg, I'm
10 assuming you have a copy of his proposed voir dire?

11 MR. VANDENBERG: I do, Your Honor.

12 THE COURT: Mr. Lyle, I'm not, the first part of
13 number one, I'm not going to say.

14 MR. LYLE: That's fine, Your Honor.

15 THE COURT: Now, does this, this sentence, does any
16 member of the jury panel have such a, strong feelings about
17 these types of claims, and I will introduce, I'll say something
18 about, something very generic about what this case is about.
19 But I would perhaps, I want to hear from Mr. VanDenBerg, but I
20 would perhaps say does any member of the jury panel have such
21 strong feelings about claims involving alleged landlord ---

22 MR. LYLE: Your Honor, if you want number 2, and I
23 can just strike number 1, if you could just read number 2 and
24 simply add on, before it says if so please, and say or have any
25 strong feelings about it because number 2 basically says the

1 same thing, I probably should have struck number 1 to begin
2 with.

3 THE COURT: I was not planning to give number 2
4 either.

5 MR. LYLE: Okay. Alright. Well, I'll do whatever,
6 Your Honor, I'm not a big, that's not a hill I'm going to die
7 on.

8 THE COURT: Okay. Good to know.

9 MR. LYLE: As long as you read the standard stuff,
10 then, you know.

11 THE COURT: I was not planning to give number 3, but
12 I will hear from you about that if you want.

13 MR. LYLE: That's fine, Your Honor.

14 THE COURT: Mr. Lyle, why do you want me to give
15 number 4?

16 MR. LYLE: I think this issue deals with apartment
17 and tenant relationships and I think there's some prejudice or
18 bias that both sides would benefit from knowing, so I think
19 rather than just saying has anybody been a Plaintiff or
20 Defendant in a lawsuit, I think, I think the Defendant would
21 want to hear these answers as much as I would. If he doesn't,
22 then you know, we're fine. I just think it needs to be called
23 both ways, you know, if we're going to call the outside
24 strikes, let's call them outside for both sides.

25 THE COURT: Mr. VanDenBerg, now this is pretty

1 close to your number 1 which I'm looking at ---

2 MR. VANDENBERG: Are we at 3 or 4?

3 THE COURT: I'm sorry, no. We're at 4.

4 MR. VANDENBERG: I mean, you know, my general
5 reservation about these, I mean, you know, there's not too
6 subtle efforts to try to argue the case in these, and so, I
7 mean, so all my highlights are those, you know, so read your
8 rental, and I think, you know, that's a legal question. So I
9 mean, you're asking someone, I mean, they may think, yeah, I
10 was, you know, someone ---

11 THE COURT: Mr. Lyle, have you seen number 1 in the
12 voir dire that was proposed by Mr. VanDenBerg?

13 MR. LYLE: That's fine.

14 THE COURT: Okay.

15 MR. LYLE: You can strike through all the 1 through 4
16 of ours and read his number 1.

17 THE COURT: Good enough.

18 MR. LYLE: Again, that's not a hill I'm going to die
19 on.

20 THE COURT: Anybody have any objection, Mr.
21 VanDenBerg, do you have any objection to Mr. Lyle's number 5?

22 MR. VANDENBERG: No, we don't, Your Honor.

23 THE COURT: Okay. Any objection to his number 6?

24 MR. VANDENBERG: No, Your Honor.

25 THE COURT: 7?

1 MR. VANDENBERG: Just there's a typo on the address,
2 the address is 1051 Southern Drive.

3 THE COURT: Mr. Lyle?

4 MR. LYLE: That's fine.

5 THE COURT: 1051. Alright. And I do want to ask,
6 though, about number 6. So is there one, more than one
7 location of The Rowan or is it just this one?

8 MR. VANDENBERG: No, Your Honor. It's the one
9 location.

10 THE COURT: And 1051 Southern Drive is The Rowan,
11 correct?

12 MR. VANDENBERG: Correct, Your Honor.

13 THE COURT: Okay. Mr. Lyle, I would probably say
14 doing business as The Rowan at, which is located at 1051
15 Southern Drive unless you have some objection?

16 MR. LYLE: That's fine.

17 THE COURT: Okay. Mr. VanDenBerg, number 8?

18 MR. VANDENBERG: We have no objection, Your Honor.

19 THE COURT: 9?

20 MR. VANDENBERG: So again, I think that 9 and 10 adds

21 ---

22 THE COURT: And I apologize, I wrote no on number 9.

23 MR. LYLE: That's fine, Your Honor.

24 THE COURT: Okay. I'm sorry, I didn't see that I
25 had... And Mr. VanDenBerg, tell me about your number 10?

1 MR. VANDENBERG: 10? The Plaintiff has the
2 obligation here to prove damages and not just, you know, some
3 speculative injury, so, I mean, each of their claims damages is
4 an element, so I think there is, maybe we can, I don't know, I
5 mean, I don't know how to deal with that even in jury
6 instructions. But I think to, I think it sets the wrong tender
7 for this case, I think it's, you know, I think that the jury's
8 going to expect to hear, we're certainly going to certainly ask
9 questions of their witnesses about these damages, I mean,
10 that's, you know, no surprise, we're not telegraphing our case
11 here, I mean, we want to hear about the damages and I think
12 that to give them a pass it would suggest, and I think that's
13 really fundamentally our concern is that we're arguing the case
14 here in this question.

15 THE COURT: Mr. Lyle, your concern?

16 MR. LYLE: We're fine, Your Honor. Again, it's not a
17 hill I'm going to die on.

18 THE COURT: Alright. We're going to not do number
19 10. Now, the only voir dire that I had from Mr. VanDenBerg I
20 think we've all agreed that number 1 is fine, and number 2 just
21 was reasonable in as much as we're asking if anybody knows any
22 of these people.

23 MR. VANDENBERG: Exactly, yes, we've tried to, yes,
24 we've tried to capture any possible witnesses, or anyone
25 associated with this case.

1 THE COURT: Yes, sir.

2 MR. VANDENBERG: I'm sure we left some names off, but
3 that's what we came up with.

4 THE COURT: Okay. Anything more from anyone?

5 MR. LYLE: Nothing from us, Your Honor.

6 THE COURT: Alright. I have asked that the jury come
7 back at 2:00 so if I could ask you all to come in a couple
8 minutes prior to then, but before the jury gets here.

9 MR. VANDENBERG: Your Honor, I do have one other
10 issue and I think, you know, this might save some time. These
11 were cases that we did not, this is going to go to one of the -
12 --

13 THE COURT: I'm sorry, it goes to what?

14 MR. VANDENBERG: May I approach, Your Honor?

15 THE COURT: Of course.

16 MR. VANDENBERG: So these are a couple of cases that
17 we, that I think would go to the issue of proximate cause. I
18 think this might just be a good, you know, preview of some of
19 the cases that we're going to get to in the event that issue,
20 when it does come up.

21 THE COURT: Okay.

22 MR. VANDENBERG: So one of the, I mean, one of the
23 issues that we're, and again, this is not a surprise, I mean,
24 it's a fundamental issue of several of these claims is the
25 issue of proximate cause ---

1 THE COURT: Yes, sir.

2 MR. VANDENBERG: --- and that's what these cases
3 address. There are many other cases out there, but I think
4 these cases and this line of cases goes to the issue of, and we
5 did, you know, in our pretrial brief, we did raise the issue of
6 these legal issues as far as proximate cause ---

7 THE COURT: Yes, sir.

8 MR. VANDENBERG: --- and were two of these employees
9 in particular operating within the scope of their employment
10 when these actions occurred, Your Honor.

11 THE COURT: Yes, sir, I understand.

12 MR. VANDENBERG: So beyond that, that's really the
13 only issue that we have.

14 THE COURT: Good enough. Anything else, sir?

15 MR. LYLE: Nothing from the Plaintiff, Your Honor,
16 thank you.

17 THE COURT: Alright. We will look -- yes, sir?

18 MR. VANDENBERG: Jury strike, should we prepare
19 these during lunchbreak or should we wait until we..

20 THE COURT: Probably wait until we ---

21 MR. VANDENBERG: Okay.

22 THE COURT: Yes, sir. It would be the easiest thing
23 to do. Alright. We will see everybody back at ---

24 MR. VANDENBERG: Thank you.

25 THE COURT: --- 2:00, and thank you.

1 MR. LYLE: Thank you, Your Honor.

2 (OFF THE RECORD.)

3 THE COURT: Thank you for being back, I hope everyone
4 got a chance to get some lunch. Alright. We are going to
5 begin the process of what we call jury voir dire, and during
6 that process I am going to ask some questions, the lawyers will
7 take a look at you and then after voir dire, the lawyers will
8 begin selecting a jury. The clerk will call potential jurors,
9 and the lawyers will say yes or no whether or not you will sit
10 on this particular jury. So we're going to get through that,
11 through this and we're going to begin. Now, this case is
12 entitled Ansel Jamahl Postell versus Campus Advantage, Inc.,
13 doing business as The Rowan then EMRES, EMRES II, South
14 Carolina, LLC. And I'm going to begin by asking the Plaintiff
15 to stand and his lawyer, and Mr. Lyle, if you would introduce
16 yourself and then if Mr. Postell will introduce himself as
17 well, I would appreciate it.

18 MR. LYLE: Thank you. Good morning, my name is Todd
19 Lyle, I practice law over in Lexington, I was here in Columbia
20 originally, and I'm over at the Lyle Law Firm and I have the
21 pleasure of representing Jamahl Ansel Postell.

22 MR. POSTELL: Hi, my name is Ansel, I'm the
23 Plaintiff.

24 THE COURT: Thank you very much, thank you so much.
25 Yes, sir, if you would introduce yourself.

1 MR. VANDEBERG: Sure. Timothy VanDenBerg, I'm here,
2 I'm an attorney here in Richland County, my office is in Forest
3 Acres, and I represent, there's two Defendants, one is what we
4 refer to as The Rowan, but it's more affectionately known as
5 EMERS, roman numeral II, South Carolina, LLC. And the other
6 Defendant is Campus Advantage, Inc.

7 THE COURT: Thank you. Ladies and gentlemen of the
8 jury panel, is there anyone who is related by blood, marriage,
9 or a close personal friend ---

10 CLERK: Your Honor, do you need me to swear the
11 panel?

12 THE COURT: Oh, yes, I'm sorry, please swear the
13 panel. I apologize.

14 CLERK: Ladies and gentlemen of the jury, if you
15 could please stand and raise your right hand to be sworn. Do
16 you swear or affirm that you shall truly and shall make to all
17 such questions as being directed to you by the Court or by a
18 lawyer thereof you shall speak the truth, the whole truth, and
19 nothing but the truth so help you God?

20 PROSPECTIVE JURORS: I do.

21 CLERK: Thank you. You may be seated.

22 THE COURT: Let me start again. Thank you so much.
23 Is there anyone who is related by blood, marriage, or a close
24 personal friend of either the Plaintiff, Ansel Jamahl Postell,
25 or the Defendants, Campus Advantage, Inc., doing business as

1 The Rowan, or EMRES II, South Carolina, LLC? If so, please
2 stand.

3 (No one standing.)

4 THE COURT: Is there any member of the jury panel who
5 is related by blood, marriage, or a close personal friend of
6 either of the lawyers in this case? And if so, please stand.

7 (No one standing.)

8 THE COURT: Now, there are a list of potential
9 witnesses, I'm going to call those person's out and then I'll
10 have a similar question for them. We expect, of course, that
11 Mr. Postell will be a witness, Shawndolena Arnold Postell will
12 be a witness, Ashanti Young, furthermore, potential witness,
13 Anna Flores, Melissa Hinton, Nancy Katherine Floyd or better
14 known as Katie Floyd, Nick Hooser, Christopher Lewis, Tiana
15 Williams, Kayla Palmer, Myra Salters, Trinita Geathers, Rachell
16 Leak, Gaset Allen or better known as Mike Allen, Christopher
17 Wynette, Carlton Brown. Is there any member of the jury panel
18 who is related by blood, marriage, or a close personal friend
19 of any of the potential witnesses in this case? If so, please
20 stand. Let the record reflect that no one is standing. Is
21 there anyone on the jury panel who has been involved in any
22 legal matters or lawsuits in the federal or state courts? Has
23 anyone been sued or sued someone? And if so, please stand.
24 Thank you, sir. If you'll just give your juror number and then
25 we will...

1 JUROR 7: Number 7.

2 THE COURT: Number 7. Can you give me a brief idea
3 of what happened?

4 JUROR 7: Well, I had my lawsuit because I was
5 rearended.

6 THE COURT: Okay. Thank you. Yes, sir, your number?

7 JUROR 24: 24.

8 THE COURT: Yes, sir?

9 JUROR 24: Had a motor vehicle collision.

10 THE COURT: Alright. Thank you, sir. Yes, ma'am?

11 JUROR 179: I'm 179. My husband was sued by Comet.

12 THE COURT: Comet Bus System?

13 JUROR 179: (Nonverbal response).

14 THE COURT: Okay. Thank you. Yes, ma'am?

15 JUROR 247: 247. It was a credit card judgement.

16 THE COURT: Thank you. Yes, ma'am?

17 JUROR 314: 314. I was the property owner sued by
18 the tenant of the commercial business.

19 THE COURT: Thank you. Yes, sir?

20 JUROR 225: 225. Sued the auto shop.

21 THE COURT: Thank you, sir. This case involves the
22 alleged destruction of personal property belonging to a tenant
23 who was renting an apartment. Is there any member of the jury
24 panel who has any prior knowledge of this case? If so, please
25 stand.

1 (No one standing.)

2 THE COURT: Is there any member of the jury panel who
3 knows of any reason whatsoever why he or she could not give the
4 parties to this case a fair and impartial trial? If so, please
5 stand.

6 (No one standing.)

7 THE COURT: Any member of the panel that either you
8 or a close friend or a family member ever been involved in a
9 dispute, for instance, an eviction, with a landlord or property
10 management company? Yes, ma'am?

11 JUROR 314: 314, again, had a property that I rented
12 and had to evict a tenant.

13 THE COURT: Thank you. Has any member of the jury
14 panel, a member of your family or any of your close personal
15 friends ever lived or resided at an apartment owned and or
16 operated by the Defendant, Campus Advantage, Inc., doing
17 business as The Rowan? If so, please stand. Yes, sir.

18 JUROR 217: 217, I've got a couple close friends that
19 live at The Rowan that I visited before.

20 THE COURT: I'm sorry. You had personal friends that
21 have lived at The Rowan?

22 JUROR 217: Yes.

23 THE COURT: Okay. Thank you, sir. Would that
24 knowledge prevent you from giving the parties a free and fair
25 trial?

1 JUROR 217: No.

2 THE COURT: Okay. Thank you, sir. Other than juror
3 314, has any member of the jury panel, a member of your family,
4 or any of your close personal friends ever worked for a
5 landlord, a leasing company, or property management company?
6 If so, please stand.

7 (No one standing.)

8 THE COURT: Thank you. Has any member of the jury
9 panel, a member of your family, or any of your close personal
10 friends ever lived at 1051 Southern Drive, Columbia, South
11 Carolina, 29201? If so, please stand. Yes, sir?

12 JUROR 258: 258, I lived at Red Point right across
13 from it.

14 THE COURT: Across the street from that address?

15 JUROR 258: Yes, sir.

16 THE COURT: Okay. Would that, you having lived
17 across the street prevent you from giving all the parties in
18 this case a full and fair decision?

19 JUROR 258: No, sir.

20 THE COURT: Okay. Thank you. Has any ---

21 CLERK: Your Honor?

22 THE COURT: Oh, I'm sorry. Yes, sir?

23 JUROR 138: I'm sorry. I think I lived either there
24 or Cross Lake seven years ago when it was a different one, but
25 it wouldn't interfere, I just wanted to make sure.

1 THE COURT: What's your juror number, please, sir?

2 JUROR 138: Oh, 138, my apologies.

3 THE COURT: 138, that's quite alright. And would
4 that possible exposure cause you to be unfair?

5 JUROR 138: Not at all, I just wanted to make sure I
6 mentioned it.

7 THE COURT: Thank you, thank you, sir. Yes,
8 ma'am?

9 JUROR 117: Number 117, my daughter lives at Red
10 Point currently.

11 THE COURT: And Red Point is?

12 JUROR 117: The Southern address you just referred
13 to.

14 THE COURT: I see. Would that prevent you from being
15 fair to all parties in this case?

16 JUROR 117: No, sir.

17 THE COURT: Thank you. Does any member of the
18 jury panel have any life experience that would make it
19 difficult for him or her to sit on a jury and be impartial to
20 someone who claims to be injured and comes into Court asking
21 for money damages? If so, please stand. Yes, ma'am? I'm
22 sorry.

23 JUROR 205: Hi, I'm juror number 205, I work for a
24 defense firm and at one point I was licensed to be a property
25 manager.

1 THE COURT: Would that, so you work for a defense
2 firm and licensed to be a, at one point licensed to be a
3 property ---

4 JUROR 205: Property manager.

5 THE COURT: Would any of that cause you to be unfair
6 to these parties?

7 JUROR 205: I don't think so, but I couldn't say for
8 certain.

9 THE COURT: I understand, thank you, thank you so
10 much. Plaintiff, anything that you need to follow up on?

11 MR. LYLE: Nothing further from us, thank you.

12 THE COURT: Thank you. Mr. VanDenBerg, anything that
13 you need to follow up on?

14 MR. VANDENBERG: Your Honor, just a couple of
15 questions. I think it was that juror number, number 138, you
16 said you lived at The Rowan, formally known as, like ---

17 JUROR 138: I think the old ---

18 MR. VANDENBERG: --- Copper Point?

19 JUROR 138: Yeah. I can't remember the exact name,
20 it was like way back like in 2016, maybe. I just know that
21 Southern Drive sounded like my first address in Columbia.

22 MR. VANDENBERG: Off of Bluff Road?

23 JUROR 138: Yeah. Off Bluff Road.

24 MR. VANDENBERG: Okay. And then juror number 117, so
25 your daughter lives at Red Point?

1 JUROR 117: Yes.

2 MR. VANDENBERG: Okay. Thank you.

3 THE COURT: Anything further, sir?

4 MR. VANDENBERG: No further questions.

5 THE COURT: We're going to now start the process of
6 selecting. In the event you are not selected, in the event you
7 are called and not selected, please don't take anything from
8 that. The lawyers are choosing jurors based on their
9 experience, so please don't take anything at all from the fact
10 that you might be called and may not serve.

11 CLERK: Your Honor, how many alternates do you
12 want?

13 THE COURT: I'd like two.

14 CLERK: Two alternates, okay.

15 THE COURT: To the lawyers, I'm going to select two
16 alternates as well, is that ---

17 MR. VANDENBERG: Yes, Your Honor.

18 MR. LYLE: Good, Your Honor, thanks.

19 CLERK: You want to do this the normal strikes?

20 THE COURT: Yes. And of course each of you will have
21 four strikes, Plaintiff and the Defendant each will have four
22 strikes.

23 CLERK: Counsel, please exercise using the numbers
24 one through 20 on the far-left side of the strike sheet
25 beginning with the Plaintiff.

1 MR. LYLE: Do you want the first four and then we'll
2 do the alternates next?

3 THE COURT: Yes, sir.

4 CLERK: Yeah. One by one for each side.

5 MR. LYLE: Two.

6 CLERK: Plaintiff strikes number two.

7 MR. VANDENBERG: Number seven.

8 CLERK: Defense strikes number seven.

9 MR. LYLE: Four.

10 CLERK: Plaintiff strikes number four.

11 MR. VANDENBERG: Number 12.

12 CLERK: Defense strikes number 12.

13 MR. LYLE: Five.

14 CLERK: Plaintiff strikes number five.

15 MR. VANDENBERG: Number 18.

16 CLERK: Defense strikes number 18.

17 MR. LYLE: 13.

18 CLERK: Plaintiff strikes number 13.

19 MR. VANDENBERG: Number 24.

20 CLERK: Between numbers 1 and 20.

21 MR. VANDENBERG: Oh, I'm sorry. Number eight.

22 CLERK: Defense strikes number eight. Counsel,
23 please exercise your strikes for alternates between the numbers
24 21, 22, and 23. And the Plaintiff?

25 MR. LYLE: 21.

1 CLERK: Plaintiff strikes 21.

2 MR. VANDENBERG: 29.

3 CLERK: Between the numbers 21, 22, and 23.

4 MR. VANDENBERG: Oh, I'm sorry. I'm listening to you
5 but I'm not hearing you, so yes.

6 CLERK: So between number 22 and 23.

7 MR. VANDENBERG: Yes. Number 22, thank you.

8 CLERK: Defense strikes number 22. Please exercise
9 your strikes between numbers 24, 25, and 26 starting with
10 Plaintiff.

11 MR. LYLE: 26.

12 CLERK: Plaintiff strikes 26.

13 MR. VANDENBERG: 25.

14 CLERK: Defense strikes number 25. Counsel, please
15 allow me to review your strikes. Plaintiff strikes numbers
16 two, four, five, 13, and alternates 21 an 26. Is this correct?

17 MR. LYLE: That's correct.

18 CLERK: Defense strikes seven, 12, 18, eight, and
19 alternates 22 and 25. Is this correct?

20 MR. VANDENBERG: That's correct.

21 CLERK: Ladies and gentlemen of the jury panel, as I
22 call your name and or number, please come to the jury box with
23 all your personal belongings. Starting with Juror 354, Crystal
24 Darby; Juror 246, Ms. Priest; Juror 268, Guy Robinson, please
25 go around to the wall also, I'm sorry. Juror 35, Avery Brown;

1 Juror 271, Garnett Rooks; Juror 138, Chase Hastings; Juror 102,
2 Willie Fogle; Juror 174, William Jumper; Juror 330, Travis
3 Washington; Juror 141, Ms. Hayden; Juror 258, Brendon Reyes;
4 Juror 225, Mr. Myers; Juror number seven, Ansel Bailey; and
5 Juror 178, Dexter Kenner. Your Honor, the jury is seated.

6 THE COURT: Thank you. Any objections from the
7 Plaintiff?

8 MR. LYLE: None from the Plaintiff, thank you.

9 THE COURT: Any objections, sir?

10 MR. VANDENBERG: None, Your Honor.

11 THE COURT: Thank you. To those of you who were not
12 selected, thank you for being here. You'll need to follow the
13 directions of the bailiffs and the personnel downstairs. Thank
14 you so much for being here thus far.

15 (Non-jurors exiting Courtroom.)

16 THE COURT: To the jurors, we're going to begin. It
17 has been my limited experience to allow the jury to select your
18 own foreman, so at the next break, if you all will begin to
19 talk about who should be the jury foreman. The jury foreman
20 just simply leads the discussion and then of course, if any
21 messages need to get back to me, the jury foreman takes care of
22 that. Would you please swear the jury?

23 CLERK: Yes, Your Honor. Ladies and gentlemen of the
24 jury, please stand and raise your right hand to be sworn. Do
25 you swear or affirm that you shall well and truly try the

1 issues joined in this case and a true verdict according to the
2 law and the evidence so help you God?

3 JURY: I do.

4 CLERK: Thank you, you may be seated.

5 THE COURT: Ladies and gentlemen of the jury as
6 indicated earlier, we're about to try the case, Ansel Jamahl
7 Postell versus Campus Advantage, Inc., doing business as The
8 Rowan, EMRIS II, South Carolina, LLC. And of course, the first
9 thing I ask you to do is at some point when we take a break, if
10 you'll select a foreman. My law clerk has suggested to me that
11 I need to say as well that a foreman can be any member of the
12 jury, it can be a man, it can be a woman, so I do want to let
13 you know that. But I'm going to leave that up to your
14 discretion as to who should be the foreman once you have, we
15 have a break. I do want to give you some general rules. You
16 have been selected as a juror in this case, therefore, you must
17 leave your cell phone, any pagers, and any other kind of
18 communication devices with the bailiff when you arrive at the
19 Courthouse in the morning. You, of course, can retrieve them
20 during lunch breaks and at the end of the day. And if there
21 are any emergencies that you become aware of, please let the
22 bailiff know. Subject to an order by the Supreme Court, as a
23 juror in this case you may not deliberate until I tell you you
24 may do so, that's very important, no deliberation until I tell
25 you to do so. You must not discuss this case with anyone

1 including your fellow jurors, friends, family members and
2 anyone involved in this case. Of course, that includes no
3 social media posts about this case. Please don't discuss
4 anything at all about this case with anyone until we begin
5 deliberations. Of course, this includes face to face
6 discussions, telephone, email, texts, blogs or any other method
7 of communication. You may not use a computer, cell phone, or
8 other electronic device with communication capabilities at any
9 time while you are in the Courtroom or during deliberations.
10 During your breaks or meals, if necessary, you may use these
11 devices, however, you may not at any time use these devices to
12 get or send information about this case, and this includes
13 information about a party, a witness, an attorney, or a Court
14 officer, no searching anything about the Judge as well, or
15 anyone else involved in the case. Certainly, stay away from
16 any kind of news accounts about the case, no research about any
17 topics raised in Court or any topics you may think would be
18 helpful in deciding the case or any testimony presented by any
19 witness. All of the evidence that you must decide this case
20 must be based on the evidence that comes out in this Courtroom,
21 please, no research on your own. It is very important that you
22 have no contact at all with the parties, lawyers, or possible
23 witnesses in this case which comes before you. Even innocent
24 conversations are easily misconstrued, so you must avoid
25 contact with the lawyers and parties, or witnesses. I'm going

1 to ask you to please be prompt, it's not fair to you when we
2 must delay the proceedings because one or two of your fellow
3 jurors is late. If we ask you to be here at a certain time,
4 please make every effort to do that. And if an emergency
5 occurs either at home, work, or otherwise, please tell the
6 bailiff immediately. Generally, we operate from 9:00 until
7 about 5:00 during the day, of course, there's a break for
8 lunch. I typically will break, take a comfort break at about
9 one and a half hours, but if anybody, if any juror needs a
10 comfort break prior to that time, please let the bailiff know
11 and get that message to me. I need to tell you that this trial
12 will probably be different from what you might expect. Many
13 people do not have the chance to attend actual Court sessions
14 as you're doing now and may think from watching television or
15 movies or reading books that trials are always full of high
16 drama, intense action, and riveting circumstances. While these
17 things might be true, this trial is not for entertainment, it
18 is a fundamental part of our democracy, a search for the truth
19 in an effort to make sure that justice is done between the
20 parties before the Court. Searching for the truth and making
21 sure that justice is done is often slow, deliberate, and often
22 repetitive, the opposite of what you may have seen on
23 television or in movies or read in books. Unlike television,
24 which is over in an hour, this may take a little longer, but I
25 ask, of course, for your attention and your fairness to both

1 parties. This Courtroom is a place of honor dedicated to the
2 protection and preservation of citizen's rights through what
3 many have called the greatest justice system ever created. The
4 attorneys that are appearing before you are advocates for the
5 parties they represent, but first and foremost, they are
6 officers of the Court, sworn to uphold the integrity and
7 fairness of our judicial system and to help you in the search
8 for truth. You should expect them to be professional,
9 competent, and ethical in the representations of their clients'
10 interests. Remember that you have taken an oath to try this
11 case and reach a fair and just verdict, and you are also
12 expected to be professional, reasonable, and ethical. I want
13 to thank you for accepting the important responsibility of jury
14 service and for your contribution today to our justice system.
15 Members of the jury, before the case begins, I'd like to tell
16 you a little bit about how we're going to proceed. The first
17 thing that will occur is that the attorney for the Plaintiff,
18 and the Plaintiff is the person in this case who has brought
19 this action, his lawyer will make an opening statement which
20 will be followed by a similar statement by the attorney for the
21 Defendant. Now, it's important to remember that these opening
22 statements are not arguments, those arguments will come at the
23 conclusion of the case. The purpose of the opening statement
24 is for each party to outline his claims and the evidence which
25 he intends to present in support of those claims. Following

1 the opening statements, each side will present its evidence
2 with the Plaintiff once again going first. Now, evidence may
3 take many forms, it may be testimony, documents, models,
4 photographs, or the like. You should pay close attention to
5 all of the evidence which is presented by each party. You, the
6 jury are the sole finders of fact in this case and no one else
7 will be permitted to weigh the evidence by facts or render a
8 verdict based upon that evidence. After all of the evidence
9 has been presented, the attorneys will make their closing
10 arguments. Unlike the opening statements, the final remarks
11 will be true arguments, that is each side will emphasize
12 certain portions of the evidence and try to persuade you to
13 agree with their version of the facts. Please keep in mind
14 that the opening statements as well as the closing arguments of
15 the lawyers are not evidence. Give the attorneys your
16 undivided attention, but please keep in mind that what they say
17 is not evidence. After the arguments are finished, I'll
18 explain to you the law which applies in this case, you will
19 then retire to the jury room to consider the facts and law, and
20 once you have done so, you will return a verdict in favor of
21 one side or the other. Now, during the course of this trial,
22 the Plaintiff has what is known as the burden of proof. He has
23 the burden of proving his claims and must meet that burden by
24 proving his case by the greater weight, what is referred to as
25 the preponderance of the evidence. What we mean by the greater

1 weight of the evidence can be illustrated by imagining a
2 traditional set of scales, and when the case begins, the scales
3 are even. After all the evidence has been presented, if the
4 scales should remain evenly balanced or if they should tip even
5 slightly in favor of the Defendant, then the Plaintiff would
6 have failed to meet his burden of proof, and your verdict would
7 be for the Defendant. If, on the other hand, the scales should
8 tip even slightly in favor of the Plaintiff, then he will have
9 met his burden of proof, and your verdict would be for the
10 Plaintiff. I need to make a couple of comments before the case
11 begins. As I mentioned earlier, although I am the only person
12 who can tell you what the law is, you are the only ones who can
13 determine the facts. Let me say that again. While you will
14 get your instructions on the law from me, you are the decider
15 of the facts. I do not have the right to indicate how I may
16 feel about the evidence presented, and throughout this trial,
17 my intention will be to act impartially toward each party.
18 Second, from time to time an attorney will object to some bit
19 of testimony or evidence which the other side is seeking to
20 present. As in sports, business, or any other structured
21 activity, there are certain rules that both sides must obey in
22 presenting evidence. These rules have a definite purpose, they
23 ensure that the information you receive is the most trustworthy
24 and reliable evidence available. An objection to evidence is
25 the procedure used for an attorney to call a possible violation

1 of the rules to my attention as the Judge of this Court, and
2 for this reason, you should not hold an attorney's objection
3 against his client, nor should you conclude from my ruling on
4 the objection that I favor one side or the other. Finally, I
5 would ask that you pay close attention to all of the evidence
6 presented to you. It is you, the jury, who will determine the
7 facts in this case and as a result, you will have to evaluate
8 the credibility, which means the believability of each witness
9 who testifies in this matter. You are participating in a time-
10 tested system, and it is extremely important for each of you to
11 listen carefully to all of the evidence presented. It's been
12 my practice not to allow taking notes. Ladies and gentlemen, I
13 am sure that each of you will perform your duties accordingly.
14 And again, I thank you for your service. We're now ready to
15 begin this case. Anything before we begin from the Plaintiff?

16 MR. LYLE: None from the Plaintiff.

17 THE COURT: Anything from the Defendant?

18 MR. VANDENBERG: Nothing, Your Honor.

19 THE COURT: Thank you. Mr. Lyle, you can give your
20 opening statement.

21 MR. LYLE: Good afternoon, ladies and gentlemen, my
22 name is Todd Lyle, I introduced myself to you earlier, and I
23 have the pleasure of representing my friend and client, Jamahl
24 Postell. And so I'm going to ask you to be attentive, and I'm
25 going to promise you that I'm going to do my best not to drag

1 this out because I know that this is not the most important
2 thing that you want to do right now, it's not where you want to
3 be. However, what we're doing today is the American Justice
4 System, it's how 12 ideas get together and come up with
5 unanimity to speak the truth. And you'll hear this if you ever
6 sit through a trial, but lawyers will tell you the word verdict
7 is a Latin word that stands for truth. And so that is what I'm
8 going to ask all of y'all to do, but I am going to ask you to
9 pay attention and know that I'm going to do my best not to drag
10 this out. There are things outside of my control, but I do
11 want to present to you and tell you a story about what really
12 happened. There's a reason why there's a house of cards here
13 because I'm about to tell you about Jamahl Postell and his time
14 at a place called The Rowan which I will submit to you is a
15 house of cards. So what is the case about? The case is about
16 two things, it's about systemic failures and it's about the
17 blame game, it's about the shameless blame game because what
18 you're going to hear is about a house of cards, it's a
19 structured situation institution that's insubstantial, shaky,
20 or in constant danger of collapse. I'll submit to you that by
21 the time you get to hearing about all the different players and
22 employees of The Rowan, you'll be blown away that anybody can
23 stay there and pay their rent. I put this quote up, I don't
24 know how many of you know John Wooden, famous basketball coach
25 at UCLA, unprecedented 10 national championships, one of his

1 most famous quotes is you're not a failure until you start
2 blaming others for your mistakes. And what you're going to
3 hear is the blame game. You're going to hear about all the
4 different employees who failed to follow the policies for what
5 they call the turn which is 1002 bed space tries to cram six,
6 700 beds turned over in a one- or two-day period. And then
7 they're shocked when they realize that somebody who renewed
8 their lease and went home for a couple of weeks before they
9 came back, they're shocked when they find out that they went
10 ahead and went in and threw away all of his stuff. So what is
11 the case about? I told you earlier two things, I'm going to
12 expand on those. There's two things I'm going to ask you to
13 do, I'm going to ask you to pay attention to damages in this
14 case and then I'm going to ask you to ask yourself what does
15 justice look like. There's a part of the damage that I want to
16 tell you a quick story about. So I practice law here in
17 Lexington, but for a period of time, believe it or not, I'm
18 from here, but I practiced in New York City for a little while.
19 And I always like to tell this story because it gives the
20 context when you hear facts, when you hear about what somebody
21 went through or what somebody experienced. Railway car,
22 subway, New York City, there's a gentleman on this car with his
23 three children and they're not behaving, they're acting wild,
24 they're throwing crap, they're throwing around the cheese balls
25 or the, you know, goldfish, they're making a mess, and people

1 in the car are starting to get really annoyed. They're looking
2 at this father going, dude, take care of your kids, how about
3 do some parenting here for a second. And the father, he's
4 checked out, he's spaced, looking straight ahead, has no idea
5 what's going on. Somebody finally just says, you know, I've
6 had enough, sir, could you please parent your kids and get them
7 in control. He looks at him and says, I'm so sorry, I just
8 left the hospital where I found out my wife has terminal
9 cancer, and I haven't communicated that yet to my kids. And so
10 you go, oh, my gosh, here you go, you think you got this absent
11 father who's not parenting his kids when you realize he's faced
12 with an untenable burden of how he's going to explain some
13 awful news to his kids. So what you think is a parent who's
14 checked out because he's a bad parent or he's got his mind on
15 other things because he's lazy or because he's selfish, is
16 actually going through something somebody should never have to
17 go through was to tell their kids some terrible news like that.
18 So when you hear the facts of this case, when you hear about
19 Jamahl coming in and being scared as a little 19 year old and
20 realizing that all of his stuff is gone and going and getting,
21 walks down to the management office to tell them a bunch of
22 lies or tell them a bunch of blame game and you start realizing
23 what it's like three hours away from home all by himself as an
24 only child, his mother is important, you'll hear from her
25 later, 19 year old honor student at Benedict College who has

1 nothing. You tell me whether he's experiencing some anxiety,
2 whether he's experiencing some stress or having to go through
3 some things and not just say let's go buy you some new stuff.
4 Everything the kid ever owned, gone. So I talk to you about
5 that, I also want to talk to you about what is justice, we're
6 talking about the American Justice. This isn't a case where we
7 talk about car wrecks or things, but it's important to bring
8 this up, this isn't Leviticus, this isn't Exodus, this isn't an
9 eye for an eye or tooth for a tooth, this is what we now call
10 today the 2005 Noneconomic Damages Act of South Carolina which
11 says that you have economic damages, the cost to replace
12 things, the cost of medical bills, the costs associated with
13 the harm. We also have noneconomic damages because we're not
14 barbaric, we don't go put the managers of The Rowan through the
15 same stress and anxiety of having to go through the first
16 couple of weeks of college without practically anything, we
17 don't do that, we say, hey, we're going to talk about that
18 through the legislature's determination that collective souls
19 can come together and come up with what we call damages. So
20 what is accountability? Accountability is righting the wrongs.
21 And that's what I'm going to ask you to do after you've heard
22 this whole story, I'm going to ask you to provide a remedy, and
23 that's going to be that verdict, that's going to be that truth.
24 When you hear about everything that The Rowan has put Jamahl
25 and his mother, Shawndolena, through, when you hear them come

1 up here and make excuses because they're going to do more
2 excuses, because that's why we're here today. Obviously, if we
3 could work this out we would. But instead, we're here today
4 because they don't think they did anything wrong because they
5 think they fired the low guy, the one guy who apparently took
6 the stuff out and put some of it in his personal apartment, but
7 you'll hear through the testimony what actually happened to all
8 his stuff. So let me tell you about The Rowan. What is The
9 Rowan? The Rowan is 1002 beds, it's off of Shop Road, Bluff
10 Road, they hold themselves out as campus housing. You'll hear
11 about Campus Advantage, Inc., a company out of Austin, Texas
12 that manages in 22 different states around the country over 50
13 different assets as they call them. You'll hear about how they
14 do investment counseling and consulting and how they manage
15 portfolios for these New York City stockbrokers managing campus
16 housing letting the low man on the totem pole be the fall guy
17 whenever they screw up and not making it right. So that's a
18 good aerial view, pretty big complex, again, off of Bluff Road
19 and Shop Road. So this is their website, you go to the website
20 right now and it says, the future invests here, and that's the
21 message they want to communicate to the public, not we're going
22 to take care of your kid, not that we're going to take care of
23 your time here as a tenant, we're going to tell you the future
24 invests here, Campus Advantage. You'll see this screen shot
25 later, this comes from their website, they've got 48 different

1 communities at this point, 250 plus total communities managed
2 since 2003. They're bragging about all the communities that
3 they're acquiring. Here's another photo of the website
4 snippet, they say, our expertise is your advantage, with
5 beginnings as a student housing company in 2000, where Campus
6 Advantage utilizes our expertise to provide investment
7 management, property management, consulting services for
8 student housing properties and multi-family properties alike.
9 Our expertise combined with a genuine dedication to superior
10 living experiences has made us one of the largest student
11 housing owners and managers in the United States. Through
12 integrity, intelligence, passion, and what we call mojo, we
13 create successful communities which in turn results in
14 financial success for our partners, owners, and investors.
15 What do you not see right there? You're going to hear about
16 not seeing that this whole thing and their mojo takes care of
17 their tenants, you're not going to hear a thing about that. So
18 why talk about this? You're going to hear about The Rowan,
19 1002 beds, their regional vice president, a lady named Melissa
20 Hinton, we took her deposition via video, if it were up to me
21 we'd only play a few parts of it because it's a long winded one
22 and if Defense gets to stand up and take their case you'll
23 maybe have to hear the whole two and a half hour video, and I
24 apologize in advance for that if that happens. But you'll hear
25 eventually that they talk about this is a large asset, they

1 talk about how they have 50 plus assets nationwide. You'll
2 also hear about there was no manager for the couple weeks
3 leading up to this event. The prior manager, Terrance Jackson,
4 had left and the new manager, Katie Floyd, had just stepped in
5 right before this happened. You'll hear about how a turn is
6 hectic, 600 plus beds get turned over out of 1002 over a couple
7 day period. You'll hear about how they don't actually have a
8 license at The Rowan, they go rent a license through a company
9 called Lariat Realty. Rather than have their own employees get
10 licensed, they just go pay some local real estate company in
11 all the different states that they work so that they can check
12 that box and be compliant. You'll hear about the systemic
13 failure in following policies. I'm telling you, don't be
14 surprised when you hear how many different employees just don't
15 bother to follow their policy or either that or they make the
16 policy up later after the fact. I don't know, you'll get to
17 decide. You'll hear about the inconsistencies and the
18 testimony from several different players. And then here's the
19 most important part I want you to remember because this case is
20 alleging a violation of the Unfair Trade Practices Act, that's
21 a decision you as a jury get to decide. The Judge will tell
22 you about the law, but you're going to hear evidence that I'm
23 going to ask you to ultimately decide when you go back and
24 deliberate down that hallway that this is unfair and this is
25 deceptive to take the tenant's money and his mother's money and

1 have this kind of a failure to follow policy to the point that
2 you just trash out some kid's room and everything he owns is
3 gone. You're going to hear about how they, Campus Advantage
4 was fired by the landlord for their performance. So let me
5 talk to you very briefly about the timeline, this is what
6 you'll hear. On July the 6th of 2022, Jamahl Postell renews
7 his lease, okay, that's a screen shot you'll get to look at
8 about a 40 some odd page lease signed by both parties where Mr.
9 Postell renewed his lease. Now, Defense is going to talk to
10 you about how he was maybe thinking about transferring units
11 inside from one to another at the same facility. And
12 somebody's going to argue that well maybe that's what happened
13 is at one point he said he was going to transfer, but don't
14 listen to that. Listen to the story as it's relayed to you
15 through the different emails that you get to read where after
16 this July 6th date, there was no more talk of a transfer.
17 Katie Floyd, the property manager you'll hear from, she said I
18 thought it was still a transfer. Some people say, well, I
19 thought he was supposed to be renewed, and some people say,
20 well, I thought he was gone. Again, inconsistencies throughout
21 all the different players, but on July 6th he renews his lease.
22 On July 11th, Katie Floyd sends a message to a lot of folks,
23 they're going to tell you this was automated, it very well may
24 be, but Jamahl gets an email that talks about move out day on
25 July the 11th that's coming from Katie Floyd, the apartment

1 manager. Ms. Postell Arnold, Shawndolena, who is Jamahl's
2 mother emails and says, good afternoon, Katie, on July 14th,
3 you're going to see, hey, I just want to make sure you guys
4 knew, we're renewed, right, I don't know why my son got this
5 move out email. Later on July 14th, you're going to see Katie
6 write back and say, thank you, the second says, states that our
7 records have you renewing. So okay, crisis averted, right?
8 July 14th, I have a concern, you write back and say all is
9 well. July 17th you're going to hear about this pre-turn
10 meeting that Katie Floyd ran when they talk about all the ways
11 they're going to go through this process of turning over 600
12 plus beds and having to follow all these procedures. Pay
13 attention, we're going to have this admitted into evidence when
14 you go back and deliberate, pay attention to this outline. On
15 the July 25th date, this is a report coming from Katie Floyd
16 that you'll get to read later, but essentially on the 25th of
17 July, several people go in that room and decide they're going
18 to just go ahead and clean it out. Again, this will all come
19 back to you in evidence. July 28th, these four different
20 employees, Myra, Ashanti, actually, it's five employees, Myra,
21 Ashanti, Mike, Trinita, and Carlton were all grouped together
22 on 28, July, worked on trashing out the buildings. During this
23 trash out policy, this is a report from Katie Floyd, she's
24 going to name five different people who didn't follow policy,
25 only one gets fired, the new guy, the young guy, the low guy,

1 Carlton Brown who's listed as a porter. In fact, you'll hear
2 that Ashanti didn't even get written up. You'll hear that Mike
3 eventually, two months later got put on what Melissa Hinton
4 calls a performance improvement plan where he, then he
5 eventually resigns. You'll get to read this Teams message on
6 August the 5th when Jamahl comes back to campus after being
7 gone for a few weeks, comes back and he meets with a guy named
8 Christopher Lewis. And Christopher Lewis types this Teams
9 message, I'm about to deal with a parent via telephone
10 regarding unit 3007A, Ansel Postell, he's a renewal but he
11 walked in his unit today and his unit is trashed out and all
12 his belongings are gone. I need some kind of help from you all
13 while Katie and Michelle are working on FASs, FASs are
14 financial accounting statements. Basically, they're worried
15 about making sure the money's right. Please don't speak, just
16 type if you have information. What does that tell you? It
17 tells you Chris is standing there in front of Jamahl, he didn't
18 want Jamahl seeing what he was doing on his computer. Then he
19 says he's renewed in the system, so pay attention to that,
20 you'll hear this later, but Chris has him renewed in the
21 system, pay attention to what you hear from Katie Floyd later.
22 Ashanti says Carlton went in there the first day and turned it.
23 On Thursday me and Myra went in there and trashed it out. And
24 then you'll see Katie says the inspection indicates that the
25 apartment was in good condition, no trash out. Ms. Arnold gets

1 involved and says let me take care of my son, let me try and
2 make this right. You'll hear Ms. Arnold tell you that when
3 they moved him in his freshman year the year before before he
4 started at Benedict College that they took three vehicles to
5 move him because he was moving from three plus hours away.
6 This wasn't just grab your weekend bag, this was an actual
7 move, this was a complete relocation, everything he owned, had
8 accumulated in his life got moved into The Rowan. So Katie
9 Floyd says on August the 7th, good evening, thank you for the
10 email regarding the issue and allowing Chris and me the
11 opportunity to rectify this unfortunate event. Regarding the
12 series of events, this is correct, all items from unit 3007A
13 were removed. Unfortunately, the removed items were not stored
14 correctly and only some items have been recovered at this time.
15 I don't know why we're here, again, pretty damning, pretty big
16 admission, yet they still think they did no wrong because they
17 fired the guy, the low guy. In this picture right here is
18 everything Jamahl recovered, that's it, that's the picture
19 taken on the floor of Christopher Lewis' office after they ran
20 down and figured out the few things that a few of the employees
21 did go take. You got a little weighted vest, a bookbag, you'll
22 see a computer tablet right there. Now, I want you to pay
23 attention to the computer because, I'll be honest with you,
24 when I first met Jamahl and heard about this computer, I was
25 surprised to hear how much this computer cost until I learned

1 that this guy builds computers for a living, he does graphics
2 things, and he does Adobe this and Adobe that and so the
3 average guy who spends a lot of money on a laptop thinks oh, my
4 gosh, but you'll hear, this computer cost him over six or
5 \$7,000.00 to build then it was completely destroyed, so this
6 case is about damages. You just saw the email, you just saw
7 Katie Floyd admit, we took your stuff, we're going to make it
8 right, so then you'll get to hear from Jamahl, and you get to
9 hear from Ms. Arnold, and you'll get to hear about how they
10 gave her the run around for several weeks until they finally
11 said we've got to take matters into our own hands, and they
12 finally got a lawyer involved. So you decide the damages in
13 this case. And again, the Judge is going to quote you on the
14 law, but these are the applicable statutes, we're going to talk
15 about noneconomic damages, we're going to talk about economic,
16 noneconomic and we're going to talk about punitive. Punitive
17 damages serve two purposes, the Judge will instruct on the law,
18 but it serves two purposes, that's to punish or to deter this
19 kind of behavior and it's also to send a message to similarly
20 situated Defendants. In other words, it's 12 members of
21 Richland County at the conclusion of this case when you give a
22 verdict, you get to tell every single property manager in this
23 county how they should treat and respect the personal property
24 of their students, of their tenants who call this their home.
25 Whether they feel like they can have the sanctity and the peace

1 to have their personal property kept and taken care of or
2 whether a bunch of people cannot follow policy, lose, steel, or
3 otherwise misplace your property, ruin it and only give you a
4 fraction of it back and then say, oh, we're sorry, that we
5 fired the low guy. Not another person was let go after this.
6 So there's five causes of action in this case, again the Judge
7 will instruct you on the law, but one is unlawful ouster, which
8 is essentially a wrongful eviction from the landlord. Another
9 one's conversion of chattels which we lawyers are really bad
10 about using some of these words, but that is what that is and
11 it's basically the taking of property, personal property,
12 that's what chattels are. Unfair trade practices, that's the
13 one where I'm going to ask you to go back and decide if this
14 was unfair or deceptive. Breach of contract and then
15 negligence. And when you ask yourself about negligence, the
16 Judge will instruct you on these elements, but it's duty,
17 breach, causation, damages, and I'm going to ask you to look at
18 this from two standpoints as you hear the evidence. Number
19 one, was The Rowan negligent in how they operated, that's one.
20 Secondly, were they negligent in how they hired people, trained
21 people, supervised people, and how they would let four or five
22 employees just go roughshod on their policies. That's a
23 question you get to ask yourself as we go through these causes
24 of action. Just some snippets that Katie Floyd made, we may
25 not see her, but our side has designated some deposition

1 excerpts, and so I mentioned to you earlier what they said they
2 had him in the system. There's a question and answer that'll
3 get published later, what do you believe the status of Mr.
4 Postell's July 25th was when they entered his unit, I believe
5 the system had him listed as a transfer and therefore his unit
6 was supposed to be vacated. Now, you just saw earlier, and
7 you'll get to see it later, that Teams message from Christopher
8 Lewis says I had him as renewed in the system. You think
9 that's an important fact to have for a property management
10 company? This is Melissa Hinton, you'll get to unfortunately,
11 probably hear this whole two-and-a-half-hour video tomorrow.
12 Question, so Campus Advantage's position based on Ms. Floyd's
13 report is that at the time Carlton and Ashanti went into Mr.
14 Postell's unit, this report saying Postell had renewed and that
15 it's showing renewed in the system, yes, it shows he's a
16 current resident, yes. And that directly refutes what Katie
17 Floyd just said, that he was a transfer. So some kind of list
18 generated that should have shown Mr. Postell as being renewed,
19 and Ashanti and Carlton disregarded that list. This is the
20 corporate deposition, this is the regional vice president,
21 yeah, let me throw them under the bus, that information should
22 have been documented that this was a renewed unit. Again, from
23 the top down, nobody has taken responsibility for this, nobody
24 took responsibility to this. You'll hear from Ashanti, and
25 this is the part that makes this unfair, this makes this

1 deceptive, and this is why I will submit to you this is a
2 violation of the Unfair Trade Practices Act. Deposition of
3 Ashanti Young which you may hear from her tomorrow, have you
4 ever seen any other tenant stuff removed because there was an
5 error as to whether or not that tenant had renewed the lease or
6 not, she asked, before this incident or just in general, I
7 asked in general, she says yes. Then I say have you seen it
8 happen while you were at Campus Advantage, yes. And was it at
9 The Rowan in Columbia, yes. It goes on further, do you recall
10 which unit it was, I do not because it wasn't one in my
11 apartments or one of my buildings, but you do recall that
12 somebody's personal property was taken because of a mistake in
13 the system or a mistake on the sheet that was handed to the
14 employee, correct, and other instances of it happening with
15 Campus Advantage, yes. Now, interestingly when I asked Melissa
16 Hinton or when I asked Katie Floyd, they don't know. When I
17 asked a guy named Nick Hooser, he says well, I could see how
18 that could happen, but I don't remember a lot, it was a long
19 time ago, two years. So in closing, the Judge is going to
20 instruct you on the law, but I just remind you, the burden of
21 proof, the preponderance of the evidence, that's lady justice
22 wearing a blindfold holding the scales, we have the burden to
23 tip that ever so slightly. For punitive damages, the Judge
24 will instruct you on the law, but clear and convincing is the
25 standard. I would submit to you that when you hear all this

1 evidence, you'll be clearly convinced that Campus Advantage
2 admitted they disregarded the policies, and they didn't take
3 the appropriate corrective action. These are some of the names
4 that you heard, tomorrow you'll hear from Jamahl, you'll hear
5 from his mother, Shawndolena, and these are the witnesses on
6 the other side, you may hear from some of them via video, you
7 may hear from some of them just being their depositions read or
8 you may just hear them referred to, but Katie Floyd was the
9 property manager, Christopher Lewis was the leasing manager,
10 Myra, Trinita, Rachelle, those were all midlevel employees at
11 The Rowan. Ashanti was a community assistant, Mike Allen was
12 the supervisor for maintenance and then Carlton Brown was the
13 porter, Carlton, the guy on the bottom, Carlton was the guy
14 they fired even though you'll hear that Carlton asked Mike
15 Allen when he walked into the room and saw things like the
16 computer, hey, are we good to take this stuff, and Mike says,
17 sure. Mike didn't get fired, Mike's a supervisor. Ashanti
18 went in the room; Ashanti didn't get fired. So again, some of
19 these emails you'll read make this very clear, as a jury, your
20 actual decision, your verdict should be based on the damages in
21 this case. Now, I appreciate your time, and I look forward to
22 the next, hopefully, just day, day and a half and hopefully
23 we'll have this done. Thank you.

24 THE COURT: Mr. VanDenBerg?

25 MR. VANDENBERG: Just out of respect for the

1 afternoon break, I don't expect I'll run past 3:30, but ---

2 THE COURT: Let's try to get this in, everybody okay,
3 the jury, any need for a comfort break?

4 (Nonverbal response from jury.)

5 THE COURT: Let's try to get it done.

6 MR. VANDENBERG: Okay.

7 THE COURT: Thank you for asking, though.

8 MR. VANDENBERG: So I'm going to save my closing
9 argument for closing. Again, I want to introduce myself, I'm
10 Timothy VanDenBerg, and I want to tell you a little bit about
11 this case, some of the background, some of the facts. But you
12 know, every time that I, you know, enter the Courthouse, I'm
13 always reminded of these lessons I keep learning over and over
14 again. And one of those lessons is about the precision of
15 words, you know, words have meaning and I'm always encouraging
16 myself to keep an open mind, to be at least intellectually
17 curious if not a little bit suspicious about the mention of
18 absolutes. You know, sometimes when we hear the word always or
19 never as in, you know, sure, dad, I did all of my homework or,
20 dad, I would never do that. So I would ask you to be
21 intellectually curious about the facts of this case and about
22 the words that we use as we hear the evidence. So a little bit
23 about the, my clients. You heard some from Mr. Lyle, I want to
24 give you a little bit, you know, deeper background and a little
25 bit different perspective on my clients. So the property is,

1 is if you drive up to the front, you'll see the name The Rowan,
2 and The Rowan is the owner, the landlord of the property, and
3 as I said and as you'll see in the caption, their actual trade
4 name is, or excuse me, their legal name is EMRES II, South
5 Carolina, LLC because who wants to live at a property that's
6 named EMRES II, South Carolina, LLC, so not trying to hide
7 anything it's just that's the name that they go by is The
8 Rowan. And as you've heard, they've, you know, they're under
9 new management and they've changed their name, the other
10 participant is Campus Advantage. Now, Campus Advantage is if
11 you've ever, you know, known anyone who has owned property
12 whether it's an individual homeowner who, you know, owns a
13 second home that they lease out or if you know anyone that
14 actually owns commercial property and maybe it's too big of a
15 task for them to actually manage it themselves. In this case
16 you have a property owner, a landlord who hires a management
17 company, Campus Advantage, to actually manage that property.
18 And so Campus Advantage, as Mr. Lyle showed you on the
19 overhead, a nationwide property management company. Some
20 properties they actually own and manage, the majority of them
21 they actually just manage. In addition to that, they provide
22 consulting services so other property management companies may
23 hire them and do audits of their property. Now, and so this
24 is, you know, it's an interesting industry, and so, I don't,
25 you know, before I started working with, and there are a number

1 of clients that I served in this capacity in this space, and so
2 it's, you know, an interesting industry, but like any industry,
3 I don't, you know, that I don't necessarily know anything
4 about, I want to hear all of the facts before a form a
5 judgement about what that industry is. But in this case, so
6 Campus Advantage hires the employees, it's their employees that
7 actually work onsite, so it's not the landlord that actually
8 manages the employees, it's Campus Advantage. And so in this
9 case, Campus Advantage had, as you saw, a number of employees
10 who were on duty the day that the property, actually, that the
11 incident in this case arose back in 2022. And so in this
12 space, you know, some of the facts that Mr. Lyle mentioned I
13 want to go back over. So student housing, much like if you
14 lived at a dorm or have someone that you know that lives in a
15 dorm, they tend to operate their business similar to how, you
16 know, a student housing runs. So if you were to go to the
17 University of South Carolina or Benedict College, you would see
18 how they're actually, students live in the dorms, it's not
19 dissimilar to that in the private student housing sector. So
20 you have a number of these businesses nationwide that operate
21 specifically in a student, a private student housing space.
22 And so if you live here and read the paper you see that there's
23 these similar developments that are being built, you know,
24 around the Columbia area and around the rest of South Carolina.
25 They tend to be located in areas where there's a concentration

1 of students, so you have primarily in the, you know, the
2 upstate in Clemson in the Greenville area, down in Charleston,
3 and of course here in South Carolina. You have a number of
4 these private student housing businesses that either own and
5 operate or manage these student housing. And so, and it's a
6 little bit different. So the leases and, you know, the slide
7 that Mr. Lyle put up shows a little bit of that. But unlike
8 your typical lease where you may be familiar with leasing the
9 entire unit, so if you want to lease an apartment unit, you're
10 leasing the entire apartment. In this case, you actually lease
11 the bedspace, and you heard Mr. Lyle refer to the 1002
12 bedspaces. So The Rowan had, you know, maybe a third of the
13 number of actual units, but 1002 bedspaces, so spread over a
14 number of different buildings. And so when you lease a
15 bedspace, that's the lease that you sign, so you're not leasing
16 the entire unit. Now, you may actually have some roommates
17 that you meet and bring with you, but typically it's just you
18 that's leasing that bedspace. And not unlike living in a dorm,
19 you may also go through a roommate matching process and so in
20 one of the slides that you saw there listed, Mr. Postell's two
21 additional roommates, so he didn't know his roommates when he
22 first moved there back in 2021 and he went through this
23 roommate matching process where you enter, I don't want to like
24 refer to it as like a dating website, but it's what they do,
25 and also in the student housing, too, you enter your background

1 information and then there's a process where you're matched up
2 with people that you think or that they, that the apartment
3 management, managers think that might be a good fit for you.
4 So you lease the bedspace, you may or may not know your
5 roommates and then over the course of the year, and these
6 typically, these leases actually run from wherever the, you
7 know, the apartment community's located, they don't necessarily
8 run, you know, January to December, they run more or less along
9 the academic calendar. So when you get those leases, you'll
10 see that they have kind of weird dates on them, so in this
11 case, maybe middle of July, end of July to the following middle
12 of July, and so they tend to run based on whatever the academic
13 school year. So here in the South, schools tend to begin, you
14 know, summertime and the following summertime. If you go up
15 and look at these kind of similar private sector housing in
16 cold weather states, you may see leases that begin sometime in
17 September. So it's not unusual, it's just something that's a
18 little nuance about this industry and how they're different
19 from the other apartment communities that you may be familiar
20 with. So the facts in this case, I know, you know, I don't
21 want to, you know, it's almost like, you know, there's a story
22 to be told and I don't want to give too much of it away, but,
23 but you've already heard a little bit of it and so I want to
24 spend a little bit of time talking about the facts. And so if
25 it were as simple as Mr. Lyle suggested, we wouldn't need an

1 actual trial to determine, you know, what the facts are and
2 what the law is and how to apply a lot of those facts. And so
3 in this case, it is important to hear, you know, the entire
4 story, and so I would encourage you as you go through this
5 trial to keep an open mind, pay attention to the words, be
6 intellectually curious about the facts, what is said, maybe
7 what isn't said before you render your verdict. But when Mr.
8 Postell initially leases his apartment, as I said, it was a
9 three bedroom, three and a half unit, excuse me, three-and-a-
10 half-bathroom unit, two additional roommates. So his lease was
11 for a particular bedspace, so he had sole access to his room
12 and plus the common areas. And so there was an eat in kitchen
13 area, the half bath, and a lounge area I think he was entitled
14 to use, but it was kind of a townhouse community, excuse me,
15 townhouse unit. So if you would envision and you'll see
16 perhaps, you know, some photos of that property to get a better
17 idea of what it actually looked like. But his bedroom space
18 was a single unit that he solely occupied; he had sole access
19 to that in addition to the rest of the apartment. So he leased
20 the first year, '21 to '22, and towards the end of that first
21 year, at some point, he determined that he might want to
22 transfer units and so he left for the summer and the Benedict
23 College term ends, you know, the end of April, so sometime
24 towards the end of April, beginning of May, he returns home to
25 Atlanta. At some point in that summer, communication began

1 from the Postells to the management office about the
2 possibility of transferring units. And so there was an
3 exchange, the leasing manager and the rest of the staff
4 identified some possible units that Mr. Postell might transfer
5 into and then over the course of the 4th of July weekend, he
6 returned with his father to investigate, you know, the
7 possibility of moving into a different unit. Now, I say that
8 because it's important. So some of the facts that you'll hear
9 about the moving out towards the end of the semester and then
10 the decision to transfer units and then the ultimate decision,
11 so July 6th that you saw the lease, he signed a renewal lease
12 to stay effectively in the same bedroom in the same until. So
13 there is no, and you'll hear, you know, testimony from my
14 clients and perhaps the witnesses from Mr. Lyle's client that
15 there is no, although there was an exchange of emails, the
16 system always indicated that there was a valid lease. So
17 you'll hear a whole lot of background about the actual system
18 that was used and how that process works, how transfer leases
19 are coded and how renewal leases are coded. So again, I
20 encourage you to keep an open mind as we go through these
21 facts. So he returns after, so he renews the lease on July the
22 6th, returns the beginning of August, and when he enters his
23 unit, he discovers that his apartment unit is empty. So that's
24 a fact, we understand that, we know that that is the case, but
25 where we differ factually is what happened on July 25th. So

1 July 25th, there was a period of time leading up to this
2 process and you'll hear a lot about turn, and I want to get
3 back to turn in a minute, but I want to talk about July 25th.
4 There were a team of one maintenance person and one person from
5 the leasing staff who went to each and every bedspace on the
6 property to determine whether or not that space was indeed
7 occupied and what was needed. So whether it was, do we need to
8 maintenance the unit, so your typical, what would you imagine
9 takes place when an apartment turns over. So there were teams
10 of two people, and the team of two that entered Mr. Postell's
11 unit determined that there were contents in the unit and their
12 recollection of the contents differs from Mr. Postell's
13 version. And so we'll let the witnesses tell that story, but I
14 just want you to, again, keep an open mind, I mean, hear from
15 the witnesses tell what they observed when they entered the
16 unit. Mr. Postell returns on August the 5th and discovers that
17 there are no contents in his unit, alerts the front office that
18 he has no contents in his unit. And so as Mr. Lyle said, they
19 took him immediately, so they didn't, you know, they didn't
20 bicker about who was responsible for this, they immediately
21 took action, they took him to Target to purchase some
22 necessities. As they began the investigation to determine what
23 happened to his room, how could it actually have been the case
24 that his room was empty when he in fact had a valid lease. And
25 so witnesses will tell you, you know, what they observed when

1 they entered the unit, what the contents were and what happened
2 to those contents. So in wrapping up, again, please keep an
3 open mind. We'll hear from many witnesses today and starting
4 over the next day to day and a half. And so, and hopefully at
5 the end of this you'll return a verdict for my client. Thank
6 you for your attention.

7 THE COURT: Thank you, sir. We're going to take
8 about a 10 minute break. The bailiff is going to escort you to
9 a breakroom now which is right across the hall. Let's try to
10 get back in 10 minutes if we can, I'd like to get the Plaintiff
11 to actually begin his case today and get through a couple of
12 witnesses. Thank you all. Yes, sir?

13 JUROR: Would you like us to go ahead and vote while
14 we're out here, too?

15 THE COURT: No, sir.

16 JUROR: Alright. I just want to make sure,
17 sir.

18 THE COURT: Oh, as to a foreperson? Yes. You have
19 an opportunity to discuss the foreperson, that'd be a good
20 idea. Thank you.

21 (Jury exiting Courtroom.)

22 THE COURT: We needed to take a break now because
23 apparently some of the jurors had telephones and we wanted to
24 have an opportunity to collect those phones. In addition,
25 someone needed to make an emergency call, so that's why I

1 wanted to go ahead and break now, I know it's a little early.

2 Yes, sir?

3 MR. VANDENBERG: I just want to raise the issue of
4 showing this deposition transcript now. Are we, I do not like
5 to object during opening statements, but I mean, you know, that
6 went way beyond the veil of, you know, I mean, we're doing our
7 closing arguments here. And there's certainly now is a specter
8 of unfair prejudice now if I do decide to show the entire
9 video, I mean, it's, you know, put in their minds. So, and I
10 understand his reason for doing that, but, you know, now I'm
11 kind of, you know, I mean, you know, is this an issue for
12 appeal, I mean, I just, I'm trying to just think through, you
13 know, the impact of, you know, the issues that were raised.
14 And again, I mean, that was his, he did that on his own
15 volition and so now I think, you know, if we could maybe think
16 about this, that issue and maybe we can address it tomorrow
17 morning when things are fresh and I would like to, you know,
18 what I'm thinking is, you know, Your Honor, I'd like to
19 revisit, you know, how the deposition video is treated and
20 whether or not Your Honor will require that if it's shown that
21 it's shown in its entirety.

22 THE COURT: With the snippets that you're going to
23 take out, you still think it will, I mean, I assume that it
24 would still be about two and a half hours?

25 MR. VANDENBERG: Your Honor, I'm trying to think

1 of the snippets, I mean, I don't recall there being, and I
2 mean, there's, I don't recall exactly what was said about, you
3 know, the insurance, I mean, that's the thing, there wasn't,
4 there was no exhibit shown, I mean, Mr. Lyle showed the one,
5 the exhibit with the redacted version during his opening, so I
6 mean, I, not that they would have noticed or known what they
7 were seeing and that's the, but again, I mean, we're just,
8 we're trying to get to the facts and, you know, just a fair
9 treatment of, you know, these, both clients in this case. And
10 so, so I'll have to look back at the video this evening and
11 see, you know, based on your ruling, you know, how to, and I
12 am, you know, it's, I am not a video expert and so, I mean,
13 there's not a deep bench, you know, so my clients are now
14 looking through to see in what section, and there's, you know,
15 to Mr. Lyle's point, there's plenty of sections we can cut out
16 with just all of the intro stuff, but, you know, we have to go
17 through and make sure that, you know, his excerpts, and this
18 is, you know, our concern is that, you know, is this going to
19 be edited. There was one slide he showed with, I think it was
20 with Ashanti's deposition transcript where it was out of order,
21 he cut and pasted one section and was like numbers, you know,
22 one through 10 and the response was, you know, wasn't
23 sequential ---

24 THE COURT: Yes, sir.

25 MR. VANDENBERG: --- and so things like that,

1 I mean, you know ---

2 THE COURT: I understand. I suspect that you will,
3 first of all, as to the length of the video and the, I will do
4 my best in my comments to the jury and instructions so that
5 they take nothing from any comments he had made in opening.
6 And before we start evidence, I'm going to remind the jury that
7 the only evidence they are to consider is what comes from that
8 stand or in other matters, demonstratives are not evidence.
9 But I understand your point and certainly if you want to bring
10 anything more to my attention in the morning ---

11 MR. VANDENBERG: Okay. Thank you, Your Honor.

12 THE COURT: Yes, sir. Did you need to say something,
13 Mr. Lyle?

14 MR. LYLE: No, Your Honor. I think you already said
15 it. I mean, if he wants to make hay of something that I don't
16 produce in evidence that I said in opening, that's points for
17 him, that's just lawyer, so, but thank you.

18 THE COURT: Let's, of course, the jury's right out,
19 I'm going to take a quick break as well, so I'd like to begin
20 at 20 minutes till 4:00.

21 MR. VANDENBERG: Oh, sure.

22 MR. LYLE: Thank you, Your Honor.

23 THE COURT: You're welcome.

24 (Off the record.)

25 THE COURT: My plan is to go until right at

1 about 5:00 today and we'll resume in the morning at 9:30, is
2 that fine with everyone?

3 MR. LYLE: That's great, Your Honor.

4 MR. VANDENBERG: Yeah. We need to mark our exhibits
5 ---

6 MR. LYLE: If we want to put on the record, I mean, I
7 know we're on the record now, but there was a few of his
8 exhibits we still wanted to talk about, but I have 15 exhibits,
9 and we agreed to 14 of the 15. I'll let him consent to that
10 here now on the record, but the 15th exhibit is the Teams
11 message that has that redaction. And I now have a paper copy
12 of both that I can hand you, and again, if you want to withhold
13 your ruling until it becomes relevant, it does get played or
14 put up on the screen in the video of Melissa Hinton, so I don't
15 think it'll come in prior to that, but ---

16 THE COURT: Mr. VanDenBerg, first of all, do you
17 agree for the 14 Plaintiff exhibits that he indicates you
18 consented to?

19 MR. VANDENBERG: Yes. His exhibit other than 15.

20 THE COURT: Other than 15?

21 MR. VANDENBERG: But he's already shown 15 and that
22 was during his opening, that's the one that ---

23 MR. LYLE: It's not in evidence.

24 MR. VANDENBERG: It's not in evidence, I'm just
25 saying that ---

1 THE COURT: I understand, I'm going to remind the
2 jury about that. That's fine. So Plaintiff's 1 through 14 are
3 admitted into evidence.

4 (Whereupon Plaintiff Exhibit Numbers 1 through 14 are
5 entered into evidence.)

6 THE COURT: Mr. VanDenBerg, you just want to deal
7 with your exhibits tomorrow?

8 MR. VANDENBERG: If he's calling witnesses, you know,
9 I'd like to have mine marked in case, I can do it at the time
10 or ---

11 THE COURT: Are they agreed upon by ---

12 MR. VANDENBERG: Yes. Except, and actually so we're
13 discussing one of our exhibits it was, you know, our renter's
14 insurance policy ---

15 THE COURT: Yes, sir.

16 MR. VANDENBERG: --- we'd like to use that, and he
17 said he's fine with us using it, so ---

18 MR. LYLE: Judge, to be clear, I'm okay if he
19 mentions it, if I have a specific understanding that he's
20 opened the door for liability insurance for his Defendant, and
21 while I'm not going to tell him how to try his case, in the
22 dozen plus trials in Circuit Court that I've had, I've never
23 seen Defense want me to put up ---

24 MR. VANDENBERG: Well, it's, there's two
25 elements, there's a renter's insurance and then there's

1 liability insurance, so we're not talking about the liability
2 policy ---

3 MR. LYLE: But we are talking about it. If you talk
4 about his renter's policy, I want to talk about your client's
5 liability, if we bring up insurance, it cuts both ways.

6 THE COURT: When will the insurance issue come into
7 Court?

8 MR. VANDENBERG: It's ---

9 THE COURT: Is it through ---

10 MR. VANDENBERG: I don't know who he's calling as a
11 witness, but if he calls either one of those witnesses, Mrs.
12 Postell or Mr. Postell, it's ---

13 THE COURT: And as I understand it, what we want to
14 do, of course, my earlier ruling is I didn't want to hear
15 anything about insurance.

16 MR. VANDENBERG: Right.

17 THE COURT: Now I hear that you are agreeable to
18 allowing the policy in, but only on the condition ---

19 MR. LYLE: And I don't know, again, I've never had
20 this conversation in a Circuit Courtroom before because the
21 Defense has always just, never, ever, ever, but I'm asking Your
22 Honor if he opens the door to insurance, I'll consent to it if
23 it's your ruling that the door's now open in both ways. We're
24 going to bring up, in fact, I will move to admit into evidence
25 the discovery responses that list them having a 5 million

1 dollar liability policy, and I will promise him that in my
2 closing argument I'll talk about how all of the money is not
3 coming out of their pockets; it's coming out of the insurance
4 company's pockets.

5 MR. VANDENBERG: Well, again, those aren't even the
6 facts, I mean, they're self-insured, so there's no insurance
7 claim here, so...

8 THE COURT: And help me, now, let's go through this
9 again. You want to be able to question the Plaintiff about the
10 renter's insurance policy?

11 MR. VANDENBERG: Correct. And it's, and there's, you
12 know, renter's insurance is not liability insurance, it's
13 insurance of your personal property. So liability insurance
14 is, if there's liability insurance, it protects my client
15 against damages that he or his guest ---

16 THE COURT: And I haven't made a decision yet, but
17 you are of course, objecting then to Mr. Lyle's proposition
18 that the door would be open?

19 MR. VANDENBERG: Yes. And it's, I mean, it's
20 factually incorrect, too. He took the deposition and it's in
21 discovery, there is no insurance claim, my clients have not
22 filed an insurance claim, so there is no self-insurance,
23 they're self-insured ---

24 MR. LYLE: Just like we haven't filed a claim, but
25 there's coverage.

1 THE COURT: Gentlemen, I'm not going to allow
2 anything about insurance.

3 MR. VANDENBERG: Alright.

4 THE COURT: Mr. VanDenBerg, I understand that you
5 want to question him about, but it's just been my experience
6 and belief that anytime a jury gets ahold of insurance issues,
7 things go awry.

8 MR. VANDENBERG: Okay. And that's, that's, just to
9 be clear ---

10 THE COURT: Yes, sir.

11 MR. VANDENBERG: --- it's not just introducing the
12 exhibit, it's also the mention of insurance?

13 THE COURT: Correct.

14 MR. VANDENBERG: Okay.

15 THE COURT: I don't want the discussion about
16 insurance.

17 MR. VANDENBERG: Okay.

18 THE COURT: Now, hopefully, in his demonstratives
19 during his opening he didn't talk about insurance.

20 MR. VANDENBERG: I didn't hear that, Your Honor.

21 THE COURT: Okay. Alright.

22 MR. LYLE: Your Honor, I'm not going to make a
23 mistake in opening that door, I don't want a mistrial, but I'm
24 trying to get your ruling that if he'd open that door, I'd like
25 to finish going through it.

1 THE COURT: Yes, sir. We ready?

2 MR. LYLE: We are on our side. If there's no
3 discussion of his exhibits we can take that up later.

4 THE COURT: Oh, I'm sorry.

5 MR. VANDENBERG: Okay. No, that's ---

6 THE COURT: If you'd like to go ahead and offer your
7 exhibits and Mr. Lyle, do you have any objections to any?

8 MR. LYLE: I do, to some.

9 THE COURT: Okay.

10 MR. VANDENBERG: I thought that you, so the ones that
11 I have pulled out were seven which we had already, you had
12 already ruled on, our seven, which is the text thread.

13 MR. LYLE: And 2, 5, 7 ---

14 MR. VANDENBERG: So let me show you 2. This is
15 Ashanti's, this is from her deposition. And this one we can,
16 she's not here, she's not, I guess we can call her tomorrow,
17 but we can wait on these two until tomorrow, that's fine.

18 THE COURT: Let's wait on anything we can tomorrow,
19 we'll leave for tomorrow.

20 MR. VANDENBERG: But if I can go ahead and just, we
21 can get that marked now ---

22 THE COURT: Of course.

23 MR. VANDENBERG: --- save a little bit of
24 administrative ---

25 MR. LYLE: We can wait until tomorrow on this.

1 THE COURT: Alright. But yes, sir, if you will mark
2 them, that'll be fine.

3 MR. VANDENBERG: Okay.

4 (Off the record.)

5 THE COURT: Alright. Is everybody ready?

6 MR. VANDENBERG: Yes, Your Honor.

7 THE COURT: Alright. Mr. Lyle, you ready?

8 MR. LYLE: We are, Your Honor, thank you.

9 THE COURT: Let's bring the jury back in.

10 BAILIFF: Yes, sir.

11 (Jury entering Courtroom.)

12 BAILIFF: Jury's seated, Judge.

13 THE COURT: Thank you very much and I apologize that
14 the break extended a little bit longer than I originally
15 thought, that tends to happen in Court. And I want to thank
16 Mr. Brown for serving as the foreperson, Mr. Brown, would you
17 raise your hand, please? You're in the right seat, thank you
18 very much. We're going to begin our trial. Mr. Lyle, call
19 your first witness.

20 MR. LYLE: Thank you, Your Honor. Plaintiff would
21 call Ms. Shawndolena Arnold.

22 THE COURT: Now, let me interject for a second. We
23 are about to hear from our first witness. What you've heard
24 thus far is just opening arguments. With the evidence that I
25 want, that will be pertinent to this case will come from the

1 witness box and other evidence during this portion of the
2 trial.

3 CLERK: Do you swear or affirm that the testimony
4 you're about to give in this case will be the truth, the whole
5 truth, and nothing but the truth so help you God?

6 MS. ARNOLD: I do.

7 CLERK: Thank you, ma'am. Please have a seat in the
8 witness stand and state your full name for the record.

9 MS. ARNOLD: Good evening. My name is Shawndolena
10 Arnold Postell.

11 MR. LYLE: Thank you.

12 **DIRECT EXAMINATION**

13 BY MR. LYLE:

14 Q Ms. Arnold, is it okay if I call you that?

15 A That's fine.

16 Q Alright. Great. If you would, just briefly tell the jury
17 a little bit about yourself, where you live and what you do.

18 A So I'm originally from Selma, Alabama, but I moved to
19 Atlanta about 30 plus years ago and I'm currently employed with
20 FEMA, Federal Emergency Management Agency. However, I have
21 over 30 years of federal service.

22 Q Where did you work at before FEMA?

23 A Occupational Safety and Health Administration, OSHA.

24 Q Alright. And so you're now at FEMA?

25 A Yes.

1 Q And what is your title at FEMA?

2 A I am a training specialist slash state liaison.

3 Q Okay. And how many children do you have?

4 A I have one.

5 Q And is Jamahl your son?

6 A He's my one and only.

7 Q Alright. And so when you sent him off to college, was
8 that a big deal?

9 A It was a huge deal.

10 Q What kind of went into picking the college he'd go to?

11 A Excuse me?

12 Q What went into picking colleges?

13 A Oh, okay. So first of all, me being a single mom, I
14 definitely encouraged him that it was important for him to
15 figure out how he was going to pay his own way, and so he did
16 just that. He actually got a full ride to Benedict College,
17 sponsor, he was sponsored for that.

18 Q Now, did you take part in helping select where he was
19 going to live while in college?

20 A I excitably did that.

21 Q Alright. Tell the jury about that process.

22 A So part of that process was he and I would discuss
23 different places that he had pulled up online to see, you know,
24 where he wanted to live, neither of us had ever lived in South
25 Carolina. But upon that because we couldn't really make a good

1 decision, we didn't really know, we went to the school and we
2 asked them what were, you know, what was some thoughts, what
3 was some options. And so that's how we landed at The Rowan.

4 Q And you helped him move in his freshman year?

5 A Oh, yeah. I helped him move in, boy, did I help him move
6 in.

7 Q Tell the jury a little bit about that process.

8 A So for Jamahl, Jamahl, it took like three, three carloads,
9 it was actually two SUVs and my car that actually went into the
10 process of moving him in. My mom and I, and him moved and then
11 a friend of mine actually helped bring some of the other items
12 down.

13 Q Just give me a description of what all y'all moved in as
14 far as his personal belongings, just generally. Was there
15 stuff he left behind or did he move everything?

16 A So for the most part, everything because this was a new
17 experience, he was excited, we were excited, and so he was
18 moving away from home, it was like, you know, you're leaving
19 home, so, pretty much everything.

20 Q So there was some talk about, tell the jury a little bit
21 about the process of him thinking about transferring and then
22 what ultimately happened?

23 A So he did think about transferring because he wanted the
24 bottom apartment this time because he started out on the top.
25 So there was some talk about doing this, so I called the office

1 and tried to find out what the process was to figure out, you
2 know, if he would be able to be a transfer. And so it was some
3 back and forth, but they did provide me with a deadline that I
4 needed to make a decision. So what they did was they gave us
5 an option of an apartment that he could actually go and visit,
6 and so he did that, but he decided, no, I'd rather stay where I
7 am.

8 Q And so July 6th is the date that he signed the new lease.
9 Were you the guarantor also on that lease?

10 A Yes, I was the guarantor.

11 Q Alright. And did you pay for the rent?

12 A Yes. We paid for the rent six months in advance.

13 Q So you paid six months up front?

14 A Up front.

15 Q After you renewed it, you paid six months?

16 A Yes.

17 Q Alright. And so I'm going to hand you now what's marked
18 as Exhibit 3.

19 MR. LYLE: May I approach the witness, Your Honor?

20 THE COURT: Please do.

21 Q I'm going to hand that to you. Tell me if you recognize
22 that document.

23 A Yes.

24 Q Alright.

25 A You know what, can I get my glasses ---

1 Q Yeah.

2 A --- I'm sorry. They're in the case, the blue case. Yes.

3 Q Alright. So you recognize that and that's an email that
4 you wrote?

5 A Yes.

6 Q Alright. And I'm going to go ahead and put it up on the
7 screen because that's easier to see. So I'm going to move this
8 into evidence, Exhibit 3, and tell me about the, what's going
9 on in this email, why are you writing this email?

10 A So basically, I wrote the email because we received that,
11 you know, that he needed to be out of his apartment by July
12 25th. Well, I was like shocked to get the email because I knew
13 that we had already signed the renewal of the lease. So when I
14 got that, I immediately sent an email to the people who I knew
15 were running things at that time to question it, to question,
16 you know, the email that he received.

17 Q Alright.

18 MR. LYLE: I'm going to approach the witness one more
19 time, Your Honor.

20 Q I hand you Exhibit 4. Do you recognize that?

21 THE COURT: Mr. Lyle, I just need to comment to the
22 jury. Ladies and gentlemen of the jury, many of these exhibits
23 have already been admitted into evidence. Just to explain why
24 there's no discussion about objections at this point.

25 Q And Ms. Arnold, you recognize that?

1 A Yes.

2 Q Alright. That's Exhibit 4, I'll go ahead and I'll ask you
3 if you want to tell me a little bit about what that is.

4 A So basically, I emailed them questioning the email that he
5 received. I got an email back from Katie who at that time was
6 a general manager basically assuring me that it was no need to
7 worry about that email because she had him marked as renewed.

8 Q So Katie Floyd tells you all is well, we got you renewed?

9 A Yes.

10 Q Alright.

11 A Correct.

12 Q And now tell me then what is the next thing that you heard
13 about what happened in this incident for why we're here today.

14 A So the next thing, actually, was Jamahl drove back to
15 South Carolina, here, and when he got to his apartment, well,
16 he called me and he was like mom, he was like all of my stuff
17 is gone. I was like boy, stop playing because I thought, I
18 really thought he was playing, and he was like mom, I'm
19 serious. I said, no, there's no way all of your stuff could be
20 gone. And he was like, mom, it's gone. I said put it on
21 video, let me see it, I said I cannot believe all of your stuff
22 is gone. So he did, he put it on video, there was only one
23 thing left in the room, it was a vacuum in the floor, but
24 everything else was gone. I immediately said Jamahl, you need
25 to go down to the management office, I said because they're

1 going to have to fix this, I said this is unacceptable how, you
2 know, I mean, I was like, I was devastated to be honest, I
3 mean, I really was, I didn't even know how to handle the
4 situation myself because I had never been in this type of
5 situation. So I was trying to keep my cool and at the same
6 time encourage him to stay positive. And so I just told him, I
7 said look, I said I'm on my way, you know, I'm going to come,
8 you know. He was like, mom, it's okay, I said well, just go to
9 the office and let me speak to the manager once you get into
10 the office and don't you say anything. I said you let me talk
11 to the manager because at this point, I'm saying I'm the
12 guarantor, no, I need to handle this for you. And so that's
13 basically how that went.

14 Q So did you eventually get informed to create a list or
15 come up with some things that were missing?

16 A Yes.

17 Q Alright.

18 A So Katie, the manager, and Christopher, but Katie, she
19 asked me if I would create the list, well, first she
20 apologized, you know, and said that they would, you know,
21 basically, because I was like, he has nothing to sleep with, he
22 doesn't have, you know, he doesn't have a comforter, he doesn't
23 have a shower curtain, you know, I mean, I went through all of
24 that. And so finally she said to me, okay, Ms. Arnold Postell,
25 we're going to take him to Target and try to, you know, get him

1 at least where he could have a good night's sleep. And so
2 after that happened, I almost lost my train of thought, after
3 that happened, after going through that part of her assuring me
4 that everything was going to be okay, she told me, she said
5 make a list, she said make a list as soon as possible and get
6 that back to me and I did. He and I, we sat down over that
7 weekend and we created a list of the things that we could
8 remember was in the apartment. Because again, you've taken all
9 of your stuff from home and we're trying to come up with this
10 list quick so that we can give it to her because we're thinking
11 they're going to go ahead and get us situated. But that did
12 not happen.

13 MR. LYLE: Approach the witness, Your Honor?

14 Q This is, I hand you Exhibit 7, tell me if you recognize
15 that.

16 A Right.

17 Q Alright. So let's go through this because this is pretty
18 important. I'm going to show the jury, these are the text
19 messages, looking on the first page of this, now, what's the
20 date of this?

21 A August 5th.

22 Q This is the day this happened?

23 A Correct.

24 Q Alright. So tell me what you mean by this text message.

25 This is your text message with ---

- 1 A Yes.
- 2 Q --- your son?
- 3 A Yes.
- 4 Q And this is you writing this?
- 5 A Yes.
- 6 Q Alright. What are you saying here?
- 7 A Yeah. So basically, my first instinct was safety, okay?
- 8 I'm thinking, okay, is my son safe here at this apartment,
- 9 should he even be staying here at this apartment, who took his
- 10 stuff out of his room. So I'm saying to him, look, don't say
- 11 any more than you need to say, don't get, you know, in other
- 12 words, don't get your emotions caught up, just go to the
- 13 office, talk to these people, find out what's going on, and at
- 14 the end of the day, they're going to have to fix this because
- 15 this is unacceptable, this is unacceptable. We're paid up,
- 16 there's no reason, we renewed, I don't understand what
- 17 happened.
- 18 Q Alright. So I'm going to move to the bottom of this page.
- 19 What is that right there on the screen, it's the bottom of that
- 20 first page?
- 21 A So the bottom of this first page is me starting to make a
- 22 list of the things that I could remember.
- 23 Q This is the night it happened?
- 24 A Yes.
- 25 Q So it's fresh on your mind?

1 A It's fresh on my mind.

2 Q Alright. Let's go to the next ---

3 A Plus I bought a lot of that stuff, so that's definitely
4 fresh on my mind.

5 Q So if I go to the second page of this text message, it now
6 looks like the full list that you thought of that very night?

7 A (Nonverbal response).

8 Q And you eventually supplemented this with more concrete
9 numbers?

10 A Yes.

11 Q Alright. We'll go to the next page, the third page of
12 these texts. And you don't need to tell me what Jamahl said
13 and why, but tell me what you said and why because Jamahl,
14 he'll get up here and tell his story.

15 A Okay. So, okay, which is blue and which is gray, so I'm
16 the blue?

17 Q No. You would be the ---

18 A I'm the other one, okay. Okay. So take the clothes stuff
19 off, I got that, that was him. What do you mean, you need to
20 list the number of items and the names of shoes. You want me
21 to continue?

22 Q Sure.

23 A Okay. I was saying I was making a list for the stuff; he
24 was telling me he was going to handle that because he knew his
25 personal items better than I did. Call me when you done, just

1 thought about something, I told him to text me. He said no,
2 when you are done, done. Your bookbag, add that to the list, I
3 was telling him because this was a very special bookbag that he
4 had received, so I said add that to the list. Just call me
5 when you're finished. We're supposed to call cops

6 ---

7 Q Do you know why he asked you that?

8 A Well, I know why he asked me that, yes.

9 Q Why is that?

10 A So he said that they were telling him that he needed to
11 call the police and make a police report.

12 Q Did you think he needed to call the police?

13 A No, I didn't think ---

14 Q Why?

15 A Because I was like no one broke into your apartment,
16 they're saying that they did turnkey to your apartment so no
17 one broke in, so why am I calling the police, we should be
18 dealing directly with The Rowan.

19 Q Let's go to the next page for me. I'm going to put that
20 up on the screen.

21 A Yes. Can you call what's her name, he's speaking of our
22 cousin, but she's an older cousin so he doesn't, he knows that
23 she's in law. He's asking me can I call her, she's a probate
24 Judge and so I did. He said I told Peanut to tell her to call
25 you, you could have just asked the question, that may take a

1 while. In other words, I was telling him he could have called
2 her, or I could call her, but anyway I called her.

3 Q So Vickie is, you said she was what?

4 A She's my cousin, she's our cousin, but she's an older
5 cousin.

6 Q Okay. Is there anything else worth talking about in these
7 text messages?

8 A Oh, so yeah, so about the urgent care thing, we were
9 concerned about him being sick, you know, and being around
10 people and, you know, Covid was out at the time, so all of that
11 was a concern.

12 Q Okay. I'm going to hand you ---

13 A And he was like, I'll just be sick because of course ---

14 Q I'm going to hand you what's marked as Exhibit 8. Tell me
15 if you recognize that.

16 A Yes.

17 Q Alright. What are we looking at for Exhibit 8?

18 A So basically, there was several follow-up calls that I had
19 to do because after the list was provided to them, they just
20 pretty much ghosted me, they went on silent, you know, no one
21 would talk to me. Every time I would call they would say they
22 would be in meetings, I would leave messages, well, Katie said
23 for me to call, I'm trying to make sure she got my email with
24 the list. I wanted to know how long it was going to take for
25 them to basically replace his items because she had told me it

1 wouldn't be a long process. And they pretty much ghosted me, I
2 mean, no one would take my calls anymore, so at that point, I
3 was like, I'm going to have to get an attorney, I mean, I don't
4 have a choice, no one's talking to me, so I have to get an
5 attorney, so...

6 Q So that exhibit outlines some of the emails back and forth
7 with you and The Rowan?

8 A (Nonverbal response).

9 Q Alright. I'm going to go back in time, I apologize, I'm
10 going to hand you that exhibit which is marked number 9. Do
11 you recognize that email?

12 A Yes.

13 Q Alright. Tell the jury why Katie Floyd sent you this
14 email on 6:52 pm on August the 7th.

15 A Okay. Well, she was letting me know that they were going
16 to rectify the unfortunate situation regarding the items that
17 had been trashed or removed from Jamahl's apartment.

18 Q So that is your email that you received from Katie
19 Floyd?

20 A Exactly, yes.

21 Q Alright. Now, on August the 23rd, I'm going to hand you
22 Exhibit 11. Let me know if you recognize that.

23 A Yes.

24 Q Alright. I'll put this up. Tell the jury what Exhibit 11
25 is.

1 A So basically, Katie, she's thanking me for sending over
2 the information at this point and that she was going to send it
3 to her regional for review, and for further instructions.

4 Q So it looks like on the 18th you had a phone call, then
5 you're sent an email on the 22nd, and this is the email
6 addressed to you from Katie Floyd on August 23rd?

7 A Correct.

8 Q And at this point, did you still believe they were going
9 to make it right?

10 A I did, I really did. I thought they were going to make it
11 right, I mean, because it was obvious his stuff was gone, you
12 know, everything was gone, so I really thought they were going
13 to make it right.

14 Q Alright. I'm going to hand you Exhibit 12.

15 A Yes.

16 Q Do you recognize this?

17 A Yes.

18 Q Alright. And so Exhibit 12 is the spreadsheet that you
19 put together for them listing all the items in the house, or in
20 the apartment?

21 A In the apartment.

22 Q Alright. Does that accurately to the best of your ability
23 describe the things that you and your son put together?

24 A Right. So to the best of my ability, it is accurate, we
25 both, we went online, we, you know, you don't know prices right

1 off, so we went online to try to get prices of what things were
2 costing and that's how we pretty much came up with the list.

3 Q Now, those prices were brand new items ---

4 A (Nonverbal response).

5 Q --- now, was everything brand new that got missing?

6 A Of course not.

7 Q So was this an estimate?

8 A It was an estimate.

9 Q And some of the stuff could have depreciated some from
10 that, but you didn't have the opportunity to buy the used
11 stuff?

12 A Right.

13 Q Okay. Thank you. Ms. Arnold, I have no further
14 questions. Answer any questions that Mr. VanDenBerg may have
15 for you.

16 THE COURT: Mr. VanDenBerg?

17 MR. VANDENBERG: Yes.

18 THE COURT: Your witness.

19 **CROSS EXAMINATION**

20 BY MR. VANDENBERG:

21 Q Ms. Arnold, hello. This is the first time we've met, had
22 the opportunity to talk. So I want to ask you a question,
23 though. So as you compiled this list, were you able to locate
24 any receipts for the items that you say were missing?

25 A No.

1 Q Sorry?

2 A No.

3 Q And you said that there was, at the time when this
4 incident occurred, it was the beginning of the lease term, is
5 that correct?

6 A At the time that the ---

7 Q Incident occurred.

8 A --- that the incident occurred, but he had already
9 been in the apartment for over a year.

10 Q I'm sorry. Let me rephrase the question. So when he
11 returned to campus, he was there for a new lease term?

12 A Yes.

13 Q Were there any concerns about his safety?

14 A Not when he, not when he originally left Atlanta,
15 but once he arrived to the apartment, yes, there was some
16 concerns.

17 Q And yet you allowed him to stay in the unit for another
18 year?

19 A Yes, yes, yeah.

20 Q So I want to ask you about the claim spreadsheet and that
21 process. So where did the figure, \$20,000.00 come from?

22 A The figure, it was an estimate, it was based on the things
23 we could remember that we had gone online to get prices of, and
24 it was an estimate because Katie had advised me that I needed
25 to get her a list as soon as possible.

1 Q And but the, did the list come before the figure or did
2 the figure come before the list?

3 A The list came and then the figure came because we had to
4 Google from the list to get the prices. So there was a list,
5 we had to create a list, not a figure, we had to create a list
6 first.

7 Q So based on your recollection, when was the \$20,000.00
8 figure first arrived at?

9 A After we created the list.

10 Q So what we saw in the text message exchange between you
11 and your son, that list was the first step in determining the
12 items that were missing?

13 A After we created the list, we came up with a figure
14 based on the number amount that Google said it would
15 be.

16 Q I'm sorry, but I'm just trying to get the sequencing down.
17 So during the text exchange, this is on August the 5th, so the
18 day that your son arrived back on campus. And while he was at
19 Target, you started developing this list?

20 A Immediately, immediately.

21 Q And then I think I heard your testimony that it was two
22 days later that you provide that list to Katie? Was it Katie,
23 specifically ---

24 A Katie Floyd, I sent it, yes, because she was the one that
25 I was talking directly to. Chris was in the room, but Katie

1 was the one who was actually taking my call directly. She was
2 the one giving me instruction.

3 Q And so two days later the, what we saw as the spreadsheet
4 totaling \$20,000.00 for some of the items and then \$7,500.00
5 for the other items?

6 A That is correct.

7 Q And that was two days later?

8 A That's correct.

9 Q Okay. So the, I'm going to ask you about the, there was,
10 I forget which exhibit it was, but it was the exhibit, the
11 email confirmation from Katie Floyd --

12 MR. VANDENBERG: -- let me check my notes, Your
13 Honor.

14 THE COURT: Of course.

15 Q It was the Exhibit Number 9, this is the email from Katie
16 where she, she's recounting her exchange with you?

17 A (Nonverbal response).

18 Q And prior to that, was there a phone call between you and
19 Katie to discuss, you know, this, the damages at that point?

20 A No. Katie and I spoke on that Friday, which was August
21 5th I believe, regarding all of his items being removed from
22 his apartment. That evening, I sat down, and I started to
23 create a list based on my memory. Jamahl in turn said that he
24 would take care of his personal items, and I started making the
25 other list of the things that I was, was fresh on my mind.

1 After we made the list, we took that entire weekend, I remember
2 it distinctly, we took the entire weekend and sat down and
3 conversated about are you sure you have everything, mom, I'm
4 trying to remember, you know, I mean, it's hard to try to
5 remember every little thing that you had, but we did the best
6 we could, and we sat down and Googled and got the prices. And
7 that's how we came up with the amount.

8 Q And so earlier in the summer, it was one of the exhibits
9 that showed an exchange between you and Christopher, another
10 employee, about transferring units?

11 A (Nonverbal response).

12 Q Do you recall over the course of that first year, that
13 first academic year and leasing year when your son was at The
14 Rowan, when did the first, I guess, the question arise about
15 him possibly transferring units?

16 A That didn't come up until I believe it was like the
17 summer, I mean, school was out.

18 Q School was out, and he was already at home?

19 A He had come home, and we talked about him doing the
20 bottom, I mean, he had talked about it, honestly with me, but
21 not with Christopher or anyone at the apartment complex prior.

22 Q That's what I'm asking you is when did he discuss at first
23 with you ---

24 A Well, we had talked about it from the beginning from being
25 at the top versus being on the bottom and how the space was so

1 much larger because, I mean, you got your own bathroom, you got
2 two big closets, you got, you know, all of this space and if
3 you're on the bottom, you got access to the washer and dryer
4 right there. So he was revisiting, oh, I think I would have
5 liked it better to be downstairs versus being upstairs. So it
6 was conversation that he and I was having.

7 Q So my question then is when he at the end of the school
8 term, so end of April 2022, when the school term ended at
9 Benedict and did he immediately return to your home in
10 Georgia?

11 A I don't remember if it was immediate.

12 Q So but approximately ---

13 A But I know he came home, of course, yeah.

14 Q When is the approximate date in May then when he would
15 have come home?

16 A Maybe a week or so later, I don't know, I don't know,
17 maybe, I don't know, I can't remember.

18 Q And so if he was, had been contemplating moving units, and
19 you testified earlier that he brought almost his entire
20 collection of belongings when he moved and he was returning
21 home, what did he bring with him?

22 A He brought just a few things, I mean, because he was going
23 to be working all summer. If you know my kid, he's not one
24 that's like hanging out, you know, in Atlanta, he's just not.
25 But he did bring a few things because he was having employment,

1 but it wasn't much, it wasn't much because he was going to, you
2 know, work attire.

3 Q So can you be, can you elaborate on what you recall him,
4 seeing him bring home?

5 A No, I don't, well, he did bring home, he had this
6 casserole that he had done, so he loves to cook, and he brought
7 home this crab dish, lobster dish is what it was, a macaroni
8 and cheese lobster dish that he had brought home, that he had
9 frozen for me to try. But as far as what he brought home, I
10 really don't know, I wasn't like in his stuff, I mean, he's 19,
11 he's coming home, I'm not looking at what he brought home, I'm
12 not, I'm not doing that.

13 Q And the reason I ask is because you were very specific and
14 very detailed about the items that you recall him bringing to
15 school, and so I'm just wondering if you ---

16 A That was a totally different situation, we're packing him
17 up, so that's totally different. As a matter of fact, I had
18 him trash some stuff, but that was a totally different
19 situation, we're packing up, leaving home, you're leaving home,
20 not coming home. So if you're leaving home, you're,
21 everything, you're packing up stuff to put into your new home
22 away from home.

23 Q And so when he, you did not come back with him the weekend
24 that he came, the July 4th weekend of 2022?

25 A No, no, I didn't come with him, his dad did.

1 Q Okay. And do you recall what items he might have packed
2 to bring with him on that trip?

3 A On that trip, that was an overnight trip, I mean, that
4 wasn't a trip that he's coming to stay because he was coming to
5 just look at the apartment and make a decision on whether or
6 not he wanted to transfer, so he wasn't coming at that point to
7 stay. So he wasn't like packed up with anything.

8 Q Any other items that he might have brought with him? Did
9 he have any computer items?

10 A Not to come to see the apartment.

11 Q And so I guess, my next question is just, so if he packed
12 up most of his items when he moved to Columbia, what did he
13 leave behind at your home there in Atlanta?

14 A Well, we had an extra computer at home that he would
15 sometimes use, but I mean, just, I mean, little stuff, it
16 wasn't like big stuff, I mean, he really didn't, he took
17 everything, just about everything when he moved. I mean this
18 was a new experience for a college student, I mean, he was
19 excited, I was excited, I mean, you don't know what you're
20 going to need and me being mom, I'm like make sure you got your
21 dress shoes, make sure you got, you know, make sure you got,
22 you know, all these tennis shoes that you love, make sure you
23 got all of your stuff so that you'll have what you need because
24 I'm not that mama that's going to be coming up and down the
25 road to bring stuff. So we made sure that he had everything

1 that he wanted to have when he moved into his new home away
2 from home.

3 Q I want to ask you about the computer he left behind.

4 A Now, this is a home computer left behind.

5 Q So it's your computer?

6 A No, it's the home computer.

7 Q Can you describe ---

8 A Anybody can use the computer.

9 Q Is it a, like, is it like a desktop computer?

10 A Now, you got to talk to him about computers, that's not my
11 thing.

12 Q Well, I'll ask him about it, but I'd like to ask you about
13 it too. Can you just describe what it looked like?

14 A Well, I mean, it's a computer, it's a computer.

15 Q So was it like a box that was the computer? Was it a
16 laptop? Do you know what a laptop computer is?

17 A Yeah.

18 Q So was it just a ---

19 A Well, we have a laptop, yes, we have a laptop.

20 Q I'm asking ---

21 A We have monitors, we have a laptop, yeah.

22 Q But I'm asking you about the computer that your son left
23 behind.

24 A I can't speak for what he left behind, I can speak for
25 what we had as a family, you know, we have family

1 computers at the house, but I can't speak for what he left
2 behind.

3 Q So is, where would his property be in your home?

4 A It would be in his room.

5 Q And did you not go in his room at all?

6 A I mean, he's 19, I mean, I don't have a problem child, I
7 don't have a reason to just like be in his room snooping
8 around, I mean, I go in his room, if the door is open and I see
9 he got water bottles all over, I'm like, you need to clean up
10 that mess. But to like look and be like what kind of computer
11 you work, no, I don't do that.

12 Q So you're saying that you did not go in his room?

13 A I'm saying that I will go in his room, I have gone in his
14 room, if his room needs to be cleaned, I definitely insist that
15 he cleans his room, but I don't understand what you're asking
16 me, honestly ---

17 Q Okay.

18 A --- I'm answering to the best of my ability.

19 Q Okay. Let me rephrase the question. So you testified
20 that to the best of your recollection your son brought almost
21 all of his belongings with him?

22 A I was definitely in his room then, definitely.

23 Q So when you were in his room helping him pack up the
24 two SUVs and your vehicle, did you assess what was left
25 behind?

1 A Yeah, I assessed a little bit of what was left behind, I
2 mean, he took his major, his major computer, he took that to
3 school, of course. His computer, he took to school, the one
4 that he works on he took to school. Now, the home computer, if
5 you just come home and you just want to play around, you know,
6 a little bit on the computer, that's different. But his stuff,
7 he took all of his stuff that was in his room, just back to
8 school.

9 Q So I'm asking when you packed him up to move him to
10 school, and again, your testimony was about, you know, the two
11 SUVs and the car full of belongings. And you said that you
12 were in his room when things were being packed up and you made
13 the assessment that almost all of his belongings were moved
14 with him to college ---

15 A Yeah, yeah.

16 Q --- and so I'm asking you specifically, what was left
17 behind and wasn't taken with him?

18 A Again, all I can tell you is it may have been one or two,
19 you know, a couple pair of pants left, stuff that just really
20 didn't really matter to him. But as far as like, that's the
21 best that I can tell you, I mean, his computer was gone, the
22 things that mattered to him out of his room, everything that
23 mattered, everything that was important to him, it left and
24 went with him to school, to South Carolina, here.

25 Q Okay. And so do you, I mean, do you recall in

1 detail, were you involved -- let me strike that. Were you
2 involved in packing the vehicles?

3 A Yeah, we were. I mean, he packed the tubs of stuff, and
4 you know, we, you know, I'm like, did you get this, did you
5 make sure you have your mask, and you know, I mean, yeah, yeah,
6 we were all involved, my mom, we both were involved. You know,
7 I made sure, you know, towels, because he was dealing with acne
8 really, really bad at that time, and so, you know, we had to
9 get like a lot of, because if you know Jamahl, he don't want to
10 use the same towel and he had to use like white, white towels.
11 So it was like a lot of stuff that we, because he was very
12 particular about his skin, I mean, and sheets and, he was just
13 very particular.

14 Q So if you can just describe, so you mentioned two SUVs and
15 a vehicle?

16 A (Nonverbal response).

17 Q The two SUVs, can you describe those?

18 A So I have a BMWX3 and a friend of mine had a Yukon Denali
19 and Jamahl's car that he drove to school that he got as a
20 graduation gift was a Honda Accord. And so you all know you
21 can't get a, you can get some stuff in a Honda Accord, but we
22 had stuff in the front seat, in the back seat, I mean, it was
23 just a lot of stuff, it was just a lot of stuff.

24 Q Do you recall the year of the Honda Accord?

25 A 2009.

1 Q 2009? Okay. And so the two vehicles, one was yours, one
2 was a friend's and Jamahl's car, all three were full of
3 belongings?

4 A Yes.

5 Q So let's just go through what, if you recall in detail, so
6 in your BMW, what were the contents in your car since that was
7 your car?

8 A Oh, my goodness. Okay. So I really don't know exactly
9 what contents was in the car, I just know that it was a lot of
10 contents. We're shopaholics, I mean, my family, we really,
11 really are, we overdo it with shopping, I mean, it's like a,
12 it's a problem. But we just, we like clothes, we like shoes,
13 we just like stuff, and so it was a lot of stuff in the car, it
14 was a lot of stuff in the car, I mean, because we was like this
15 is ridiculous, I mean, it was a lot of stuff.

16 Q So I'm asking you since, you know, I know it was two years
17 ago, but two years ago you were able to compile this list of
18 personal effects, we saw that up on the screen. I'm assuming
19 that you prepared somewhat for your testimony today and then
20 you reviewed these items?

21 A (Nonverbal response).

22 Q So I'm asking you now, specifically, about the contents in
23 the car you were driving, your BMW, specifically, what was in
24 there?

25 A I can't specifically tell you what exactly was in the

1 car, but I would assume that it may have been clothing in the
2 car, shoes in the car, refrigerator, not in my car, I know the
3 refrigerator because he wanted his own refrigerator because he
4 was like I don't want my roommates messing with my stuff, so he
5 had his own little, you know, mini refrigerator. We had air
6 fryers, we had toilet tissue, I mean, and you know when you go
7 to Sam's, so we had like a lot of that, Sam's washing powder,
8 it was just a whole, it was stuff, it was stuff. I mean, I
9 went overboard, I even made sure he had like Tylenol, if you
10 get sick, I mean, I made sure he had Aleve, Tylenol, you know
11 Aspirin, all of it, I mean, it was just, this is my only child,
12 y'all got to remember, it's my only child, he's going away for
13 the first time and I'm three hours away and I'm just trying to
14 make sure he has everything he needs to be able to be self-
15 sufficient while he's away from home.

16 Q So is it, I'm just trying to summarize here, so you don't
17 recall exactly what was in your car?

18 A In my car? I know we had some tubs in there, it was a lot
19 of tubs, the seat was laid down, my mom and I was in the front,
20 the car was full with stuff, I mean, personal items, you know
21 what I mean? I mean, what would you, I don't know another way
22 to explain it.

23 Q Well ---

24 A It was a lot of stuff, I mean, like I said, he had a
25 coffee pot, he had, you know, he had dishes, pots and pans, The

1 Rowan didn't supply that, he had to have his own stuff. I
2 mean, he had food, I mean, we had nonperishable items that we
3 packed up. One of his favorite meals, even for that day, you
4 know, going. So I mean, you put this in the freezer, you don't
5 have to eat it right now, but once we get there you can freeze
6 it if you want. So it was a lot of stuff, I really can't tell
7 you specifically what was in my car versus what was in the
8 other cars, I can't ---

9 Q Let's ask about the other cars then. What was in the, you
10 said it was an Escalade, what was the second car?

11 A I said it was a Denali Yukon.

12 Q So a Denali ---

13 A I'm not good with cars, but I do remember it was a Denali.

14 Q So what were the contents in the Denali? Same question
15 about your car.

16 A Now, one thing I do know for a fact I know was in the
17 Denali was the refrigerator, I do know that. But it seems like
18 some of the pots and pans may have been in there, too, it seems
19 like I remember that. I think in the car, in the SUV, and then
20 was mostly the long tubs with the, I mean, we went so far as we
21 bought hangers, we had everything laid out, you know, so all he
22 had to do was easily just put stuff up because he had like two
23 closets, he had two closets, I mean, two nice sized closets
24 with the shelves and so, he was able to put his like dress
25 stuff on one side, we were all organized, dress stuff on one

1 side, casual stuff on the other side. And then he had, like
2 the beds are high, so some of his other stuff he was able to
3 just kind of like slide, you know, under the bed and you could
4 easily access it because the bed's sitting up high.

5 Q So you've been present in the Courtroom since the
6 beginning of this case, and so you understand why I'm asking
7 this series of questions about the, specifically, about the
8 contents since there's, there's a disagreement about the actual
9 contents that were in your son's room, correct?

10 A Well, yeah, I guess I understand you. I understand you
11 asking about the contents but not the way that you keep like, I
12 don't understand that part why you keep asking me like the same
13 questions over and over.

14 MR. VANDENBERG: Your Honor, a few more
15 questions.

16 Q So I want to ask about the computer that was allegedly
17 damaged. So you said, I think you, I heard you describe the
18 computer as Jamahl's computer, so can you be more specific
19 about the computer? Any personal knowledge about the type of
20 computer?

21 A I just know he put a lot of money and time into that
22 computer, I know that. I don't, I'm sorry. It was his baby,
23 it was his project, it was his stuff, it was what he enjoyed
24 doing. I mean, he's a cybersecurity major, I mean, it's what
25 he enjoys doing.

1 Q And do you understand what happened to that computer after
2 this incident in July and August of 2022?

3 A Yes. I understand that when he got back to his apartment,
4 that the computer and all of his items were gone. I understand
5 that a few hours later after they had taken him to Target, he
6 came back and they said they had found the computer and that,
7 he was like, he wanted to make sure it cuts on, so they tried
8 to cut it on and couldn't cut it on or something to that
9 effect. It didn't work anymore.

10 Q And so this was on August the 5th?

11 A Yeah, I believe that was on the same day, yep, after he
12 got back from Target they called and told him to come back down
13 to the, come back down to the office where they had located a
14 couple of other items.

15 Q And then August the 6th, if I remember correctly, was the
16 text exchange between you and your son where you were
17 discussing the prospect of calling the police?

18 A No. We never talked about calling the police, no, that's
19 definitely not correct.

20 Q Maybe I'm misunderstanding, but was there a text message
21 exchange between you and your son?

22 A It was a, in the text message he was asking, but we never
23 talked about calling the police.

24 Q Do you know what prompted that question?

25 A It was, I believe it was your office, their office,

1 The Rowan, it was them.

2 Q And if you can just remind the jury your testimony about
3 the reason behind calling the police?

4 A Well, it was a civil case, I didn't see a reason to call
5 the police, his apartment had not been broken into. So I
6 didn't understand why we needed to, and I asked them to explain
7 that to me and no one could.

8 Q Do you recall who you asked?

9 A I remember I asked, I thought it was Katie, I'm almost
10 certain, I'm certain it was Katie, that's who I was talking
11 to.

12 Q Okay. So I'm going to ask you about the computer again.
13 So the computer that was, that I guess the estimate on your
14 spreadsheet was \$7,500.00, was that just for the computer
15 alone?

16 A Yep, I think it was.

17 Q And so was that, where did that figure come from?

18 A That came from, you'll have to talk to Jamahl about
19 that.

20 Q Okay. So at --

21 MR. VANDENBERG: Your Honor, we have no further
22 questions.

23 THE COURT: Thank you. Any redirect?

24 MR. LYLE: None from the Plaintiff. Thank you, Your
25 Honor.

1 THE COURT: Ma'am, you may have a seat, thank you.
2 Mr. Lyle, anything we can do in the remaining 20 minutes we
3 have?

4 MR. LYLE: I think so, Your Honor. I was going to
5 call Jamahl, but that's obviously going to go a bit beyond
6 that, but I was going to also publish Katie Floyd's excerpts.
7 I can use one of my assistants to do that now. That'll fill
8 up five or 10 minutes so that we can eat it off of
9 tomorrow.

10 THE COURT: That's fine.

11 MR. LYLE: Great. And at this time, Your Honor, I'd
12 like to publish in accordance with my notice of designation for
13 deposition excerpts seven or eight different excerpts from the
14 deposition of Katie Floyd, Nancy Katherine Floyd, she's goes by
15 Katie, and I'll utilize Beth, my paralegal to read the answers
16 to my questions.

17 THE COURT: That's fine. For the jury's benefit, an
18 employee from Mr. Lyle's office is going to read from a
19 deposition, so for all practical purposes, she is the witness
20 that ---

21 MR. LYLE: I'm sorry, Your Honor ---

22 THE COURT: No. You please go ahead.

23 MR. LYLE: I was just letting Yanis know I was going
24 to try to ---

25 THE COURT: Okay.

1 CLERK: Do you swear or affirm that the
2 testimony you're about to give in this case be the truth,
3 the whole truth, and nothing but the truth so help you
4 God?

5 MS. ADKINS: Yes, I do.

6 CLERK: Thank you. Please have a seat in the witness
7 stand.

8 MR. LYLE: I'm going to publish these excerpts as
9 identified in the notice. Question to Ms. Floyd, alright,
10 well, I guess diving right in, do you have an explanation for
11 how this happened because I've seen some affidavits, I've seen
12 some other stuff, I kind of want to hear what your testimony is
13 if I'm asking you at trial how this happened, what would be
14 your answer?

15 MS. ADKINS: That an employee disregarded all
16 policies, all directives, entered into a unit and ultimately
17 stole belongings, belongings that he should have no reason to
18 be in, he had no approval to be in and he took it upon himself
19 and his own free will to disregard all directions, all rules,
20 all regulations that were explicitly outlined in detail for the
21 sake of self-gratification on his own part.

22 MR. LYLE: Okay. So the system on July 25th, the
23 system which you're referring to being Campus Advantage's
24 computer software, has Mr. Postell listed as moving out?

25 MS. ADKINS: Correct.

1 MR. LYLE: Alright. So when I mentioned earlier
2 about being confusion, you would agree with me that there were
3 emails sent before that one I just showed you that purportedly
4 showed that he was renewing his lease?

5 MS. ADKINS: I would not agree with that. I am not
6 aware of any email that was provided prior to that date that
7 indicated that he was going to be remaining in his unit.

8 MR. LYLE: Alright. Would you agree with me though,
9 that a layperson looking in would obviously see there is
10 misinformation or confusion as to whether or not the tenant is
11 actually staying or leaving?

12 MS. ADKINS: I would not agree with that statement.

13 MR. LYLE: You don't agree with that?

14 MS. ADKINS: I do not.

15 MR. LYLE: Okay. You do not find that those two
16 emails to be in conflict with each other?

17 MS. ADKINS: I do not believe that they are because
18 both are applicable to his specific situation as a renewal
19 transfer.

20 MR. LYLE: What do you believe was the status of Mr.
21 Postell on July 25th when they entered into his unit? You can
22 read the screen if you don't have that page.

23 MS. ADKINS: I believe the system had him listed
24 as a transfer and therefore his unit was supposed to be
25 vacated.

1 MR. LYLE: That you were not able to recover, so is
2 it your testimony that he had zero shoes, he had zero pants, no
3 clothing, no jewelry, watches, nothing, there was none of that
4 in his room?

5 MS. ADKINS: It's my testimony that based on my
6 conversations with my staff members who did enter into the
7 unit, that there were shoe boxes with no shoes inside the
8 apartment, there were no clothes, there was a little bit of
9 bedding left on the bed.

10 MR. LYLE: Okay. So just to be clear, if a Rowan
11 employee does an inspection on a, this is a move out
12 inspection, if there was personal property found in there, it
13 should have been noted on this inspection, is that right?

14 MS. ADKINS: Correct. Noted and with photos taken.

15 MR. LYLE: That concludes the publication, Your
16 Honor.

17 THE COURT: Thank you. Would you give us your name,
18 please?

19 MS. ADKINS: Oh, Beth Adkins.

20 THE COURT: Thank you. You need her to spell it?

21 COURT REPORTER: Yes, please.

22 MS. ADKINS: A-d-k-i-n-s.

23 THE COURT: Thank you, you may be seated. Mr.
24 VanDenBerg, do you have anything at this point with regard to
25 these deposition excerpts?

1 MR. VANDENBERG: No, Your Honor.

2 THE COURT: Thank you.

3 MR. VANDENBERG: Thanks.

4 THE COURT: Mr. Lyle, anything more?

5 MR. LYLE: Your Honor, I think in the interest of
6 flowing, I don't think it may be wise if you want to have a
7 hard cut off at 5:00 to start something we can't really go far
8 into.

9 THE COURT: Yes. I think that's appropriate as well.
10 Mr. VanDenBerg?

11 MR. VANDENBERG: No objections, Judge.

12 THE COURT: I would like to talk to the two of you
13 for a few minutes after they leave. Ladies and gentlemen of
14 the jury, thank you for today. We're going to leave a little
15 early, and what I'd like to do is to start sharply at 9:30 in
16 the morning. I can get you here in the assembly room at 9:15.
17 Yes, ma'am?

18 BAILIFF: 9:15.

19 THE COURT: At 9:15, that would be wonderful. And of
20 course, I'll be talking with the lawyers earlier so hopefully
21 we will be on time. Thank you so much. Have a very good
22 evening. Remember now, please, no speaking with anyone about
23 this case. Don't talk to the lawyers or the parties, no
24 research about this case. I can tell you that I had a good
25 friend who was a Judge hearing a case, and he decided to ride

1 by a location and the Appellate Court reversed him on that, so
2 the same thing would happen if a juror sought to do any of
3 their own research, no research. Thank you so much, we
4 appreciate you.

5 (Jurors exiting Courtroom.)

6 THE COURT: I'd like to start with them tomorrow at
7 9:30, do you think you can be here at 9:00 for just any
8 pretrial matters that we need to take up?

9 MR. LYLE: Certainly, Your Honor.

10 MR. VANDENBERG: Sure.

11 MR. LYLE: We can be here as early as you like.

12 THE COURT: That would be wonderful. Let's meet with
13 you all at 9:00 and if, because of course, you would like, I
14 think you indicated you would like to make some additional
15 arguments?

16 MR. VANDENBERG: Yes, Your Honor.

17 THE COURT: In the event you choose not to, we'll
18 just meet at 9:30, but what I'd like to do is plan to be here
19 at 9:00.

20 MR. VANDENBERG: Yes, sir, thank you.

21 THE COURT: Thank you all.

22 (Whereupon the hearing ended at 4:47 pm.)

23 **DAY THREE, SEPTEMBER 18, 2024**

24 THE COURT: I hope everybody is well. I thought long
25 and hard about a directed verdict motion. Mr. VanDenBerg, I

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

COURT OF COMMON PLEAS
2022-CP-40-04419

ANSEL JAMAHL POSTELL,
PLAINTIFF,

vs.

PARTIAL
TRANSCRIPT OF RECORD

CAMPUS ADVANTAGE, INC. AND
EMRES II SOUTH CAROLINA, LLC,
D/B/A THE ROWAN,
DEFENDANT.

September 17, 2024
Columbia, South Carolina

B E F O R E:

THE HONORABLE MILTON G. KIMPSON, JUDGE.

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

TODD R. LYLE, ESQ.
Attorney for the Plaintiff

TIMOTHY S. VANDENBERG, ESQ.
Attorney for the Defendant

Penny M. Johnson
Court Reporter III

I N D E X

(PW) - Denotes Plaintiff's Witness
(DW) - Denotes Defense Witness

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
	(Plaintiff's Exhibits)		
6	Move-Out Inspection		37
10	E-mail		98
15	Teams Message Redacted		30
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1	Floor Plan		99
2	List of Contents		93
11	Text Exchange		160
12	Initial Lease		160
13	Lease Renewal		160
17	Photograph		99

All Exhibits were retained by the Clerk of Court for Richland County.

P R O C E E D I N G S

THE COURT: This is Ansel Jamahl Postell vs. Campus Advantage, Inc., and EMRES II South Carolina, doing business as The Rowan, case 2022-CP-40-04419. Looks like the parties are present.

Good morning.

MR. LYLE: Good morning.

MR. VANDENBERG: Good morning.

THE COURT: Anything we need to take up prior to calling the jury?

Yes, sir.

MR. VANDENBERG: A few things, but one I think that we haven't discussed before is the sequestration of witnesses, both those who haven't testified yet and those subject to recall. We would request that those witnesses be sequestered during the trial.

THE COURT: Any response?

MR. LYLE: I don't have any. I'm planning on -- I've got my first witness, Ms. Ashanti Young, in the back. She is a former employee of Campus Advantage. I'm going to call her first. Then I'm going to call Mr. Postell. But I believe he has the right to be present for his case. So there really would be no sequestration because other than that, I'm just doing video clips.

MR. VANDENBERG: The witness who testified yesterday,

1 Ms. Postell, we'd ask that she be sequestered as well as Ms.
2 Young when she's not testifying.

3 MR. LYLE: Your Honor, I would respond to that, Ms.
4 Arnold has already testified. If Your Honor would have her
5 leave the courtroom, we would comply with your ruling, but I
6 believe she's already testified. I'm not sure how she could
7 come back for recall.

8 THE COURT: And I'm wondering, are you planning to
9 recall her?

10 MR. LYLE: I don't.

11 THE COURT: I think it's probably appropriate to
12 sequester the witnesses. If there's a chance you would
13 recall her, she would need to be sequestered.

14 MR. LYLE: I don't know, but I would like to reserve
15 that right.

16 MR. VANDENBERG: Thank you, Your Honor.

17 THE COURT: You're very welcome.

18 MR. VANDENBERG: I think it probably makes more sense
19 to revisit his motion in limine regarding the roommate.
20 Because I think that will instruct how we handle the video.

21 THE COURT: If you will give me one second.

22 (Pause.)

23 THE COURT: Yes, sir, Mr. VanDenBerg.

24 MR. VANDENBERG: It was his motion, so I think -- I
25 mean, I'm happy to go first.

1 THE COURT: Mr. Lyle, did you need to bring something
2 up that had to do with the -- did I reserve a ruling on the
3 motion in limine with regard to statements from the alleged
4 roommate?

5 MR. LYLE: Your Honor, I have in my notes that you had
6 said that it was hearsay. And pending some other extraneous
7 reason, I thought you had said that the roommate doesn't
8 come in.

9 MR. VANDENBERG: I think you were leaning -- I mean,
10 you were concerned about hearsay, but we wanted to wait
11 until the appropriate time. And I'm saying the appropriate
12 time because -- and, actually, the information is already in
13 evidence.

14 This is a Teams message that was an exchange between
15 the witness who just left and several other employees and my
16 client. And that Teams message is embedded in the report
17 that now is introduced -- he's already introduced it in
18 evidence. It was introduced during the video for trial
19 deposition of Nick Hoosier that he intends to play today.

20 So it's -- I think because it's -- for that reason
21 alone, I think that, really, it's not an issue anymore
22 because it's already in evidence.

23 THE COURT: Help me remember what the text message
24 said.

25 MR. VANDENBERG: The text message that Mr. Lewis heard

1 responding to a message asking about the trash out of a
2 unit. And Ms. Young, who had encountered this roommate when
3 she and her colleague entered the unit. And the roommate,
4 Mr. Postell's roommate, told them that he thought he had
5 moved out. He saw him moving his belongings out.

6 So they were there -- Mr. Brown, who was her colleague
7 who was subsequently terminated, we haven't got to that
8 evidence yet, but he, also, during the course of the
9 investigation, he was -- actually, our witness, who will
10 testify, interviewed him in the presence of our other
11 witness, so heard these statements as well. Also, that was
12 documented in the same e-mail.

13 So when Katie Floyd documented this in her e-mail, she
14 included in the snippets that we'll see. And that's what we
15 saw yesterday both during Ms. Postell's testimony and it was
16 displayed during Mr. Lyle's opening statement. It brought
17 up September 10th during Nick Hoosier's video for trial
18 deposition. So -- and without objection. You know, we have
19 no reservation about that exhibit or the -- as I said, it's
20 already in evidence.

21 THE COURT: Can anybody show me that text message?

22 MR. LYLE: Your Honor, if I may, I approach and show
23 you a copy. Your Honor, this copy is unredacted. This copy
24 is redacted. And I would draw your attention to the very
25 last line on the bottom.

1 THE COURT: As I recall, you told me -- I thought you
2 showed the redacted version.

3 MR. LYLE: I showed the redacted version on the screen.
4 There are exhibits, like, Nick Hoosier's that -- that same
5 screen shot exist in Katie Floyd's seven-page report. And
6 pending Your Honor's ruling, I would ask that we redact that
7 portion as well before it goes back to the jury. The
8 unredacted version was placed in Katie Floyd's report.

9 THE COURT: Have you shown it to the jury?

10 MR. LYLE: I have not.

11 THE COURT: Now, Mr. VanDenBerg, this report, this is
12 from Katie Floyd?

13 MR. VANDENBERG: Exactly. Your Honor, that was already
14 introduced into evidence in its existing form during Nick
15 Hoosier's deposition. It's already -- even though the jury
16 hasn't seen that particular document, it was the trail of
17 breadcrumbs left. It was in opening statement. It was
18 mentioned during Ms. Postell's witness exam yesterday.

19 So it's -- also, as I mentioned, when we get to the
20 discussion about the videotape, there's a three-minute
21 section where that section of her report is displayed as Mr.
22 Lyle is deposing Ms. Hinton. I think he's already figured
23 out a solution. We discussed that last evening. But,
24 again, it's your ruling on this particular statement.

25 So the additional concern is that our witness, Ms.

1 Floyd interviewed all of these parties, including the
2 roommates. So if she testifies, part of her testimony --
3 and this is why it's in her report. It's because she went
4 behind and interviewed all of these people personally. Not
5 that it matters, but I met with the roommate as well. I'm
6 not a witness, but again -- and I don't want to be a
7 witness, but I'm just saying that this is the avenue of what
8 we've been discussing.

9 THE COURT: I understand.

10 Mr. Lyle, what's your response?

11 MR. LYLE: Thank you, Your Honor. We're fine with
12 whatever your ruling is, but, to me, this is kind of
13 evidence 101. He is trying to introduce an out-of-court
14 statement for the truth of the matter asserted as to whether
15 or not Mr. Postell was moving out or not. There's plenty of
16 evidence to reach the contrary of that.

17 However, I would reach in further and say, again, I
18 have all his discovery responses and I'm a little bit miffed
19 that I just heard he even met with the roommate and, yet,
20 still has never listed his name or produced him as a
21 witness, listed him on any discovery responses. His name
22 only showed up in his pretrial report, which was filed
23 Friday after 5:00 p.m.

24 So I would say it's -- I'm sorry, go ahead, Your Honor.

25 THE COURT: No, you go ahead.

1 MR. LYLE: It's an out-of-court statement by some
2 alleged roommate, who he has full control -- in fact, he has
3 lots of control to bring him into this courtroom. He even
4 met with him.

5 THE COURT: What his argument seems to be, and correct
6 me if I'm wrong, that you opened the door. That you've
7 allowed -- you've either intimated to the jury that this --
8 that there was some discussion with the roommate or you at
9 some point showed the jury a report, unredacted --

10 MR. LYLE: That's not correct, Your Honor. First off,
11 it's not evidence, it was just in my opening. I'd be happy
12 to bring that slide and show you. That portion was cut off
13 and redacted. I would mention that Katie Floyd's report has
14 not yet been ruled upon. The motion in limine is pending
15 pending your ruling, same as Nick Hoosier's deposition, that
16 same Katie Floyd report.

17 And if Your Honor rules it's admissible, that's fine.
18 We'll deal with it. It's not the end of the world. As I've
19 said several times, I'm not going to die on that hill. If
20 my case was that weak, I probably wouldn't be here to begin
21 with. However, it's hearsay. It's a witness that Mr.
22 VanDenBerg met with, knew the guy's name and never disclosed
23 him until the pretrial brief. Bring him in the courtroom
24 and let him say it.

25 THE COURT: He has the ability to choose who he's going

1 to call as a witness.

2 MR. LYLE: That's correct, Your Honor.

3 THE COURT: Is there an exception to the hearsay rule
4 for this coming in?

5 MR. VANDENBERG: There's several. Number one, present
6 sense impression. I mean, she saw what she saw. The thing
7 I like about this guy, really, is that he's not a party.
8 He's entirely objective. And he made this statement, not
9 like he was arguing a point. He just -- actually, at that
10 point in time, the witnesses were doing their job. They
11 were, actually, trying to confirm, as we'll see when we get
12 into this evidence, but they were just trying to confirm the
13 information that they had on this list.

14 The witness, Mr. Green, was coming out of the unit.
15 They encountered him and they asked him a question. And
16 that was his response. That was what was documented at the
17 time, you know, by these witnesses who are just seeing what
18 they're seeing, hearing what they're hearing.

19 Again, we're not offering this as to the truth, as Mr.
20 Lyle suggest. But it's just the statement that was,
21 actually, uttered.

22 THE COURT: So you're saying you're not offering it for
23 the hearsay purpose?

24 MR. VANDENBERG: We recognize the statement is hearsay.
25 We're offering it just as a present sense impression that

1 was recorded and documented in several instances, both
2 contemporaneous to these witnesses actually listening to
3 this statement and then several days later when our witness
4 who hasn't been heard from yet, actually, met with this
5 individual and documented this conversation.

6 THE COURT: Any response before I rule?

7 MR. LYLE: Yes, Your Honor. A present sense impression
8 would be someone's contemporaneous thoughts, feelings,
9 observations. What I've heard is that the roommate would
10 say that -- this is two layers of hearsay. This would Mr.
11 Postell telling the roommate of his intentions to move out.
12 And if I brush off my old law school review, I think the
13 only time you can go with a forward sense of intent in the
14 future is as it relates to probating a will. So I would say
15 this is two layers of hearsay.

16 If he said I saw Mr. Postell just a moment ago or he
17 screamed an excited utterance and did something as present
18 sense impression, that would be a hearsay exception.
19 However, what he is trying to say is that the roommate heard
20 from a prior -- it's two layers of hearsay. It's the
21 roommate saying what Mr. Postell said at some prior moment
22 well in advance of when the roommate then made the statement
23 to Ashanti Young -- well, it's really only to Ashanti Young,
24 it's no one else. So it's not the correct use of present
25 sense impression.

1 THE COURT: How is this issue going to arise during the
2 testimony?

3 MR. VANDENBERG: Well, Your Honor, the other issue
4 today is this video. I mean, it's -- in the video
5 testimony, there's a three-minute section of Ms. Hinton's
6 video where this is --

7 THE COURT: Mr. VanDenBerg, who is going to play Ms.
8 Hinton's --

9 MR. LYLE: I had planned on playing just a few clips
10 and then I think Your Honor had ruled that he could play the
11 entire three hours or two hours and 45 minutes. There's
12 about a 12-second clip, and I'm happy to play it for Your
13 Honor so you can hear it, but it relates to a police report
14 and something else. Then she just says and I think an
15 employee mentioned that someone had spoken to a roommate who
16 said they thought he was, in fact, moving out. It's a very
17 short clip. It's about 12 seconds. I've edited it out of
18 the versions I plan on playing.

19 And I've, also, taken the time last night working on it
20 late to get the entire video minus those few snippets that I
21 would say are hearsay. So I have given that to the other
22 side so he can play the whole video minus the parts I
23 believe -- I would ask Your Honor to keep out. We can play
24 it here. It would not very long at all to bring it up and
25 let you hear that section.

1 THE COURT: What response -- I have some difficulty
2 with the statement, the alleged statement as a present sense
3 impression. Is there any other reason I can let it in under
4 the hearsay rule?

5 MR. VANDENBERG: Ms. Floyd's, during her -- I mean,
6 it's what she puts in her report, which is already in
7 evidence, which is her recorded recollection of this
8 conversation. And it was contemporaneous to her meeting.
9 So that was on August 7th, she had interviewed all these
10 various witnesses, including Mr. Green, had a conversation
11 with him. So August 5th is when Mr. Postell returned.
12 August 7th is the date -- so she is -- contemporaneous to
13 her investigation.

14 THE COURT: This report is already in evidence?

15 MR. VANDENBERG: Yes, Your Honor.

16 MR. LYLE: It's pending your ruling on the motion in
17 limine. We've introduced Exhibits 2, 3, 4, 7, 8, 9, 10, 11,
18 12. When we get Katie Floyd's report, which is 10, that was
19 pending your ruling on this redaction, whether or not it, in
20 fact, is redacted. Obviously, wouldn't just have admitted
21 something I, also, moved in limine to have removed just a
22 few moments earlier.

23 If I could just briefly respond --

24 THE COURT: Let him finish.

25 MR. VANDENBERG: Your Honor, we stipulated to the

1 exhibits, every one of them yesterday. The only one that he
2 left out was, I think, No. 15, which was an actual separate
3 Teams message.

4 THE COURT: I understand what he's saying. He's not
5 presented any argument about that. He can always withdraw
6 it.

7 Yes, sir.

8 MR. LYLE: I would just mention -- he says that it's in
9 Katie Floyd's report because Katie Floyd did all these
10 interviews. Number one, Katie Floyd can come as, again, his
11 witness. But number two, there's no mention of this
12 roommate in Katie Floyd's report. I would, actually, say
13 the only mention of it is in the screen shot of a text
14 message. Katie Floyd did not mention that she interviewed
15 any roommates. I would encourage Your Honor to --

16 THE COURT: At what point are we going to play this
17 video? You're going to play snippets, you're going to play
18 the whole --

19 MR. VANDENBERG: I think what I asked yesterday was if
20 we could revisit that in light of the opening statement
21 yesterday, the prejudice to my clients.

22 Do you still have Katie Floyd's investigatory e-mail?

23 THE COURT: Yes.

24 MR. VANDENBERG: I'll show you where it is. It's in
25 there. This was turned over in discovery February of this

1 past year, seven months ago. It's right here on Page 2.
2 And this is -- also, in Ms. Hinton's deposition, right here
3 on Page 2, right here at the top is a screen shot showing
4 the two witnesses. And I was thinking that Mr. Lyle's
5 motion in limine was No. 10. Yesterday was just a fluke,
6 but maybe what he was getting to was, you know, these
7 witnesses, who, of course, his client was roommates with
8 these two individuals, Joseph Gamble and Timothy Green for
9 one, maybe two years. He's had plenty of opportunity during
10 the course of the past two years to discuss who the
11 roommates were. So that's why I was thinking more about the
12 substance behind that motion in limine, No. 10, and we
13 couldn't bring up the evidence about that. But it's in
14 there. I mean, they've had it for seven months. It's in
15 the report. It's already in evidence, these roommates'
16 names.

17 THE COURT: Their names, but not their statements.

18 MR. LYLE: Their names are not in evidence, Your Honor.

19 THE COURT: I'm going to continue to exclude any
20 statements of the alleged roommate saying that Mr. Postell
21 is going to move out. Now, I'm willing to revisit this once
22 we get to Ms. Hinton's --

23 Go ahead.

24 MR. VANDENBERG: It will come up during Ms. Young's
25 testimony. She was the one that interviewed -- she was the

1 one that encountered these witnesses.

2 THE COURT: If she testifies and she talks about it,
3 I'll look for an objection.

4 You said the next witness you anticipate is going to be
5 who?

6 MR. LYLE: Your Honor, I plan on calling Ashanti Young
7 as a former employee of Campus Advantage. She is -- to my
8 knowledge, other than Mr. VanDenBerg, who's now just told me
9 he interviewed this roommate, to my knowledge, Ashanti Young
10 is the only one who would testify having spoken with this
11 roommate. So I would ask Your Honor to clarify whether
12 you're going to instruct her not to mention what the
13 roommate said or whether you're just going to let her talk
14 and make me object to it. If that's the case, then,
15 strategically, I may just let it in and we'll go from there.

16 THE COURT: She's your witness, right?

17 MR. LYLE: No, she's a former employee of Campus
18 Advantage. I'm calling her as adversarial.

19 THE COURT: But still, you would be -- oh, I see your
20 point.

21 MR. LYLE: I'm calling her in my case in chief because
22 right now, so far Mr. VanDenBerg has not produced any
23 witnesses nor do I know if he will. So I -- and I'm not
24 sure about reply. So I have her prepared because I
25 subpoenaed her. She's hostile. She didn't want to be here.

1 I subpoenaed her the last time we were on the trial roster
2 and I subpoenaed her again. She is in the courtroom.

3 THE COURT: I understand. And I'm not so sure she's
4 hostile until you demonstrate that to me.

5 MR. LYLE: She's, certainly, going to say some things
6 that are not helpful to my case.

7 THE COURT: I understand.

8 MR. LYLE: But I would ask Your Honor if there would be
9 instruction given to her not to mention anything said by the
10 roommates. If the door is opened somehow by no fault of
11 mine or my client's, I would ask you to strike that
12 testimony. It's extremely prejudicial under 403, but it's,
13 also, hearsay.

14 THE COURT: Well, I understand your argument on
15 prejudice. I'm not convinced by that, but I am still
16 looking for a hearsay exception. In the absence of one, I'm
17 willing to instruct her not to relay interviews of -- does
18 she know the people who are going to be testifying? Does
19 she have any idea?

20 MR. LYLE: I'm not sure I follow your question, Your
21 Honor.

22 THE COURT: I will instruct her that she is not to
23 relay any conversations she has had with third parties
24 regarding Mr. Postell's intentions to move out or stay in
25 the apartment.

1 MR. LYLE: Thank you, Your Honor.

2 THE COURT: You look quizzical about that.

3 MR. VANDENBERG: I think that's awfully broad. I mean,
4 I think that -- so what should her testimony be? I think
5 that ruling would encompass, like, just her kind of doing
6 her job, what she thought was her job.

7 THE COURT: Help me limit it.

8 MR. VANDENBERG: As far as -- you know, she -- so as
9 she is approaching this unit to do her job, she encounters
10 the roommate. In the course of the investigation, it's
11 somewhat prejudicial to her because she is -- you know, what
12 happens later is against policy. So what should have
13 happened didn't happen at that point in time. So, I guess,
14 maybe not for purposes of this case, but it's certainly --
15 she's heading down the road of violating the policies of her
16 employer by not doing her job.

17 So when she encounters this person, it's almost as if
18 she is still on the right path, sort of, by trying to verify
19 -- follow the policy, which is to verify occupancy in this
20 unit. That's what these employees were supposed to have
21 been doing. So in the course of doing her job, this is what
22 happens. I mean, they're trying to gather information about
23 occupancy and to verify occupancy. So as part of that, it's
24 just -- it's objective information that actually confirms or
25 refutes what she's supposed to be trying to do.

1 So if she's hearing from someone she knows is a
2 roommate of this individual and it's -- what the statement
3 says, it's not I've heard Mr. Postell talking about moving
4 out. It's I observed him moving his belongings out. So he
5 was -- what he observed and what he relayed to Ms. Young and
6 then, eventually, to Ms. Wood. Really, we don't have
7 witnesses stacked up to testify. There's really not a lot
8 of --

9 THE COURT: I understand. I am going to instruct her
10 that she is not to testify about any conversations she may
11 have had with Mr. Postell's roommates. Now, it seems to me
12 that if she interviewed them, that comes in, but she can't
13 tell this jury what they may have said.

14 MR. VANDENBERG: And we're not saying -- I guess, a
15 short conversation is an interview, but yes, I mean, she was
16 -- in passing, maybe two seconds, just that quick exchange.

17 THE COURT: Again, you can certainly ask her -- she can
18 tell you that she interviewed them or talked to them, but I
19 don't want her to testify as to what they may have relayed
20 to her because I do think in absence of an exception or a
21 nonhearsay purpose, I think it's hearsay.

22 MR. VANDENBERG: Thank you, Your Honor.

23 THE COURT: Yes, sir, I'm sorry.

24 MR. LYLE: We still have the video to discuss.

25 THE COURT: Now, is there some way that you can mask

1 that portion?

2 MR. VANDENBERG: We discussed that. We still have to
3 talk about the other excerpt. I guess we're getting to
4 that, too. But there's -- I think what Mr. Lyle is
5 referring to, there's a 12-second approximately, an excerpt,
6 where there's a mention -- and I have -- somewhere around
7 here, I've got the transcript of that so you can see in
8 writing what she says.

9 She mentions -- let's maybe deal with that first,
10 that's an easy one. But there's a 12-second mention of an
11 insurance policy. We don't really -- what I was hoping to
12 avoid is -- you know, Mr. Lyle was up late. I was working
13 on tax returns last night. He was working on video editing.
14 There's an excerpt in there where she mentions -- she just
15 says insurance policy. It's not in the context that we were
16 spending a lot of time discussing yesterday, but if we can
17 -- we're comfortable with striking that. It's just -- and I
18 think -- I mean, you edited that portion out, so maybe
19 that's -- and this is from the second half of Ms. Hinton's
20 video.

21 But as far as the mention of the roommate, there's a --

22 THE COURT: Before you go on now, this insurance issue,
23 is that resolved between the parties?

24 MR. LYLE: I still don't know what he's asking. Maybe
25 I can just clarify. This is three issues relating to the

1 playing of the entirety video. The issue he just mentioned
2 is about an 18-second clip where Melissa Hinton, also, says
3 something about it would have been helpful if he had filed
4 on an insurance claim. Whether he filed an insurance claim,
5 we don't know. She mentioned insurance claim.

6 There's a second nine-second clip where Ms. Hinton,
7 also, says something about we don't think we did anything
8 wrong. In fact, through my interviews or my investigation,
9 I've learned that there's apparently some roommates who may
10 have said something to one of our employees. So it's that
11 same issue of the roommates. I can play both of those clips
12 for you very quickly.

13 And then the third issue is just that Teams message. I
14 share it on my screen to ask Ms. Hinton -- again, this is a
15 discovery deposition, lots of questions. That thing stays
16 up on the screen for about six or seven minutes. I have
17 told him that I'm okay if we just turn the screen off and
18 let the audio play for that -- I don't know if you know how
19 Zoom works, but I share it on the screen, the document is
20 staring you in the face and we talk for a while, maybe not
21 about the contents of the document, but maybe a little bit
22 and then I ask her some followup questions. Meanwhile, that
23 Teams message is staring you in the face. So I'm okay with
24 playing that entire portion provided for about that seven
25 minutes, we turn the screen off.

1 So those are the three issues related with playing the
2 entire video. And I can show you those two clips quickly.

3 MR. VANDENBERG: We're fine with just the audio
4 portion. I think that's fine. I couldn't figure out a way
5 to edit that. Once I looked at it and I discovered that the
6 reason why he was suggesting to actually strike the entire
7 section because that Teams message is shown. So audio
8 playing, plain screen, I think that for that portion. We
9 don't have an issue with, you know, playing just the audio
10 portion for that section where this message is up nor with
11 these latter sections.

12 So in video part two, there is a brief reference to the
13 roommate and then there's a reference to the insurance
14 policy. We don't have an issue with editing those sections
15 out or just somehow skipping over them. They're very brief.
16 It doesn't really interrupt the flow. So we don't have an
17 issue with that.

18 Fundamentally, though, back to our original concern
19 that we voiced yesterday was about the prejudice that now
20 we're facing with the mention of wasting time by showing the
21 entire video during our case in chief. And I don't really
22 know how to correct that. I don't think it's a mistrial or
23 anything like that. I think that it's a fairness issue.

24 I tried to find some case law on this. I spent a
25 little bit of time looking for that, couldn't find anything.

1 So in one of those rules, it's just left to the discretion
2 of the trial judge. And the issue is fairness. We're
3 trying to be efficient. We think -- it was taken for
4 discovery purposes, but I think that the entire video is
5 relevant. There's a lot of good information that Mr. Lyle
6 was able to elicit about some background information. Some
7 of what he addressed during his opening statement was taken
8 out of the context of this deposition.

9 So I think in light of that, I think that showing the
10 entire video will clarify a broader picture of some of these
11 statements. So the opening statements were taken out of
12 context, but I believe showing the entire video, the members
13 of the jury will see -- you know, there was a statement
14 about that no one is licensed. They rely on some licensee
15 that's not even around. That's addressed at length and
16 adequately addressed during the deposition transcript. So
17 things like that, that's just one example.

18 But those types of issues, I believe I can play the
19 entire video, audio portion of that one section, striking
20 the mention of the roommate in the second section and the
21 insurance policy, but showing that in total during his case
22 in chief I think will satisfy any fairness concerns that we
23 have.

24 THE COURT: Didn't I allow that yesterday, the playing
25 it in the entirety? Or is the issue now you want him to

1 play it all during his case in chief?

2 MR. VANDENBERG: Correct. I think -- my concern, in
3 addition to what I've already expressed, is just this
4 fairness issue, which is what we raised to begin with. Now,
5 that he's prejudiced our -- even bringing this video to
6 display, even if we can show it in its entirety, you know,
7 the jury is -- especially depending on the time of day that
8 we're showing this video, I mean, if it's at the end of the
9 day and they're tired, we're running out of time and they're
10 like, I remember back when Mr. Lyle said boy, they're going
11 to bore you to tears here by showing you this video. So
12 here we go showing the video.

13 THE COURT: I have a response, but I want to hear --
14 Mr. Lyle, what say you?

15 MR. LYLE: I think I just heard opposing counsel try to
16 tell me what I need to do in my case in chief, which, as
17 Your Honor is well aware, if he's got these witnesses in his
18 control, like Ms. Hinton is the corporate designee, if he
19 wants her to come and testify, that's his call. She's
20 unavailable to me. I think it's just horribly unfair to sit
21 there and say I'm not going to bring my own witnesses, but I
22 can make the other side play some three-hour discovery
23 deposition.

24 And I'd, also, point out that Your Honor knows this,
25 but I'll say *Turner V. Medical University of South Carolina*

1 430 S.C. 569, that states a contemporaneous objection is
2 required to preserve issues for appellate review, citing
3 Webb vs. CSX Transportation, Inc., 364 S.C. 639. Ordinarily
4 if appellate fails to object the first time a mistake is
5 made, you should waive the right to raise that issue on
6 appeal.

7 Your Honor, he didn't raise objections during the
8 opening. I appreciate him not doing that, but that's what
9 the rules are. If he had an issue with what I said in my
10 opening, he should have objected then.

11 THE COURT: Mr. VanDenBerg, I'm not going to require
12 him to play the entire video during his case in chief. Now,
13 what I want you to do -- I'm certainly going to continue to
14 allow you to play the entire video during your case. If
15 it's late in the day, we may just have to break. I don't
16 want to prejudice you by starting at four o'clock with this
17 video.

18 In addition, if you can think of anything that I can
19 say as the presiding judge to mitigate anything he may have
20 said before you play the video, I am certainly willing to
21 consider that. But I understand, I understand the
22 difficulty, but I can't -- I think it would be incredibly
23 improper for me to alter how he presents his case.

24 MR. VANDENBERG: That's what the rule is for. It's the
25 rule requiring fairness for showing the video deposition.

1 THE COURT: I understand.

2 MR. VANDENBERG: Do you have the edited version clips?
3 I mean, I'm just asking if you can share that with me so
4 that I don't have to spend the time trying to edit -- you've
5 already masked out the -- do you have the edited version?

6 MR. LYLE: The video is broken up into two videos.

7 MR. VANDENBERG: I've got that.

8 MR. LYLE: Okay. I have it broken out with the two
9 pieces cut out on the second video. I have it cut out. So
10 when you play your video, we'll have to turn the TV off
11 during that session.

12 Judge, just for your edification, I plan on calling Ms.
13 Ashanti Young. I won't take very long with her. And I plan
14 on calling Mr. Postell. And there's a 14-minute video of a
15 guy named Nick Hoosier. And then there's about 20ish
16 minutes of clips that I can play and I'll be done. So I
17 would like to think pending there not being any legal issues
18 where we've got to send the jury out, I should be able to
19 finish by lunchtime.

20 THE COURT: That would be good news.

21 Is there anything objectionable in -- what's the name
22 of the video?

23 MR. LYLE: Nick Hoosier. No, sir, that was done for
24 use at trial.

25 THE COURT: All right. Good enough.

1 MR. LYLE: And it's 14 minutes.

2 THE COURT: Are we ready for the jury?

3 MR. LYLE: I guess just one final issue. You had
4 mentioned Katie Floyd's report. To the extent he says that
5 I have admitted it into evidence, I would take the position
6 I was waiting on the ruling on that Teams message. I just
7 wanted to clarify that you are ruling the mention of the
8 roommates, the redacted version is appropriate; is that
9 right?

10 THE COURT: I am going to redact that unless you open
11 the door.

12 MR. LYLE: Sure. Then I would point out the Exhibit 7,
13 Katie Floyd's report, we'll provide you the redacted version
14 of that before we admit it into evidence.

15 MR. VANDENBERG: May we go ahead and address our
16 exhibits before the jury arrives?

17 THE COURT: Yes, sir.

18 MR. VANDENBERG: I think we've already --

19 Is there any concern that you have about our exhibits?

20 MR. LYLE: Yeah, the same ones I had yesterday. The
21 insurance binder --

22 MR. VANDENBERG: Yeah, that's out.

23 MR. LYLE: The mention of the Richland County Sheriff's
24 Department's text messages with Katie Floyd.

25 THE COURT: What's in those text messages?

1 Well, Mr. VanDenBerg, you tell me what's still
2 objectionable?

3 MR. VANDENBERG: I don't think that there's anything,
4 but I'd rather do it now.

5 THE COURT: Yes, sir.

6 MR. VANDENBERG: Our Exhibit 5 is Teams message stand
7 alone. So I've got a Sharpie.

8 MR. LYLE: Your Honor, I've redacted a version. I
9 don't want him to just Sharpie one up. I've already given
10 it to you. It's clean. I don't want Sharpie writing on it
11 at the last minute.

12 MR. VANDENBERG: Well, his version is not redacted.
13 It's just he's whited it out, which is not a redaction. So
14 if you want to redact something, you show the redaction.

15 MR. LYLE: I disagree.

16 THE COURT: The idea, of course, is that the jury
17 doesn't have that information. So whether we white it out
18 or redact it, I just don't want the jury to have it.

19 You have looked at that version?

20 MR. VANDENBERG: I have.

21 If you've got a clean version, I'll need to remark this
22 as No. 5 for us.

23 MR. LYLE: I would ask him to use our exhibit. It's
24 the exact same thing.

25 THE COURT: That's already in evidence?

1 MR. LYLE: Well, pending your ruling, that was 15.
2 This is -- if I may approach, he's simply trying to admit
3 this exact same document with his black Sharpie on it. I'm
4 just saying that --

5 THE COURT: Mr. VanDenBerg, what do you say about using
6 --

7 MR. VANDENBERG: Where is the original?

8 MR. LYLE: It's right here.

9 MR. VANDENBERG: I'm slightly confused here. So we'll
10 introduce this as whatever our exhibit number is rather than
11 your Exhibit 15?

12 MR. LYLE: I'm sorry, say that again.

13 MR. VANDENBERG: So it's marked, but it hasn't yet been
14 introduced?

15 MR. LYLE: Correct.

16 MR. VANDENBERG: So we'll mark it as our whatever
17 number it is. We'll be introducing this so we should mark
18 it as Defendant's Exhibit whatever number.

19 THE COURT: Where are you in your -- because you marked
20 a number of things for identification.

21 MR. VANDENBERG: Well, we haven't actually agreed on
22 anything in my stack, so what we can do is -- if I can have
23 a new defense sticker.

24 MR. LYLE: If you want to, we can go ahead and admit it
25 now. That way there's no more confusion.

1 MR. VANDENBERG: That would be great.

2 MR. LYLE: Let's admit it now as Plaintiff's 15.

3 MR. VANDENBERG: Perfect.

4 (WHEREUPON, Plaintiff's Exhibit No. 15 was admitted
5 into evidence.)

6 THE COURT: Are we ready to call the jury in?

7 MR. LYLE: Could we go ahead and call Ms. Young in?

8 THE COURT: Would anybody object to us bringing her in
9 now so I can give her that instruction before the jury comes
10 in?

11 MR. VANDENBERG: That would be great with us, Your
12 Honor.

13 (WHEREUPON, the witness enters the courtroom.)

14 THE COURT: Ms. Young, how are you today?

15 MS. YOUNG: Good. How are you?

16 THE COURT: Good. We're going to ask you in a few
17 minutes to take the stand. For the purposes of right now, I
18 need to give you an instruction.

19 ASHANTI YOUNG,

20 after being duly sworn, testified as follows:

21 THE COURT: Thank you.

22 Ms. Young, you can stand there. First of all, thank
23 you for being here. During the course of your testimony,
24 you are not to discuss any conversation -- you are not to
25 relay anything any roommate of Mr. Postell may have told

1 you.

2 Any questions about that?

3 MS. YOUNG: No, sir.

4 THE COURT: Now, if you want to have her just sit in
5 the audience.

6 MR. LYLE: That's fine. We plan on calling her as soon
7 as the jury is seated.

8 (WHEREUPON, the jury enters the courtroom.)

9 THE BAILIFF: The jury is seated, Your Honor.

10 THE COURT: Thank you.

11 Good morning. I hope you all are well. I got in
12 traffic this morning and was delayed. So this is all
13 because of me, and I apologize. But I know that you were
14 here on time, so I greatly appreciate that. Unfortunately,
15 you can't hold me in contempt, so we'll move forward.

16 Plaintiff ready to call its next witness?

17 MR. LYLE: Thank you, Your Honor. Plaintiff would call
18 Ashanti Young.

19 THE COURT: Ms. Young, if you would come forward. We
20 will administer the oath.

21 ASHANTI YOUNG,

22 after being duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. LYLE:

25 Q Good morning, Ms. Young. Do you mind if I call you

1 Ashanti?

2 A No.

3 Q Thank you. We've met before. We took your deposition
4 about a year ago in this case. Do you recall that?

5 A Yes.

6 Q That's because you worked for Campus Advantage.

7 A Yes.

8 Q You're familiar with this case?

9 A Yes.

10 Q And you're one of the people who went into the room
11 that a guy named Carlton back in 2020 and saw some personal
12 property still in Mr. Postell's unit?

13 A Correct.

14 Q And I want to ask you, you were given a list by
15 management at Campus Advantage when you guys went and did
16 these inspections and trash outs, correct?

17 A Correct.

18 Q And did that list have unit 3007A on it? Was that one
19 of the buildings you were responsible for?

20 A Correct.

21 Q And was there anything on that list that would have
22 indicated whether or not that unit should have been renewed
23 and not necessarily inspected versus should have been
24 transferred or vacated and, therefore, inspected?

25 A Correct.

1 Q And the list for 3007A, which was Jamahl's unit, was
2 there any annotation that it was to be renewed on your list?

3 A No.

4 Q So were there other things on your list that were
5 annotated as renewed?

6 A Yes.

7 Q And Jamahl's was not?

8 A Correct.

9 Q So it was your understanding from the list provided to
10 you by your management that Jamahl's unit was supposed to be
11 cleaned out or trashed out and transferred to someone else?

12 A Correct.

13 Q And you were following the policy that your company had
14 given you?

15 A Correct.

16 Q Did you have any kind of a pre-turn meeting where y'all
17 discussed all this?

18 A Yes.

19 Q What was the participation like in that meeting? Were
20 there employees all engaged in that meeting?

21 A I would say yes.

22 Q Was anybody wearing headphones?

23 A Yes.

24 Q Who was wearing headphones?

25 A Carlton.

1 Q Anybody else sleeping?

2 A Not to my knowledge.

3 Q You didn't see anybody sleeping?

4 A No.

5 Q Were you sitting where you could see everybody in the
6 room?

7 A No.

8 Q So there could have been people sleeping and you just
9 didn't see them?

10 A Correct.

11 Q And so y'all had a plan to, basically, trash out all
12 these units in one day; is that right?

13 A Yes.

14 Q Was that realistic?

15 A No.

16 Q Was that wild?

17 A Yes.

18 Q Isn't that the word you used in your deposition?

19 A Yes.

20 Q It was a wild plan to think y'all could go through all
21 these units in one day?

22 A Correct.

23 Q Had you been in property management for several years
24 now?

25 A Correct.

1 Q Housing turnover is pretty hectic?

2 A Yes.

3 Q It's important to have the turn board, as y'all call
4 it, correct?

5 A Yes.

6 Q As an employee, you rely on that information provided
7 to you by upper management?

8 A Correct.

9 Q Do you recall a day where y'all had to finish out
10 before you could even go home?

11 A Yes.

12 Q And y'all worked past dark?

13 A Correct.

14 Q In July?

15 A Yes.

16 Q After 9:00, 9:30?

17 A Yes.

18 Q What time did y'all start that morning?

19 A 6:00 a.m.

20 Q You started at 6:00 a.m. and worked till nine or ten
21 o'clock?

22 A Yes.

23 Q Were you given any breaks?

24 A Yes.

25 Q When was that break?

1 A It would just depend, usually be around noon sometime.
2 It could be, like, around 1:30, two o'clock.

3 Q So you, actually, do you recall going into Jamahl's
4 unit?

5 A Correct.

6 Q Now, there was some testimony -- somebody mentioned
7 something about you not feeling well and sitting on a golf
8 cart?

9 A Correct.

10 Q How much time do you think you spent in that unit?

11 A I'd say about 30 minutes.

12 Q You were 30 minutes in that unit?

13 A Yes.

14 Q I'm going to hand you what's marked as Plaintiff's
15 Exhibit No. 6. Do you recognize that?

16 A Yes.

17 Q And is that a move-out inspection that you were the one
18 doing the inspection?

19 A Yes.

20 MR. LYLE: At this time, I'd move that into evidence as
21 being your inspection of Unit 3007A.

22 THE COURT: It's my understanding, there's no objection
23 to that.

24 MR. VANDENBERG: That's correct.

25 THE COURT: Plaintiff's No. 6 is admitted.

1 (WHEREUPON, Plaintiff's Exhibit No. 6 is admitted into
2 evidence.)

3 BY MR. LYLE:

4 Q Tell the jury what your duties were when you did an
5 inspection.

6 A So when we do an inspection, it was like a move-out
7 inspection, so we really look for, like, damages or anything
8 that we have to replace. So on this sheet, it has
9 everything listed out from living room to kitchen to
10 bedroom. It will say, like, walls, paint condition, carpet
11 condition. If there was anything wrong, you would take a
12 picture of that. And then you would just -- if you didn't,
13 you could choose like good or care or charge. Then you
14 would just choose which one. So if there was nothing wrong
15 with the paint in the room, you would just hit good. You
16 wouldn't actually take a picture of it.

17 Q So you've got a screen in front of you. Is that the
18 same thing that you're looking at?

19 A Yes.

20 Q So let me call your attention to where you have
21 resident's bedroom, it says the condition is good; is that
22 right?

23 A Correct.

24 Q Were you ever instructed if there was personal property
25 or items left behind that it would not be good and you

1 should mention the personal property or items?

2 A No.

3 Q You were never told that?

4 A No.

5 Q Were you told to take photographs when people leave
6 behind property?

7 A No.

8 Q Nobody in management ever told you to take photographs?

9 A Of the unit if there was any damage or anything.

10 Q Or property left behind?

11 A No.

12 Q Now, how long did you work under Katie?

13 A I would say a few months. She came in right when we
14 did the turn in July. I can't remember how long she as
15 there.

16 Q Was Katie always straight up with you about your job
17 performance and things that you did at work?

18 A Yes.

19 Q Was she truthful as it relates to your duties and how
20 you follow them?

21 A No.

22 Q She wasn't always truthful with you?

23 A No.

24 Q You had several occasions to know of her not being
25 truthful about her job?

1 A About her job, no.

2 Q About your job?

3 A Yes.

4 Q About other employee's jobs?

5 A Yes.

6 Q She blamed things on other people?

7 A Yes.

8 Q She never took responsibility?

9 A I don't know.

10 Q You've seen her lie in her job?

11 A I don't know.

12 Q Do you recall in your deposition when I asked you if
13 she lied? Do you remember what your answer was when you
14 were under oath and told that answer?

15 A I don't.

16 Q So you don't recall whether I asked you if you knew
17 Katie to lie at work?

18 A I remember that question, yes.

19 Q Do you remember what your answer was?

20 A I don't.

21 Q If I showed you your deposition, would that refresh
22 your memory?

23 A Yes.

24 Q Okay. We'll come back to that in a second. In your
25 opinion, did Carlton Brown steal items out of units?

1 A In my opinion, no.

2 Q Right. Carlton did what he was told?

3 A Correct.

4 Q And you saw them place stuff out of Jamahl's unit onto
5 a curb?

6 A Correct.

7 Q And you saw temporary employees pick through that?

8 A I did not.

9 Q But you saw temporary employees there that day?

10 A Yes.

11 Q They could have easily picked through that stuff on the
12 curb?

13 A Correct.

14 Q And you did see clothes in Mr. Postell's unit?

15 A Correct.

16 Q You saw shoes?

17 A Yes, sir.

18 Q Pants?

19 A Yes.

20 Q Shirts?

21 A Yes.

22 Q You did not look in the bathroom really that hard?

23 A There wasn't much in there.

24 Q You didn't look under the bed, right?

25 A Nothing under the bed.

1 Q You did or you didn't look under the bed?

2 A The bed set high, so you could see directly under it.

3 Q Did you open up the totes and the boxes that you saw in
4 his closet?

5 A Not the chest.

6 Q You did not open the chest?

7 A No.

8 Q You saw a hamper, ironing board, iron?

9 A Correct.

10 Q You didn't lift anything up while you were in there,
11 right?

12 A No.

13 Q Does The Rowan policies dictate how you're supposed to
14 communicate with other employees and what you're supposed to
15 do with the tenants, do you know?

16 A Can you rephrase that?

17 Q Sure. Are you familiar with the policies of your
18 employer when you were working at Campus Advantage?

19 A Correct.

20 Q And did those policies adequately address how you were
21 supposed to communicate with other tenants?

22 A Not that I know of, not the tenants.

23 Q The Rowan set you up to fail in your job, didn't they?

24 MR. VANDENBERG: Your Honor.

25 MR. LYLE: I'll move on.

1 BY MR. LYLE:

2 Q Let me ask you this, do you recall in your time at
3 Campus Advantage there being any other instances of the
4 system not being accurate?

5 A Yes.

6 Q Do you recall other instances of the system not being
7 accurate such that tenants like Mr. Postell had their stuff
8 taken or misplaced or, otherwise, missing?

9 A Correct.

10 Q That happened while you were at Campus Advantage?

11 A Correct.

12 Q While you were working for Campus Advantage at The
13 Rowen Apartments?

14 A Correct.

15 Q And it happened multiple times?

16 A Correct.

17 MR. LYLE: Beg the Court's indulgence one moment.

18 (Pause.)

19 BY MR. LYLE:

20 Q I just want to be clear. This is important to this
21 case. You did get a list from your management as to which
22 units were being renewed and which units were being vacated
23 or transferred or turned over?

24 A Correct.

25 Q And there was an R annotated next to each unit that was

1 supposed to be renewed?

2 A Correct.

3 Q And as we sit here today, you are sure that unit 3007A
4 that Mr. Postell lived in did not have an R next to it?

5 A Correct.

6 Q That was the list you were given?

7 A Correct.

8 Q By Katie Floyd?

9 A Yes.

10 MR. LYLE: No further questions, Your Honor.

11 THE COURT: Mr. VanDenBerg.

12 MR. VANDENBERG: Yes, Your Honor. Thank you.

13 CROSS-EXAMINATION

14 BY MR. VANDENBERG:

15 Q Good morning.

16 A Good morning.

17 Q I want to back up and maybe slow things down a little
18 bit.

19 A Okay.

20 Q Have you walk through a couple of things. Since Mr.
21 Lyle asked you about your deposition, I do want to ask you
22 about that first. So there was a point in your deposition
23 where you were shown the investigatory e-mail that Katie had
24 done?

25 A Correct.

1 Q Do you remember that?

2 A Yes.

3 Q Can you describe to the jury what your feelings were
4 after reading that?

5 A My feelings were not great after reading it just
6 because when Katie was working there, she always called me
7 her favorite. So after seeing how she felt about me and her
8 in the investigation that she wrote up, it really kind of
9 hit me hard. Because it was like you felt that way about
10 me, but never really showed that you felt that way about me.

11 Q So I want to back up to the day that you and Mr. Brown
12 -- actually, let's go back a week before. Do you recall the
13 pre-turn meeting on July 17th, 2022?

14 A Correct.

15 Q This was all hands, so all Rowen staff were required to
16 be in attendance?

17 A Correct.

18 Q Who was at the meeting that day?

19 A I believe Katie and Nick as well.

20 Q Are you sure Nick was there?

21 A Yes.

22 Q Katie led the meeting?

23 A Yes.

24 Q So what was the purpose of this pre-turn meeting?

25 A To, basically, go over, like, the policies and what

1 they, I guess, wanted from us during that time. And then we
2 went over our meals for that period as well as the breakdown
3 of how we were going to go about the whole turn process.

4 Q Had you been through the turn process before?

5 A No.

6 Q It was your first time -- when were you, actually,
7 hired by Rowen, if you recall?

8 A In March of 2022.

9 Q March of '22. Who was the manager at that time?

10 A Um --

11 Q Terrance, does that sound familiar?

12 A Yes.

13 Q So Terrence hired you in March of '22. Do you recall
14 when Katie arrived as the manager?

15 A Yes.

16 Q Approximately when did she arrive?

17 A I want to say the beginning of July is when she came.

18 Q So the incidents we've been talking about occurred in
19 the latter half of July; is that correct?

20 A Yes.

21 Q So July 17th was this pre-turn meeting. So Katie had
22 been there roughly a couple of weeks?

23 A Correct.

24 Q Do you recall what was going on around the office as
25 Katie entered as the manager?

1 A Correct.

2 Q So was there -- I mean, was it business as usual as it
3 had been when Terrence was there?

4 A Yes.

5 Q So were there any meetings before the pre-turn meeting?
6 Were there any meetings where you were introduced to Katie
7 and management was discussed?

8 A So, actually, the day Katie came, I was not at work, so
9 I met her the next day. So I don't know if they had a
10 meeting or anything introducing her.

11 Q Okay.

12 A So I met her the second day.

13 Q So your role was as a community assistant?

14 A Correct.

15 Q Can you describe for the jury what that position
16 entails?

17 A The community assistant, they're, basically, like
18 leasing agents, put it that way. So we did a bunch of
19 leasing, resident events, marketing, touring, all that
20 stuff.

21 Q So organizationally, who was your immediate supervisor?

22 A Katie Floyd.

23 Q And Christopher Lewis, do you recall him?

24 A Yes.

25 Q And what was his role?

1 A He was the leasing manager.

2 Q As a community assistant, did you work through team
3 leads as others, I guess, in management other than Katie
4 Floyd and Christopher Lewis?

5 A No.

6 Q Any other -- was there an assistant manager?

7 A We had an AGM.

8 Q Who was that?

9 A That was Rachelle.

10 Q So what was her function, do you recall?

11 A So mostly, she handled accounting. So pretty much,
12 what Katie couldn't handle. If Katie wasn't there and there
13 was some resident issues, then she would step in and take
14 Katie's place and handle those issues. But as long as the
15 property manager was there, she only did accounting.

16 Q So when you were first hired -- I know this is going
17 back a couple of years now, but when you were first hired,
18 what was that process like?

19 A So they had that they were hiring. I went in there.
20 I, actually, asked someone if they were hiring. They said
21 yes. I had my interview with Terrence. Then about two
22 weeks later, I got a call for the job.

23 Q So were you, actually, living at Rowen as a resident?

24 A I was.

25 Q And how common is that for residents of The Rowen, at

1 least, to, also, be employees?

2 A Very common.

3 Q Were there others when you were employed there that,
4 also, lived on site?

5 A Yes, all my coworkers were residents of The Rowan.

6 Q Including maintenance staff?

7 A Correct.

8 Q So back to organizationally, with regards to like the
9 setting of a policy, managing others, was that something
10 that a community assistant would be involved in?

11 A Not really.

12 Q So as far as writing policies, was that something that
13 was done at a corporate level, like the Campus Advantage
14 Corporation?

15 A Yes.

16 Q And when you were first hired, was it just Terrence
17 that interviewed you or was there anyone else that was
18 involved in that hiring process?

19 A Just Terrence.

20 Q And did you go through any training when you were first
21 hired?

22 A I did, but it was on the computer.

23 Q Do you recall if any of those training modules -- let
24 me back up. So do you recall the name of this training
25 module?

1 A I don't.

2 Q It was all online?

3 A Correct.

4 Q Any in-person training that you can recall?

5 A As far as, like, the policies on training, no. As far
6 as training, I really got trained by my coworkers.

7 Q But as far as the online training, do you recall any of
8 the training modules by name or just by description?

9 A I remember two, that would be sexual harassment and
10 fair housing.

11 Q Were you required to review and sign an employee
12 manual?

13 A I believe so, yes.

14 Q And that was online?

15 A Yes.

16 Q So policies were something drafted by Campus Advantage
17 Corporate?

18 A Correct.

19 Q Let's talk about the meeting of July 17th. So everyone
20 was there. How long was the meeting?

21 A I would say an hour maybe.

22 Q And was it just a discussion there or was there a tour
23 taken of the unit or was that later on?

24 A I don't know. I know that happened, but I don't know
25 when.

1 Q But during the July 17th meeting, were there any
2 handouts?

3 A I believe so.

4 Q You were given an agenda?

5 A Yes.

6 Q So I want to ask you about the agenda. So in the
7 agenda, it shows -- and I heard during your direct exam the
8 discussion about the initial assignment of teams. So I want
9 to talk about the original plan based on that. So what was
10 the original plan for you on doing a turn based on the July
11 17th meeting?

12 A So I believe I was originally supposed to be in the
13 office for the first part of it. But are you talking about
14 the units?

15 Q So the first day of the turn, based on this July 17th
16 meeting, what was your understanding of your original
17 assignment that day?

18 A So I was supposed to be in the office on that day.

19 Q Can you describe to the jury exactly what that function
20 would have entailed?

21 A Yes. The way student housing works, we have the same
22 week for move-ins, but if you don't renew your lease,
23 everyone has the same move out day. So the people who were
24 still staying on the property, they would still come in with
25 maintenance requests or paying their rent. So we still had

1 to have office staff in the office.

2 Q And was there ever a discussion of the role of those
3 individuals, also, to respond to request to verify leasing?

4 A Yes.

5 Q And who else in addition to yourself was supposed to be
6 at the front desk that day?

7 A I know it was me and one other person, I believe. I
8 believe Katie was, also, in the office as well.

9 Q Now, during the course of this meeting on July 17th --
10 and I heard you respond during your direct exam about some
11 pushback based on some unrealistic goals. So the goal as
12 you understand it was to initially assess all 1002 bed
13 spaces at The Rowen?

14 A Correct.

15 Q So initially, there were just teams of three that were
16 set up?

17 A Correct.

18 Q So you would have been -- at least, you and one other
19 person would have been at the front desk?

20 A Yes.

21 Q And there other three teams would have been
22 accomplishing this task of assessing all 1,002 bed spaces?

23 A Correct.

24 Q So was the response immediate when it was announced or
25 was it you think about it?

1 A It was immediate.

2 Q Immediate response. So just describe, was Katie and
3 whoever else was leading the meeting, were they adamant that
4 this is the way it was going to be or were they receptive to
5 your feedback?

6 A I thought they were very adamant. A lot of people who
7 were giving pushback were the people who had done a turn
8 before.

9 Q You mentioned that you were paired with Carlton that
10 day?

11 A Correct.

12 Q Was Carlton a new employee, such as yourself?

13 A No.

14 Q Based on your knowledge, had he been there for some
15 time?

16 A Yes.

17 Q A number of years?

18 A Yes.

19 Q And do you know what his role at The Rowan was at that
20 time?

21 A I believe he was groundskeeper.

22 Q Do you have an understanding of what that role is?

23 A Yes. Basically, maintaining the grounds, so picking up
24 trash. He was kind of like a maintenance person, too. So
25 whenever he did the grounds, he would step in and help with

1 the small work orders. But he was mainly the groundskeeper.

2 Q So he had been there for a few years. So this was not
3 his first turn?

4 A Correct.

5 Q Based on your knowledge, was there anyone else other
6 than yourself at turn for who it was their first turn?

7 A (No response).

8 Q You want me to say that again?

9 A Yes.

10 Q Anyone else who that was their first turn?

11 A Yes.

12 Q How many other people were in a similar situation?

13 A I don't know an exact number, but about two, other than
14 me.

15 Q And were there other community assistants?

16 A Yes.

17 Q You said a few minutes ago that much of what you
18 learned was on-the-job training?

19 A Correct.

20 Q So was that from your fellow community assistants?

21 A Yes.

22 Q And others on the staff? Terrence when he was there?
23 Katie?

24 A Correct.

25 Q Any assistance from Rachelle or Christopher Lewis?

1 A I'm going to say more Christopher Lewis just because he
2 was the leasing manager. But, mainly, I was getting trained
3 by my coworkers.

4 Q So I want to kind of back up and discuss the turn
5 process. Do you recall the name of the software that you
6 were using at The Rowan at that time?

7 A Real Page.

8 Q And were you able to train on Real Page either through
9 this online training or was this on-the-job training?

10 A On-the-job training.

11 Q And was there anyone who was instructing on how to use
12 Real Page?

13 A Yes, my coworkers.

14 Q Christopher Lewis?

15 A My coworkers and Christopher Lewis as well.

16 Q And describe for the jury, you know, how comprehensive
17 is this Real Page?

18 A It's two parts of it. One is called One Site and one
19 is call Onsite. Onsite would be where you would go onto
20 their leases, approving leases, check the status of people
21 signing their leases. I believe One Site was the part with
22 the maintenance requests and all that on it. So you were
23 really using one, but you would have to go into two separate
24 entities depending on what you're trying to do.

25 Q And so as far as the leasing, approving leases, was

1 that something that you did or was that someone else's
2 responsibility?

3 A The property manager.

4 Q Just the property manager?

5 A Yes. So we could send the leases, but until there was
6 a property manager's signature on there, it wasn't legally
7 binding or anything like that.

8 Q So describe that process, the leasing process. So you
9 say that you would do the intake. So there would be a
10 prospective tenant that would call?

11 A Yes. So someone could call, someone could come and
12 tour and do the application process. Once the application
13 process is done, we were able to send the leases, could edit
14 only a few things on it. So we could edit the dates and, I
15 believe, the rent amount. And then, like, if there was a
16 special during that time, we would be able to input that.
17 And then we would just send it over to them. And like, I
18 said, on Onsite, you could track on where they are on
19 signing. So once they sign, we would send it up to
20 countersign to the property manager.

21 Q So if there were any changes to someone's lease, who
22 would be responsible then for revising that lease in Real
23 Page?

24 A After it has been signed and there are changes?

25 Q Or leading up to that? Would it still be the general

1 manager who would then be approving it?

2 A Yes. So before a property manager has signed it, we
3 can make changes to it. After the property manager has
4 signed it and there needs to be changes, the property
5 manager would handle that.

6 Q And what was the best source for determining whether
7 someone actually had a valid lease?

8 A Can you rephrase?

9 Q So what is the -- is the information in Real Page, is
10 that the source for verifying whether there is a valid
11 lease?

12 A Correct.

13 Q Any other information, any other document that would
14 have that information?

15 A No.

16 Q Were you able to access Real Page on your mobile
17 device?

18 A No.

19 Q Any other device that you could connect to -- I guess,
20 could you connect any of the other modules within Real Page,
21 either Onsite or One Site, on your cell phone?

22 A No, not on the cell phone.

23 Q What about the inspection information, are you looking
24 at that on your phone?

25 A Yes.

1 Q Anything else other than inspection that you recall?

2 A No.

3 Q So if you were out onsite and you wanted to know
4 whether or not someone had a valid lease, the only way to
5 determine that would be to actually call someone -- or, I
6 guess, walk to the front office, log into Real page and
7 determine that for yourself or you could call someone?

8 A Correct.

9 Q So back to the July 17th meeting. Ultimately, Katie
10 was convinced to revise the team structure?

11 A Correct.

12 Q What was the result of that?

13 A So we were in bigger teams and then we broke down into
14 smaller teams so that we could get more done, I guess.

15 Q So there were six teams?

16 A So at first, I believe we were in smaller groups --
17 well, like, there would be three groups of, like, four
18 people. And then, like, after the meeting, they were
19 telling her, you know, that's just something we can't do.
20 That's when she broke it down the teams into smaller groups.
21 That's how me and Carlton ended up being together.

22 Q Was there any thought given to putting someone, such as
23 yourself where this was their first turn with someone who
24 was more experienced?

25 A Yes.

1 Q So anyone else other -- so individuals who were
2 similarly situated where this was their first turn, were
3 they, also, paired with someone who had experience?

4 A I believe so.

5 Q So you were paired with Carlton. So you understood
6 leaving the July 17th meeting that the first day of turn
7 that you would be paired with Carlton?

8 A Yes.

9 Q Was there any -- so July 25th, I believe you testified
10 that was an early day. Was everyone required to arrive at a
11 certain time?

12 A Correct, 6:00 a.m.

13 Q So did you convene in the main office there?

14 A Yes.

15 Q Was everyone present?

16 A Yes.

17 Q Same people that were present July 17th?

18 A Yes.

19 Q Everyone?

20 A Yes.

21 Q Were the temp workers there as well?

22 A They usually came, I think they came at seven o'clock.
23 We came in at 6:00 because we were doing move-outs and
24 move-outs started, I believe, at 8:00 a.m. So we were there
25 before the temp workers.

1 Q So the plan always as far as July 25th -- following
2 this July 17th meeting, the plan for July 25th was that you
3 would start the day paired with Carlton doing inspections?

4 A Correct.

5 Q So same with the other five or so teams?

6 A Correct.

7 Q So let's walk through that morning in slow motion. So
8 you arrive at -- I'm sorry, what time did you say?

9 A 6:00 a.m.

10 Q 6:00 a.m. Was there another meeting led by anyone that
11 day?

12 A Katie.

13 Q Do you recall what she -- let me back up. Did she take
14 attendance or was it easy to kind of see that everyone was
15 there?

16 A It was easy to tell.

17 Q So everyone was there. Katie led that meeting. Do you
18 recall what was discussed during that meeting?

19 A I do not.

20 Q Do you recall at one point you went to the other units
21 to review that?

22 A Correct.

23 Q Was it shortly after six o'clock or was that some hours
24 later?

25 A Right after.

1 Q Right after. And who led that visit over to the other
2 unit?

3 A Rachelle.

4 Q Was Katie with you all or did she stay back?

5 A She stayed back.

6 Q So Katie took the teams over there --

7 A Rachelle.

8 Q I'm sorry, Rachelle did. And what was the purpose of
9 this visit to the unit with Rachelle?

10 A To, basically, show us what we're looking for in an
11 apartment. Also, how to work the inspection site. Because
12 of lot of us really didn't use that. Well, I never knew
13 people -- we never used that before. It was kind of like a
14 refresher for everyone on how to operate the app.

15 Q So how to operate this app?

16 A Yes.

17 Q It was an app or was it just --

18 A It was an app.

19 Q So Rachelle took you to show you how to do the business
20 of turn, how to use this app?

21 A Correct.

22 Q So what time did you break from this tour to continue
23 doing what you were organized to do that day?

24 A I don't remember.

25 Q Was it maybe an hour?

1 A I would say about 30 minutes or so.

2 Q Now, Mr. Lyle asked you about observations and some
3 saying that you weren't feeling well, that you were sitting
4 on the golf cart?

5 A Correct.

6 Q Is it true that on July 25th that you weren't feeling
7 well?

8 A Correct.

9 Q And was that the case when you first arrived at six
10 o'clock?

11 A Correct.

12 Q And subsequently, when you were on the tour with
13 Rachelle?

14 A Correct.

15 Q The way that you were feeling physically might have
16 affected your attention to what was being discussed?

17 A Correct.

18 Q So at what point after you broke from this tour of the
19 unit did you and Carlton start your inspections?

20 A I would say about 20 minutes maybe.

21 Q So you showed up at 6:00, what time did you guys start
22 your inspections?

23 A I believe 8:00 a.m.

24 Q So at eight o'clock, you started. Do you recall, even
25 approximately, what time you arrived at Mr. Postell's unit?

1 A It was right before lunch, I believe. I can't really
2 remember a specific time.

3 Q And so between eight o'clock and when you arrived at
4 Mr. Postell's, you're fairly confident it was before noon?

5 A Correct.

6 Q So at noontime, you guys broke for lunch?

7 A Right.

8 Q So that was a good milestone to recall. So you started
9 your inspections around eight o'clock. Now, Mr. Lyle asked
10 you if you -- you were observed sitting on a golf cart. Was
11 there any validity to that? Were there some of these
12 inspections made while you were on the golf cart and Carlton
13 made the inspection?

14 A Correct.

15 Q So at what point between eight o'clock and you reached
16 Mr. Postell's unit did you start feeling better to resume
17 your duties?

18 A You mean, like, in time form?

19 Q Just approximately, was it closer to eight o'clock or
20 was it closer to 11:00 or 12:00?

21 A I believe it was closer to, like, 11ish.

22 Q So in the hours leading up to 11 o'clock, it's possible
23 that some of your colleagues at The Rowan might have
24 observed you sitting on the golf cart while Carlton went and
25 did the inspections?

1 A Correct.

2 Q But by the time you reached Mr. Postell's unit, you
3 were feeling better to resume your duties?

4 A Correct.

5 Q So let's talk about you entering Mr. Postell's unit.
6 So when you arrived shortly before noon, did you -- and his
7 unit was 3007A?

8 A Correct.

9 Q And so if you can describe for the jury what your
10 typical -- just from the outside facing the apartment, what
11 do these apartments look like?

12 A So they're built like town homes. So if you lived in a
13 two, three or four bedroom, you would have steps. So you
14 walk up to your front door. So there would be one apartment
15 on the left side and one on the right side, but they would
16 share the same steps as far as like walking up to the front
17 door.

18 Q So Mr. Postell was in a three-bedroom, three and a half
19 bath unit?

20 A Correct.

21 Q It's called a three-by-three; is that fair?

22 A Correct.

23 Q So he was in a three-by-three unit. And he had two
24 other roommates?

25 A Correct.

1 Q So as you walked up the stairs, I'm assuming to his
2 unit?

3 A Correct.

4 Q I guess to enter not his bedroom, but his unit?

5 A Yes.

6 Q So do you recall which of the bedrooms he occupied?

7 A A.

8 Q So where would that have been situated in the unit?

9 A Upstairs.

10 Q Facing the front or facing the back?

11 A Facing the front.

12 Q So the front in this case would have been the parking
13 lot view?

14 A Yes.

15 Q And so if you recall, I know you haven't been there for
16 a while, but what would the back be facing for unit 3007?

17 A Some other apartments. There was another building.

18 Q So was there another bedroom upstairs?

19 A Yes.

20 Q So were these separate bedrooms?

21 A Yes.

22 Q Did each of these bedrooms have their own bathroom?

23 A Yes.

24 Q So three bedrooms and each had their own bathroom?

25 A Yes.

1 Q And they had a half bathroom?

2 A Correct.

3 Q So as you enter the unit, the unit itself, you walked
4 in, was there a lounge area?

5 A Yes, it was the living room area, and the kitchen and
6 that's where the half bathroom was located.

7 Q So an eat-in kitchen, a lounge area and a half bath on
8 that main floor?

9 A Correct.

10 Q And then you go upstairs and there's two bedrooms?

11 A Correct.

12 Q A is on the front, B is on the back?

13 A Correct.

14 Q And then where is the third bedroom?

15 A So when you walk out the main living area, there's
16 stairs that go down. And there would be one bedroom down
17 there.

18 Q Okay. Are the washer and dryer situated in the same
19 place in all these three-bedroom, three-bath units?

20 A Yes, on the bottom level.

21 Q On the bottom level?

22 A Yes.

23 Q In all three-bedroom, three-and-a-half bath units at
24 The Rowen, are all the washer and dryers on the ground
25 floor?

1 A Yes.

2 Q Everyone has access to the washer and dryer?

3 A Yes.

4 Q So Mr. Postell was in bedroom A. Anything upstairs
5 other than these two bedrooms? Were there any closets?

6 A Yes. There was a shared closet that was up there, a
7 linen closet.

8 Q A shared linen closet. So one bedroom on the front,
9 which was bedroom A, Mr. Postell's, B on the back and then
10 the ground floor. Call it a basement, is that okay?

11 A Yes.

12 Q So that day, you and Carlton showed up at Mr. Postell's
13 unit, 3007. You walk up the stairs. Did you have to knock
14 at the door?

15 A Yes.

16 Q So you enter the unit. And you have your list?

17 A Correct.

18 Q I want to pause for a second and talk about the turn
19 list.

20 A Okay.

21 Q I want to ask you about the turn board. Do you
22 understand that concept?

23 A The paper.

24 Q The paper?

25 A Yeah.

1 Q So the turn board, you understand that description?

2 A No.

3 Q So the list -- do you know how that list is created?

4 A I know it's created from Real Page, but I don't know
5 how to actually pull that list from the system.

6 Q Is it your understanding that the list that you
7 received is a report that comes out of Real Page?

8 A Correct.

9 Q That's your understanding?

10 A Correct.

11 Q And so your understanding is this list that came out of
12 Real Page was given to you with a list of units that you and
13 Carlton were supposed to go inspect?

14 A Correct.

15 Q So you have your list. On the list, you testified that
16 it did not show Mr. Postell as having renewed?

17 A Correct.

18 Q And so your understanding -- describe for the jury what
19 exactly is your mindset. So as you're going through
20 evaluating, what was your mindset, what was your expectation
21 when you arrived at Mr. Postell's unit?

22 A So like I said, this was my first time. So on the
23 sheet, it would have an R or a V. So when someone has an R
24 on their unit, you knew not to go into that room at all. If
25 they had a V, that means they were supposed to be moved out.

1 And me expecting to go into the unit, there were numerous
2 correspondence, like, as far as e-mails on when to be out of
3 the unit, how to turn in your keys and all that stuff. So
4 whenever we go into a unit that has a V, which means vacate,
5 we either expect it to be vacant or somewhat moved out.

6 Q So let's talk about that. So at The Rowen, this is a
7 community that markets towards college students?

8 A Correct.

9 Q It's not exclusively for college students, but they
10 market towards college students?

11 A Correct.

12 Q So in your experience up to that point in time and in
13 the time since, it's not uncommon for residents,
14 particularly college students to maybe leave stuff behind?

15 A Correct.

16 Q And these items may vary from things they maybe forgot
17 and left behind or things that they just -- let's just pause
18 there. So sometimes they just forget items; is that
19 correct?

20 A Correct.

21 Q And is there a policy at Campus Advantage for how to
22 deal with those items that are just left behind?

23 A Yes.

24 Q What is the term that describes that policy?

25 A Bag and tag.

1 Q So what is a bag and tag policy, again, your
2 understanding?

3 A So if there's any items left in the room, you will bag
4 them up and mark it with what unit it was found in and then
5 take it to the front office.

6 Q When you say just mark it, are there any documentation
7 beyond that? Are you supposed to take pictures of the
8 items?

9 A I guess.

10 Q So where do these bagged and tagged items end up?

11 A So they would go into the tower. The tower was a tower
12 that maintenance worked out of. So it was, like, a
13 four-bedroom that they would, like, take parts out of. They
14 stored some of their tools and stuff in there. So we would,
15 essentially, store it in the tower.

16 Q So this was a unit for use internally to store things?

17 A Correct.

18 Q So it's not like a big warehouse, it's just a -- when
19 you walk in, it's a unit with stuff in it?

20 A Correct.

21 Q Are these special bags or they just like empty bags?

22 A Regular bags.

23 Q Are they clear or are they, typically, like lawn bags?

24 A Some of them were black. Some of them were white trash
25 bags. But I don't know the bag color mattered.

1 Q Had you ever been into the bag and tag tower?

2 A Well, prior to turn, yes.

3 Q But you're familiar with what it looks like?

4 A Correct.

5 Q Let's talk about trash out. What was the Campus
6 Advantage trash out policy? So you bag and tag items that
7 -- everything? So if you find a toilet paper roll or some
8 pile of trash, some moldy food in the refrigerator, does
9 that get bagged and tagged or is that --

10 A It's trashed.

11 Q So as far as determining the items that are -- the
12 value of items that are -- so you walk into a unit and you
13 see that there's items that should be bagged and tagged, who
14 is it that makes the judgment call on how that property is
15 treated?

16 A It will be the people who are in the unit.

17 Q So is it the individual that enters the unit or is that
18 a judgment call for the general manager?

19 A I would say the people that enter the unit.

20 Q So you entered a unit and it was -- there was what you
21 would assess to be expensive items, you would make that
22 determination? You wouldn't call the front office or call
23 the general manager to make those decisions?

24 A No, we would just bag and tag it.

25 Q So let's talk about trash out. So the materials that

1 are to be preserved are bagged and tagged?

2 A Correct.

3 Q And then some of the items that I described, so moldy
4 food in the refrigerator, trashed out?

5 A Correct.

6 Q Paper stuck in the bathroom area?

7 A Trashed.

8 Q So during the course of the turn, as you're making an
9 assessment, I guess, as you go through the turn process, is
10 there a process as to how these steps are accomplished?
11 Does the trash out come before bag and tag or is it a linear
12 process?

13 A So it just depends on when you're in the unit. So
14 there isn't really like a trash out first and then you go
15 back and bag and tag. It's like when you go in the unit,
16 you decide what needs to be bagged and tagged or what needs
17 to be thrown away.

18 Q So as far as -- I mentioned Campus Advantage policies
19 and I asked you earlier about who authored these policies.
20 The policies are offered by corporate Campus Advantage?

21 A Correct.

22 Q So back to the day of the 25th, so you are in Mr.
23 Postell's unit. You have your list. It shows that it
24 should be vacant?

25 A Correct.

1 Q So you and Carlton are together at this point in time?

2 A Correct.

3 Q So are you in front of Carlton or is he behind you?

4 A He's in front of me.

5 Q Is there anyone else -- of the other two bedrooms, are
6 they marked as vacant?

7 A Renewed.

8 Q So it was just Mr. Postell's unit that shows as vacant?

9 A Correct.

10 Q So you walk up the stairs to Mr. Postell's bedroom. B
11 is in the back and Mr. Postell is in A. So you go
12 immediately to unit A?

13 A Correct.

14 Q Carlton is in front of you?

15 A Correct.

16 Q Now, do all of the roommates have access to each
17 other's room?

18 A No.

19 Q So each individual bedroom is locked with a key that
20 only the resident has access to?

21 A Correct.

22 Q But, of course, you, as staff, have an access key to
23 get into these units?

24 A Correct.

25 Q So Carlton was in front of you, what did he do as he

1 approached the unit?

2 A So he knocked on the door and then we went in. I can't
3 remember if the door was unlocked or if he used the key to
4 get in.

5 Q Did you have your own key or did Carlton have the key?

6 A We both had keys, but he was the one to enter.

7 Q So you enter this room. So what I want to show you is
8 -- you know, back when we took your deposition, there were a
9 couple of exhibits that you created. One was -- there was a
10 floor plan that I had drafted and then you annotated?

11 A Correct.

12 Q So I want to show that to you. Do you recall your
13 deposition?

14 A Correct.

15 Q Do you recall me asking you to do that?

16 A Correct.

17 Q I want to show you what we've marked as Defendant's
18 Exhibit 1. Still Exhibit 1, but a new Defense Exhibit 1.
19 Do you recall that?

20 A Yes.

21 Q And so just to orient you, so as you enter this room,
22 these bedroom A and three bedroom, three and a half bath,
23 are they the same or are there some that might be mirror
24 images of what's displayed here?

25 A They're all the same.

1 Q So as you enter, the thing that you see in bedroom A
2 will be the same?

3 A Correct.

4 Q In all throughout The Rowan. So let's just talk about
5 it a little bit here. So what do you see as you enter? You
6 can use that to orient yourself. I'm going to ask you
7 specifically about what we find here as far as closets, et
8 cetera. But just describe for the jury, as you enter this
9 bedroom A, what do you see?

10 A So as soon as you walk in the door, there was a dresser
11 that we provide on your right-hand side. Then straight
12 forward, you would see the desk and chair that we, also,
13 provide in the unit. And there were two screen monitors
14 attached to it. And --

15 Q I'm sorry, you're doing a good job, but just generally
16 describe what you see just in general in bedroom and then
17 we'll come to what you saw in Mr. Postell's unit?

18 A Okay. So in a regular unit, you would have the dresser
19 that we provide. You will, also, have a desk and a chair
20 and the bed frame.

21 Q And where is the bed frame? So as you walk in, you
22 said the dresser is to your right. The desk and chair?

23 A In front of you.

24 Q Are they against the wall?

25 A Yes.

1 Q Exterior wall?

2 A Yes.

3 Q Are there two windows opposite this desk?

4 A Yes.

5 Q And then where is the bed situated?

6 A So when you walk in the room and you turn to your right
7 -- if you're walking in this way, the bed was facing this
8 way.

9 Q And is the bed, is it -- I think I heard you describe
10 it as a platform bed. So it's up on some type of riser?

11 A Correct.

12 Q And you can see clearly under that bed?

13 A Correct.

14 Q Are the beds nailed to the floor or screwed into the
15 floor? Are they able to be moved?

16 A You can move them.

17 Q Same with the desk and chairs?

18 A Correct.

19 Q Same with the dressers?

20 A Correct.

21 Q So there's two closets in this room. So what we've
22 marked here in closet B. So as you enter the room, closet B
23 is to your left along this wall?

24 A Correct.

25 Q And then you turn to the right and there is an entrance

1 to the bathroom?

2 A Correct.

3 Q Is that wide open or is there a door to that bathroom?

4 A It's a door.

5 Q And if you continue on that wall is the access to what
6 we call closet A?

7 A Correct.

8 Q We have closet A, closet B, the bathroom. So in the
9 bathroom, is there any storage cabinet in there, like a
10 vanity cabinet?

11 A Yes.

12 Q And any other storage space, any shelves in there?

13 A No, just the towel rack.

14 Q So in each of the closets, are there any other storage,
15 like, dressers?

16 A No.

17 Q Is there a rack?

18 A Yes.

19 Q Is it like a flat rack and then a bar underneath for
20 clothes hangers?

21 A Yes.

22 Q Other closet, the same thing, storage unit up top?

23 A Yes.

24 Q Now, let's talk about Mr. Postell's unit. So Carlton
25 is ahead of you?

1 A Correct.

2 Q So what is the first thing you see as you enter the
3 room?

4 A The desk and chair, the gaming chair he had and the two
5 monitors that were attached to the desk.

6 Q So the gaming chair, was the rolling chair still in his
7 room?

8 A No. It was a gaming chair that he bought.

9 Q So he had a gaming chair, but you didn't see the
10 rolling chair. Maybe it was elsewhere in the unit?

11 A Correct.

12 Q So you said two monitors?

13 A Correct.

14 Q And you said they were attached to the desk?

15 A Yes.

16 Q Were they -- how were they attached? Did you get a
17 good look at how they were attached?

18 A No. I know it was hard to get off, though.

19 Q And how do you know that they were hard to get off?

20 A Because when Carlton came to remove them, he had to go
21 get some pliers.

22 Q Where did he have to go get the pliers?

23 A From the cart.

24 Q So let's go back to that in a minute. So let's keep
25 going around this room. So the monitors are on the desk.

1 Any other equipment on the desk?

2 A I think there was a keyboard and a mouse.

3 Q What about a computer tower? If I say computer tower,
4 do you know what I mean?

5 A Yes.

6 Q So not a laptop, but kind of a computer tower. Did you
7 see one of those?

8 A I don't recall.

9 Q So let's keep going around the room. So just the
10 interior. Anything else that you saw? I see that you've
11 marked over in the corner, there's a mini fridge?

12 A Yes.

13 Q So describe how in Mr. Postell's case he had his bed
14 oriented. Was it perpendicular to the wall?

15 A So it was in the middle of the wall facing the closet
16 B.

17 Q Did he have anything attached to the wall on either
18 side of his bed?

19 A There was some speakers.

20 Q Do you recall how they were attached?

21 A I do not.

22 Q Was Carlton going to remove them?

23 A Yes.

24 Q Did you observe him having similar challenges getting
25 those speakers off the wall?

1 A No.

2 Q So let's -- so back up for a second. Was Carlton in
3 the room the entire time when you were there? You said he
4 had to go back to the cart?

5 A Yes, he went back to the cart to get some pliers.

6 Q And how shortly after you entered the room did he go to
7 the cart to get these pliers?

8 A I would say ten minutes maybe.

9 Q So you guys walk in, you look around, Carlton sees that
10 it will be a challenge to get these monitors off and maybe
11 the speakers, so he immediately goes out to get pliers?

12 A Correct.

13 Q So during the time that Carlton was out of the unit,
14 what were you doing?

15 A Just in the unit.

16 Q You were just waiting for Carlton to return?

17 A Yes.

18 Q Did you look around?

19 A I did.

20 Q So let's talk about closet B. So closet B is the one
21 that when you walk into the room is to your left?

22 A Correct.

23 Q Do you recall that I gave you a piece of blank paper
24 and ask you to describe the contents?

25 A Correct.

1 Q And we went through closet B and closet A, all of that?

2 A Correct.

3 Q And the bed as well. So let's talk a little bit first,
4 what do you recall being on top of the bed?

5 A So there was just like a balled up bed sheet on the
6 bed.

7 Q All right. You've already described what was on the
8 desk. Let's turn now as you enter the room to the dresser.
9 It was to your right?

10 A Uh-huh.

11 Q What was on top of the dresser?

12 A Just a bunch of cleaning supplies.

13 Q Cleaning supplies?

14 A Yes.

15 Q Did you happen to, also, open the drawers to this
16 chest?

17 A Yes.

18 Q And how many drawers were there?

19 A I believe there was four.

20 Q Did you open each of them?

21 A Yes.

22 Q Did you do a thorough investigation to see if anything
23 was in there?

24 A Yes, nothing was in there.

25 Q Nothing was in those drawers. Did you look in the

1 bathroom?

2 A Yes.

3 Q What did you see in the bathroom?

4 A There wasn't much in there. I think it was some more
5 cleaning supplies -- well, a few cleaning supplies, like, on
6 the vanity. And I can't remember if there was a curtain up
7 or not. Because Carlton went in the bathroom.

8 Q So you saw cleaning supplies. By this point in time,
9 you've been in quite a number of residential rooms?

10 A Correct.

11 Q Was this -- I guess on a scale of zero being
12 immaculate, like this room was created and no one has lived
13 in here, to a ten, it's like the biggest messiest place.
14 Where on that scale was this unit generally?

15 A So you said zero being empty?

16 Q Immaculate, clean, brand new constructed, like no one
17 has ever lived in this, it's brand new. That being a zero
18 versus ten being messy?

19 A As far as cleanliness?

20 Q Cleanliness?

21 A The cleanliness was good.

22 Q So I'm asking because you saw all these cleaning
23 supplies, did it appear it had been cleaned by the resident?

24 A Yes.

25 Q So let's look at -- orient yourself with closet B. So

1 in closet B, I heard you describe some of the items that you
2 encountered in Mr. Postell's unit. So let's look in closet

3 B. How do these doors open? Is it a sliding door?

4 A So you pull them forward and they open.

5 Q So accordion?

6 A Yes.

7 Q I think you already said that it has a rack on top?

8 A Correct.

9 Q A bar?

10 A Correct.

11 Q So was anything hanging on the bar?

12 A Yes. There were a few dress shirts and I believe the
13 dress pants were hung on the hangers as well. And then on
14 the top rack, there were a bunch of shoes boxes, but there
15 were no shoes in them. There were about two or three pairs
16 of, like, dress shoes.

17 Q And so these items that you saw hanging on the rack,
18 were they spread out the length of this closet space?

19 A No.

20 Q Were they situated, like, in the middle together?

21 A Yes.

22 Q You said dress shirts and dress pants?

23 A Yes.

24 Q And what types of shoes did you say?

25 A Dress shoes.

1 Q Can you describe what those dress shoes looked like?

2 A I know some were brown and black.

3 Q Did you get a good look at them? I mean, did you pay
4 much attention to them?

5 A No.

6 Q You didn't happen to notice the brand or anything?

7 A No.

8 Q What about the shirts, did you notice what brand the
9 shirts were?

10 A No.

11 Q So shirts, pants, few pair of shoes. Anything else on
12 the top rack other than the shoe boxes and a few dress
13 shoes?

14 A No.

15 Q How wide -- I didn't draw this to scale, but how wide
16 would you estimate this closet is from one side to the
17 other?

18 A About five or six feet.

19 Q So on the floor, what do you see on the floor?

20 A There was a chest that was in there.

21 Q Can you describe the chest?

22 A Yes. It was like a brown chest and it had where you
23 lock it on the front. Not like an actual lock, but I guess
24 to seal whatever was inside.

25 Q And how big was this chest would you estimate? If the

1 closest was five or six feet, how big was this chest?

2 A I'd say two and a half, three feet maybe.

3 Q How tall was it? Really tall? Like, this tall or was
4 it low to the ground?

5 A Low to the ground.

6 Q About a foot wide?

7 A I would say yes.

8 Q So there was a chest. Anything else?

9 A There was a weighted vest in there. There was, also, a
10 small safe in there as well.

11 Q Okay.

12 A There was a tote as well. There was a gray tote. It
13 was full of white washcloths and towels.

14 Q So when you say tote, like a plastic storage bin?

15 A Yes.

16 Q And you said it was full of?

17 A Washcloths and towels.

18 Q Was that what you observed on top?

19 A Yes.

20 Q Did you eventually empty that tote into trash bags?

21 A No.

22 Q Carlton did that?

23 A I don't think we emptied that tote. We left it in the
24 tote.

25 Q So the tote and its contents was put into a trash bag?

1 A Well, it didn't -- it wouldn't fit in a trash bag, so
2 we just carried it out.

3 Q So I want to show you what we've marked as Defendant's
4 Exhibit 17. I'll ask you if you see any of the items that
5 you just described in this picture?

6 A Yes.

7 Q So there appears to be a weighted vest, what I would
8 call a weighted vest. Is that the item you saw?

9 A Yes.

10 Q And there's a -- I call it a foot locker, but you said
11 it was a chest?

12 A Yes.

13 Q Does that look like the chest you saw in the closet?

14 A Yes.

15 Q And this is a black and white picture, but is that
16 maybe the dimensions of what you would call a tote?

17 A Yes.

18 Q It's not a very good picture, but you see in there as
19 well what I call a computer tower?

20 A Yes.

21 Q Your testimony was you don't recall seeing a computer
22 tower when you entered Mr. Postell's room, correct?

23 A Correct.

24 Q In addition to that is a backpack. Do you see that?

25 A Yes.

1 Q Do you recall seeing a backpack in Mr. Postell's unit?

2 A No.

3 Q Also, it's what looks like a desk lamp. Do you see
4 that?

5 A Yes.

6 Q Do you recall seeing that in Mr. Postell's room?

7 A No.

8 Q There's, also, on either side of this computer tower,
9 there appears to be computer monitors. It's hard to tell,
10 but is that, basically, the dimensions of the monitors that
11 you saw affixed to Mr. Postell's desk?

12 A Yes.

13 Q So go back now to closet B. Anything other than what
14 you described that you recall seeing in closet B?

15 A No.

16 Q So you said nothing under the bed?

17 A Correct.

18 Q Any drawers on this desk that had supplies?

19 A No.

20 Q Let's go to closet A. So closet A, how wide is this
21 closet?

22 A About two feet wide.

23 Q So how does that open, is it a swinging door or is it
24 an accordion door?

25 A It's a swinging door.

1 Q So it is locked?

2 A No.

3 Q So inside this, you said there's a shelf and another
4 clothing rack?

5 A Correct.

6 Q Anything hanging from the clothing rack in there?

7 A No.

8 Q Anything on top of the rack?

9 A Yes, there was an iron sitting up there.

10 Q So he had an iron?

11 A Yes.

12 Q Was there an ironing board in the closet?

13 A Yes, it was on the floor.

14 Q Was this a full-sized ironing board or was it a mini
15 ironing board?

16 A I would say about full size.

17 Q Full size?

18 A Uh-huh.

19 Q You say it was on the floor. Was it laying on the
20 floor or was it against the wall?

21 A It was against the wall.

22 Q Anything else on the floor?

23 A There was like a hamper in there. It was filled with
24 some more cleaning supplies. I think it was some hangers in
25 it as well. That's pretty much it.

1 Q So what did you do with the contents from the hamper?

2 A We left it in there.

3 Q So you made your assessment. Was Carlton in the room
4 at any time when you were investigating closet A or closet B
5 or did this happen while he was out?

6 A He was present in the room.

7 Q So you're walking around. When he returns from the
8 golf cart, what does he do?

9 A That's when he starts taking off the monitors from the
10 desk.

11 Q Is there like a rack that the monitors were attached to
12 or the monitors themselves are -- did you look closely to
13 see how they were attached to the desk?

14 A It was like a cart. I'm not sure how the cart was, but
15 it was like -- I don't know. It was another part that he
16 had to attach them to the desk.

17 Q So were they clamped on?

18 A I think it was some kind of clamp.

19 Q And what about the speakers on the wall, were they
20 screwed into the wall or hammered into the wall?

21 A That, I don't recall. I just know they were up there.

22 Q Did you see Carlton taking them down?

23 A Yes.

24 Q So what was -- let's talk about what you observed
25 Carlton doing. So in addition to, I guess, detaching these

1 monitors and detaching the speakers, what else did you see
2 him doing while he was in the unit?

3 A That's pretty much it as far as him -- well, us putting
4 the stuff we saw in the closet into bags.

5 Q So I want to back up. We skipped over an important
6 step. So as you entered the unit and observed what you
7 observed, did anyone call the front desk to verify whether
8 or not the unit was actually leased?

9 A No.

10 Q I asked you during your deposition to describe on a
11 scale of zero to ten, not a cleanliness scale, but a zero to
12 ten scale where zero is completely vacant, maybe immaculate,
13 looks like no one is living there clearly. Anyone would say
14 there's nothing here. The closets are empty, nothing in the
15 bathroom. That's zero. And a ten is fully furnished, the
16 dresser is full, closets are full, bed made, posters hanging
17 on the wall, someone sitting at the desk doing their
18 homework is a ten. So on a scale of zero to ten, where
19 would you put this unit?

20 A I would say a three or a four.

21 Q So even though it appeared that there were clearly
22 items in the room, computer monitors -- do you know how much
23 computer monitors cost?

24 A I do not.

25 Q In your evaluation of the contents, did you ever stop

1 to value in your own mind what are the value of the items
2 that you saw in the room?

3 A No.

4 Q I think what you testified to is the person that makes
5 that valuation is the person that enters the room. That's
6 your understanding?

7 A Correct.

8 Q So as you entered it, what would have triggered in your
9 mind the requirement to validate the leasing status?

10 A The status of?

11 Q So if you had walked into the room -- you said it was a
12 three or a four in your mind, what would have triggered in
13 your mind the requirement to call and verify that someone --
14 whether or not someone was living there?

15 A I would say if the bed was made up. The drawers were
16 full with clothes. And then, like, I would say more items
17 in the closet. Where you would stop and say it looks like
18 someone has been staying here rather than seeing it look
19 like someone had started moving out.

20 Q So during this -- on the 25th, was -- or, actually,
21 during this turn period, was there ever another unit that
22 you entered, you and Carlton entered where your information
23 showed that it was supposed to be vacant, but, in fact, it
24 was occupied and it was without a lease?

25 A Correct.

1 Q Tell the jury what you did -- so using the scale of
2 zero to ten -- do you remember the unit number?

3 A I do not.

4 Q Was it the same day that you entered Mr. Postell's
5 unit?

6 A I believe so.

7 Q Later in that afternoon?

8 A I think one was before. I think we entered that
9 apartment before.

10 Q So you think that was before you entered Mr. Postell's.
11 But it showed on your list?

12 A Correct.

13 Q That it was supposed to be vacant?

14 A Correct.

15 Q And when you got to it and you opened it up, it was --

16 A The room was full.

17 Q On a scale of zero to ten, where would you put that
18 room?

19 A A ten.

20 Q So someone was sitting in there?

21 A Yes.

22 Q That's a good indicator. So what did you do at that
23 point in time?

24 A So we asked them about their lease. And then, also,
25 called the front office and said hey, this person is still

1 living in this room. They said they renewed their lease.
2 We called the front office and verified whether they were
3 supposed to be there or not, and they were.

4 Q So in that instance because in your estimation, it
5 appears higher than a three or four, in this case it was a
6 number ten because the guy was sitting there, even in that
7 case where someone was sitting there, you still called the
8 front office to verify the leasing status?

9 A Yes.

10 Q In your experience either before this date or
11 subsequent to this date, is it maybe not uncommon that if
12 one roommate in the unit moves out that if that's a more
13 desired unit, say a bedroom, that one of the other residents
14 quickly moves into that bedroom?

15 A Yes. They usually have to ask for that room swap. But
16 it don't happen often.

17 Q So there is a process if you want to move within your
18 designated unit from one bedroom to the other, you can
19 actually request a room swap?

20 A Yes.

21 Q That's the official procedure?

22 A Yes.

23 Q But have there been instances where someone takes it
24 upon themselves to move into a unit? You know, if it's
25 empty, they just determine in their own mind no harm, no

1 foul, they just go ahead and move their stuff in, squatter's
2 rights?

3 A No.

4 Q So let's go back now --

5 MR. VANDENBERG: I do want to introduce as Exhibit 2.
6 This is from your deposition. This is the sheet that you
7 created during your deposition.

8 MR. LYLE: No objection.

9 THE COURT: Exhibit 2 is admitted.

10 (WHEREUPON, Defendant's Exhibit No. 2 was admitted into
11 evidence.)

12 BY MR. VANDENBERG:

13 Q So I want to go back to what you and Carlton were doing
14 in Mr. Postell's unit. So you observed Carlton detaching
15 the computer monitors and speakers. And then did you see
16 what he did or were you busy doing other things?

17 A Once he got done with them, he took them down to the
18 cart.

19 Q He took them down to the cart?

20 A Uh-huh.

21 Q Was there ever any point in time -- you said you didn't
22 call the front office to verify, you didn't call, but did
23 Carlton ever call anyone to verify the leasing status?

24 A Not to my knowledge.

25 Q Are you aware of any calls that he made to his

1 supervisor, Mike Allen?

2 A Yes.

3 Q So was that call made in your presence?

4 A No.

5 Q Did he tell you about his call later on?

6 A He didn't, but --

7 Q That's fine. So Carlton takes the speakers and the
8 monitors down to the cart. Did you just assume that's what
9 he was doing or did you actually see him taking them to the
10 cart?

11 A I saw him taking them to the cart.

12 Q Was the cart parked out in front so you could see him
13 outside in front of the unit?

14 A Yes.

15 Q So in addition to the monitors and the speakers, what
16 other items did you see him moving and taking to the cart?

17 A That's all I remember.

18 Q Now, what we've introduced as Exhibit 17, this picture,
19 do you see any of these other items that he took to the
20 cart, the chest, the weighted vest or the tote?

21 A Well, I know he took the weighted vest. All the other
22 items, I don't personally remember seeing him put those on
23 the cart.

24 Q You saw him take them out of the bedroom, you just
25 didn't see where they went?

1 A Correct.

2 Q Any other items you saw him remove from the bedroom,
3 just didn't see where they went?

4 A All these items in the room here, those were the only
5 items. Everything else went in bags.

6 Q Did you do anything else with any contents that were in
7 the room? I think you said there was a tote that had all of
8 the towels and then there was the hamper in the closet, the
9 ironing board and the iron, refrigerator. Did you do
10 anything at this point in time, on the 25th, with those
11 other items?

12 A No, but the tote in this picture looks like the tote
13 that the rags and towels went in.

14 Q So I just want to get the timeline straight as far as
15 what you and Carlton did on the 25th while you were together
16 in Mr. Postell's room. So other than just the two items we
17 discussed, the monitors and speakers, and the weighted vest
18 you saw him take out of the room, but didn't see where it
19 went. When you were finished at that point in time in Mr.
20 Postell's room, did you leave and just the tote was still in
21 there, the refrigerator was still in there and the other
22 items were still in there? Or did you do anything at that
23 point in time with those items?

24 A Those items, I can't remember. But I know, like, the
25 items that he had put in the bags, that's when he took them

1 out and set them outside.

2 Q And what do you recall putting in the bags?

3 A So pretty much the items that weren't already in
4 something. So, like, the shoes boxes, the dress shoes, the
5 items that were hanging up in the closet. Anything that
6 wasn't already in something went into the bags.

7 Q So the iron and the ironing board?

8 A The iron boarding was not.

9 Q And not the ironing board, okay. And the hamper, you
10 said there was some more cleaning products and some hangers.
11 Did those stay in the hamper or did they go into --

12 A They stayed in the hamper.

13 Q So you had a hamper with its contents, ironing board
14 separate. You had a tote with the towels in it intact.
15 Were you and Carlton doing this or was it just you that was
16 doing this?

17 A So Carlton bagged everything up. I just had to take
18 them outside.

19 Q So you removed the hamper intact out to the curb?

20 A No, Carlton carried that because it was heavy. But as
21 far as like the actual bags that we put stuff in, I took
22 those out.

23 Q So the bag with the clothing items, the shoes and the
24 shoes boxes -- there was something -- I'm sorry. I just
25 wanted to make sure it wasn't my phone. So the trash bags,

1 you carried out with those contents you just described?

2 A Correct.

3 Q There was one additional question that I wanted to ask
4 you about.

5 MR. VANDENBERG: Your Honor, that is all the questions
6 that we have. We do reserve the right during our case in
7 chief to recall Ms. Young.

8 THE COURT: Of course. Mr. VanDenBerg, have you -- the
9 exhibits you intend to introduce, if you would state those.

10 MR. VANDENBERG: I think we've agreed on all of them.
11 At this time, we want to introduce all of the exhibits that
12 we've discussed.

13 THE COURT: Can we have the numbers of those? I just
14 want to make sure the record is clear.

15 MR. VANDENBERG: So they are actually Plaintiff's
16 Exhibit.

17 THE COURT: If they're Plaintiff Exhibits, I probably
18 already admitted them.

19 BY MR. VANDENBERG:

20 Q Actually, let's go ahead and do that. What I'd like to
21 show you, this is -- this is what I asked you earlier about.
22 This is Plaintiff's -- I guess it was already introduced in
23 a different form as an exhibit.

24 MR. VANDENBERG: So it's Plaintiff's 10. I guess we'll
25 peel the sticker off and put a new one on this one. So we

1 move to introduce --

2 MR. LYLE: No objection.

3 MR. VANDENBERG: Since we're using it, we agree to
4 without objection introduce Plaintiff's 10 into evidence.

5 Q So we can confirm it, what we're talking about here,
6 this is -- do you recall this?

7 A Yes.

8 Q And that is the message from Katie's investigation
9 e-mail?

10 A Yes.

11 MR. VANDENBERG: We have no further questions, Your
12 Honor.

13 THE COURT: Thank you. Plaintiff's 10 is admitted.
14 (WHEREUPON, Plaintiff's Exhibit No. 10 was admitted
15 into evidence.)

16 MR. LYLE: Very brief redirect, Your Honor.

17 THE COURT: Just one second.

18 You, also, used Exhibits 1 and 17. I just need to make
19 sure that -- are those --

20 MR. LYLE: No objection.

21 THE COURT: Plaintiff's 1 and 17 --

22 MR. VANDENBERG: 1, 2 and 17.

23 THE COURT: 1, 2 and 17 are admitted into evidence.

24 MR. LYLE: I think they're Defendants.

25 MR. VANDENBERG: Defendant's 1, 2 and 17 and

1 Plaintiff's 10.

2 THE COURT: As articulated, the exhibits are in.

3 (WHEREUPON, Defendant's Exhibit Nos. 1, 2 and 17 were
4 admitted into evidence.)

5 THE COURT: Yes, sir.

6 MR. LYLE: Thank you, Your Honor. I'll be very brief.

7 REDIRECT EXAMINATION

8 BY MR. LYLE:

9 Q Ashanti, thanks for your patience. I'll be very brief.
10 Looking back at Exhibit 10, if you would turn to the second
11 page for me and look at that screen shot of the Teams
12 message. Do you recall that Teams message sent by
13 Christopher Lewis?

14 A Yes.

15 Q And what was your response to that message? Just down
16 at the bottom, just read the one sentence of your response.

17 A It says, The inspection indicates that the apartment
18 was in good condition and no trash out.

19 Q Now, I want to ask you about trash out. You went with
20 Trinita and Myra three days later on July 28th, correct?

21 A I believe so.

22 Q And trashed out the unit after you had gone on July
23 25th with Carlton?

24 A Correct.

25 Q Just so I'm tracking, Carlton -- do you know if Mike

1 went in the room, too? Do you know? You don't know. But
2 Carlton, Trinita and Myra all went in the room?

3 A Correct.

4 Q With you. And if I could, I'd like to broadcast again
5 real quickly. I want to show you what is marked -- well,
6 it's not marked as an exhibit, but it's a discovery response
7 related to Defendant's -- this is a list of all the
8 employees provided. I'm just going to go one by one and
9 tell me if you recognize them. Do you recognize Katie
10 Floyd?

11 A Yes.

12 Q She's the property manager?

13 A Yes.

14 Q Do you recognize Rachelle Leak?

15 A Yes.

16 Q Christopher Lewis?

17 A Yes.

18 Q Sharda (indiscernible)?

19 A Yes.

20 Q Trinita Geathers?

21 A Yes.

22 Q Jordan Lowe?

23 A Yes.

24 Q Myra Salters?

25 A Yes.

1 Q The next one is you?

2 A Yes.

3 Q Kayla Baldwin?

4 A Yes.

5 Q Lindsay Stanley?

6 A Yes.

7 Q McKayla Stanley?

8 A Yes.

9 Q (Indiscernible) Gilmore?

10 A Yes.

11 Q Mike Allen?

12 A Yes.

13 Q Christopher Bonnett?

14 A Yes.

15 Q (Indiscernible)?

16 A Yes.

17 Q Carlton Brown?

18 A Yes.

19 Q Carlton is listed as the porter. Is that his title?

20 A Yes.

21 Q Is that all the people that were working there when you
22 were there?

23 A Yes.

24 Q I would like to revisit one final thing. Just to
25 refresh your memory about Katie. We've now talked about

1 your deposition. I'm going to show you, this is your
2 deposition on Page 74. This is after reviewing what Katie
3 said about your performance. Does this refresh your memory
4 about her making things up about your performance?

5 A Yes.

6 Q Now, that you've refreshed your memory, do you want to
7 go back to that question where I asked you about her telling
8 the truth about your performance or anything about you at
9 work?

10 A Correct.

11 Q So she made things up about you?

12 A Correct.

13 Q Let me, also, call your attention to another section on
14 Page 89. This is after you reviewed the report where she
15 said you didn't follow policy. Does that refresh you
16 memory, also, about making things up about you?

17 A Correct.

18 Q It says, It's not shocking that she's not being
19 truthful in this report? Your answer was yes, right?

20 A Yes.

21 Q Now, I asked you about Jamahl's stuff along with other
22 people's stuff that got put on the curb; is that right?

23 A Yes.

24 Q And then I want to show you now, this is Page 91 of
25 your deposition. A question was asked about whether or not

1 items were more likely than not put in bags, put on the curb
2 and likely picked up by tech workers or thrown in the trash
3 after they were picked through and the answer was correct.
4 Do you remember that?

5 A Yes.

6 Q So I've got one final question for you. You weren't
7 feeling that well that day. And I want to say -- or ask
8 you, you don't really know what happened to Jamahl's
9 belongings, correct?

10 A Correct.

11 Q You don't believe he's lying when he says he and his
12 mother put all of his belongings when he moved into college
13 in that room, right?

14 A Right.

15 Q You have no reason to say that's not the truth?

16 A Correct.

17 MR. LYLE: I have no further questions, Your Honor.

18 THE COURT: Thank you.

19 Any recross?

20 MR. VANDENBERG: We'll reserve our right to recall her
21 in our case in chief.

22 THE COURT: Now, my intent is to take a very short
23 break. My further intent is to break for lunch somewhere
24 around one o'clock. If we can come back in 15 minutes,
25 would that give everybody enough time? Let's try to get

1 back in here at 11:45.

2 (WHEREUPON, the jury exits the courtroom at 11:30 a.m.)

3 THE COURT: We'll be at ease until about 11:45.

4 MR. LYLE: Your Honor.

5 THE COURT: Yes, sir.

6 MR. LYLE: I understand the Defense may want to call
7 her, but I would just let the Court know that I would like
8 to release her from the subpoena on my side. Again, I
9 understand he can call her if she wants to cooperate, but
10 I'm not aware of any other subpoenas being served.

11 THE COURT: That's fine.

12 Of course, the witness may be called by the defense.

13 Does that make sense?

14 MS. YOUNG: I'm sorry, what was that?

15 THE COURT: Do you understand that you may be called by
16 the Defense as part of their case in chief?

17 MS. YOUNG: Correct.

18 THE COURT: Thank you so much for being here and we may
19 see you again.

20 We'll be at ease until 11:45.

21 (WHEREUPON, a short break was taken.)

22 (WHEREUPON, the jury enters the courtroom at 11:49
23 a.m.)

24 THE COURT: Looks like everyone is back.

25 Mr. Lyle.

1 MR. LYLE: Thank you. Your Honor, the Plaintiff would
2 call Jamahl Postell.

3 THE COURT: Please come forward.

4 JAMAHL POSTELL,

5 after being duly sworn, testified as follows:

6 THE CLERK: Thank you. Please have a seat in the
7 witness stand and state your full name for the record.

8 THE WITNESS: Ansel Jamahl Postell.

9 THE COURT: Your witness.

10 DIRECT EXAMINATION

11 BY MR. LYLE:

12 Q Thank you, Mr. Postell. Do you mind if I call you
13 Jamahl?

14 A That's fine.

15 Q So let's just tell the jury real quickly where you grew
16 up, a little bit about yourself.

17 A I'm from Metro Atlanta, more specifically, Stockbridge.

18 Q And you graduated from high school at Stockbridge?

19 A Yes.

20 Q When you graduated high school, you started searching
21 for colleges?

22 A Yes.

23 Q And what colleges did you, ultimately, look at and
24 which one did you decide on?

25 A Well, honestly, I was just looking to see where I was

1 getting scholarships from and I received a full ride at
2 Benedict College, so I ended up in Columbia, South Carolina.

3 Q What did you study while you were at Benedict?

4 A I started in computer science, but I ended up going
5 into cyber security.

6 Q That's what you graduated with?

7 A Yes.

8 Q You graduated with honors?

9 A Yes.

10 Q So you just graduated a few months ago?

11 A Yes.

12 Q Have you got some employment lined up in cyber security
13 next year?

14 A I have a few things lined up, yes.

15 Q You're pretty good with computers?

16 A I would say I'm decent.

17 Q Now, let's talk about the Rowan. What all went into
18 you deciding where you were going to stay while you were in
19 college?

20 A Well, I've never lived on my own, obviously. So me and
21 my mom looked around, asked a few people from the school to
22 see what would be a good fit. And it ended up being the
23 Rowan.

24 Q And you were part of moving in at the Rowan in 2021?

25 A Yes.

1 Q Took three cars to move you in?

2 A Yes.

3 Q You took everything with you?

4 A Everything.

5 Q Tell the jury a little bit about your mindset when you
6 moved and went off to college.

7 A Well, obviously, it was like new beginnings. Like, I
8 didn't really know what was going to happen. I could have
9 got a job here and started living here, start a family. I
10 just didn't know. I, also, didn't want to be going back to
11 Georgia bringing stuff. That's three hours away. It just
12 didn't seem practical.

13 Q Once you selected the Rowan as a place that you wanted
14 to stay, you signed a one-year lease?

15 A Yes.

16 Q And then showing you what's marked as Plaintiff's
17 Exhibit 2. Do you recognize that? Is that your initials on
18 the bottom of each page?

19 A Yes.

20 Q That is, in fact, the lease when you renewed with the
21 second year with the Rowan?

22 A Yes.

23 Q What is the date on that?

24 A The start date or the sign date?

25 Q The sign date.

1 A July 6th.

2 Q So on July 6th, you renewed your lease to stay in
3 3007A?

4 A Yes.

5 Q The unit listed on there is the one you were in before?

6 A Yes.

7 Q What was your monthly rent there?

8 A 635.

9 Q Per month?

10 A Yes.

11 Q And your mom paid the first six months upfront?

12 A Yes.

13 Q Now, there was a little bit of talk about you possibly
14 transferring units. Tell the jury a little bit about what
15 went through your mind and what, ultimately, happened.

16 A Well, the bottom unit was individual, so you didn't
17 have another person upstairs with you. So, I guess, in my
18 opinion, it gave you more freedom. The laundry room area
19 was downstairs, too. So if I wanted to do laundry, I had to
20 take my clothes all the way down the first flight of stairs
21 and the next flight of stairs and then come back up, fold.
22 So it was just easier.

23 Q So you thought about transferring?

24 A Yes.

25 Q But then you decided not to transfer?

1 A Yes.

2 Q When you decided not to transfer, that's when you
3 signed the renewal for the same unit?

4 A Correct.

5 Q Now, I showed some e-mails to your mom because she was
6 part of that, but do you remember seeing that e-mail where
7 The Rowan sent you an e-mail about move out?

8 A Yes. I brought it my mom's attention, actually.

9 Q Why did you do that?

10 A Well, because it sent the move-out procedure. And I
11 was confused because not even probably a week ago, I had
12 just signed my lease.

13 Q So your understanding was you renewed it. Did you get
14 any affirmative from Campus Advantage or The Rowan that you
15 had, in fact, renewed it?

16 A Yes, Katie e-mailed us.

17 Q So you thought you were good at that point?

18 A Yes.

19 Q So July, you're at your apartment and you head back to
20 Georgia for a few more weeks?

21 A Yes.

22 Q Tell the jury what happens on August 5th when you come
23 back.

24 A Well, I walk up -- I opened the door, obviously, but I
25 walked into the apartment. And the way the apartment is

1 situated, upstairs, there's like no windows other than in
2 the two units. So it's generally pitch black over there
3 unless somebody has the light on, which we normally didn't
4 leave on. So when I'm walking up the stairs, I see a light
5 coming from my side of the room. I'm kind of confused,
6 honestly. So I walk up the stairs and look over and my room
7 is like completely cleaned out. It's like somebody else is
8 going to move in.

9 Q And that was what date?

10 A August 5th.

11 Q So what did you do after you saw that?

12 A I immediately called my mom.

13 Q Then what?

14 A She was shocked. She didn't believe it when I was
15 saying that everything was gone. She instructed me to go
16 speak to the staff at the office.

17 Q What happened? Who did you go talk to?

18 A First, I started talking to Chris and he told me to
19 just wait a little minute. So I sat there for a few minutes
20 and then eventually, he came over to me with Katie and they
21 were asking me questions about what I was speaking about.

22 Q Did they tell you to produce a list?

23 A Yes.

24 Q Then you texted your mom that night to start working on
25 a list; is that right?

1 A Yes.

2 Q Were you asked to file a police report?

3 A No.

4 Q Why would you not file a police report?

5 A Well, honestly, being away from home, I didn't know
6 what I was supposed to do. But I didn't see it as theft or
7 anything like that. So I didn't feel it necessary.

8 Q Why did you not see it as theft?

9 A Because there was no signs of a break-in. Like, if
10 somebody broke into your house and stole your stuff, like,
11 it's going to look like somebody broke in.

12 Q You thought it was a misunderstanding?

13 A Yes.

14 Q Now, I gave you what's marked as Exhibit 14. This is a
15 photograph. Do you recognize this photograph?

16 A Yes.

17 Q Tell the jury what they're looking at on that
18 photograph.

19 A Well, it's my backpack, my weighted vest, my lamp, my
20 foot locker, and my computer.

21 Q I'm sorry, I'm just now getting it up on the screen.
22 Tell the jury one more time what they're looking at.

23 A My computer, my weighted vest, my foot locker, my
24 bookbag and my lamp.

25 Q Now, when was this photograph taken?

1 A I'm not exactly sure. I just know when the stuff was
2 returned.

3 Q Is that what was returned to you?

4 A Yes.

5 Q Is that everything you had in your apartment?

6 A No.

7 Q So what was this like to walk in and see your apartment
8 completely empty?

9 A For lack of a better term, I guess, it was like a part
10 of my life was just burned away. Like, everything I had
11 accumulated for that period of time was just gone.

12 Q You said it was as if it had burned down?

13 A Yes.

14 Q Like, your house? Your apartment?

15 A Yes.

16 Q Now, did Campus Advantage lead you to believe they were
17 going to make this right?

18 A Yes.

19 Q What did they tell you that led you to believe that?

20 A Well, in the beginning when I first, like, walked in
21 and spoke with Katie and Chris, they seemed very friendly.
22 Like, they took me to Target to get the necessities I needed
23 for getting ready for school. She e-mailed me and my mother
24 saying that they were going to provide financial
25 compensation so that I could get my things back since they

1 didn't even know where anything was located.

2 Q Now, there may be some testimony about helping you load
3 up your car with stuff after this Target trip. What all did
4 you have in your car when you came back on August 5th?

5 A My suitcase, maybe like a couple of shoes from being at
6 home and some perishable -- well, not perishable,
7 nonperishable items that my mom gave to me.

8 Q They took you to Target, what did they buy there at
9 Target?

10 A Toothpaste, toothbrush, soap, towels, just like things
11 you would need to, like, live, I guess.

12 Q Basic necessities?

13 A Yes.

14 Q Those things were all left in the apartment when you
15 left in July?

16 A Yes.

17 Q Now, there's a picture of a computer tower. Does that
18 look like a computer tower?

19 A Yes.

20 Q Tell us a little bit about your background with
21 computers.

22 A Well, I don't know if you guys are aware, but, like,
23 YouTube for a lot of people got really popular. So a lot of
24 people, especially my age were trying to do YouTube. So I
25 was good with graphic design, so I would make banners,

1 thumbnails, edit videos for them.

2 Q What kind of add-ons and things did you put -- first
3 off, tell the jury, did you buy your computer already put
4 together or did you build it?

5 A No, I built it.

6 Q Tell them a little bit about what you put into it when
7 you built it.

8 A Well, when it comes to like rendering, you need a
9 decent graphics card. So I had a 3080 in there. And just
10 to give you a background on that, when Covid and everything
11 was going on, it was kind of hard for devices and stuff like
12 to come from China. The supply and demand was higher, so
13 the price of those goods were higher than you would think
14 they would be at retail price. So it was just a very
15 expensive computer.

16 Q Did you give a pretty good list of what it would take
17 to rebuild -- well, let me back up. You tried the computer
18 in front of the managers, right?

19 A Yes.

20 Q Did it work?

21 A No.

22 Q Did any of it work?

23 A No.

24 Q Was any of it salvageable?

25 A The case.

1 Q When you say the case, you mean the tower?

2 A Yes.

3 Q Just explain to the jury how a tower works and all the
4 other parts of the computer.

5 A Well, the case is really just the housing unit of it.
6 Everything inside of it is what you're actually describing
7 as your computer.

8 Q How much did that case cost?

9 A It was probably like 300, 350.

10 Q And you were able to reuse the case?

11 A Yes.

12 Q But you had to rebuild that thing from scratch?

13 A Basically, yes.

14 Q And when you gave us a list -- and I'll hand you what's
15 already been marked as an Excel spreadsheet. I'll hand you
16 what's marked as Plaintiff's Exhibit 12. Did you help put
17 that document together?

18 A Yes.

19 Q Is that a fair and accurate representation of all the
20 things that you left in your unit when you went home on July
21 6th or whatever date it was to go back to Georgia before
22 coming back?

23 A Yes.

24 Q And were any of those items returned back to you?

25 A The things in the inventory were returned.

1 Q Things in that picture were returned?

2 A Yes.

3 Q Were anything else other than the things in that
4 picture returned?

5 A My chair.

6 Q So your chair was returned?

7 A Yes.

8 Q Gaming chair?

9 A Yes.

10 Q So other than the items they bought for you at Target
11 and other than the items in that picture, plus your gaming
12 chair, is it fair to say that everything else on that Excel
13 spreadsheet was gone?

14 A Yes.

15 Q And never replaced?

16 A Yes.

17 Q And never was anything given to you in return?

18 A Say that again. I'm sorry.

19 Q Nobody has ever given you anything in return to make
20 this right?

21 A No.

22 Q In fact, they blamed it on the employee and fired him,
23 right?

24 A Yes.

25 Q Now, just briefly, tell the jury a little bit about

1 maybe a couple pair of shoes or clothing to give a basis or
2 ground floor for what this type of stuff is on this list.

3 A Well, I guess, just like the shoes. Jordans and stuff
4 like that are -- like, yeah, you can get them for retail
5 price, but that's like if they have them in stock, you know.
6 You might buy them for \$200, but if you try to go get the
7 shoes like after retail, it's like \$900 for one pair of
8 shoes.

9 Q Now, was some of this stuff your cousin's or given to
10 you?

11 A Some things were, like, exclusive because I have a
12 cousin that works at Nike on the design board. So
13 sometimes, they will have like test cutaways and stuff like
14 that, which aren't going to be released to the public. So
15 he'll sometimes give them to me.

16 Q And those are the pricing that you went off on the
17 spreadsheet?

18 A Yes.

19 Q And that was to replace it all brand new?

20 A Yes.

21 Q And all of your stuff that was taken was not
22 necessarily all brand new?

23 A No, of course, I was wearing my items.

24 Q But they asked you to come up with a list to replace
25 it?

1 A Yes.

2 Q And you searched on the internet and found line item by
3 line item what it would cost?

4 A Yes.

5 Q And those are the numbers you put on your spreadsheet?

6 A Yes.

7 Q Now, did you miss any school as a result of this?

8 A Yes, the first two or three days.

9 Q How did this make you feel?

10 A Honestly, I don't really know. I wouldn't say I'm the
11 most emotional person in the world, but, like, it was the
12 start of my junior year of college. It was something I was
13 looking forward to in some sense.

14 Q Did this derail that?

15 A Yes.

16 Q Did you have to seek any mental health counseling?

17 A Yes.

18 Q Is that behind you now?

19 A Yes.

20 MR. LYLE: Beg the Court's indulgence just one moment.

21 THE COURT: Of course.

22 (Pause.)

23 MR. LYLE: Thank you, Jamahl. Answer any questions
24 that Mr. VanDenBerg may have for you.

25 THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. VANDENBERG:

Q How are you doing?

A Good.

Q So I want to ask you a few questions. I want to back up a couple of steps. You were, of course, here in the courtroom yesterday when your mother testified?

A Yes.

Q And you heard her response when I asked and I'm going to ask you the same questions. All these items that you claimed are lost, you haven't been able to produce any receipts or any other evidence of their value?

A No.

Q And, also, the same question about the contents, to substantiate that these items were actually, indeed, purchased?

A Could you reword that?

Q So you don't have any receipts showing that these items were actually purchased?

A No.

Q And I heard your mother testify yesterday that she referred to, I don't know if it was herself or collectively the two of you as shopaholics. Do you include yourself as a shopaholic?

A I wouldn't call myself a shopaholic, I'm not going to

1 do that.

2 Q But I do want to ask you a few more questions about
3 your computer. So you recall when we made arrangements to
4 have your computer inspected by a local computer hardware
5 shop, Silicon Solutions?

6 A Yes.

7 Q That was approximately February 2023. And you,
8 actually, went to Silicon Solutions and the only item that
9 you had remaining was just the tower itself?

10 A Yes.

11 Q So, I guess, the empty tower?

12 A Yes.

13 Q So the contents, I think you testified a few minutes
14 ago, that everything in that computer was no longer working?

15 A Yes.

16 Q And I didn't even understand that you had changed
17 majors to cyber security. The last time we talked, you were
18 a computer science major. What is the distinction between
19 cyber security and computer science?

20 A Well, comp sci is more, I would say, the programming
21 side of things, can be a little engineering. But cyber
22 security is more to deal with threats and safety.

23 Q In the course work at Benedict College, is there an
24 overlap between the course work?

25 A Yes, it's similar.

1 Q And I heard -- I think modestly you responded, but in
2 prior testimony, I heard you described as an avid computer
3 technician. Would you describe yourself as, at least, a
4 decent computer technician?

5 A Yeah, I'm proficient.

6 Q Do you know what a Venn diagram is?

7 A Yes.

8 Q So if one circle is a computer technician and then the
9 other circle is either a cyber security professional or a
10 computer science professional, if you put those two circles
11 together, is it a complete circle or is there parts that
12 don't overlap?

13 A Well, they're both dealing with a broad thing, which is
14 like IT, but it's not the same thing.

15 Q So let's go through what a computer technician is in
16 your summation. What does a computer technician do?

17 A They can do many things. Like I said, it's kind of
18 broad. That's a very broad question.

19 Q I'll try to be more specific. So when it comes to the
20 hardware, would you expect -- like, if you went into a place
21 like Silicon Solutions, which is a repair shop, would you
22 expect to encounter a computer technician or a cyber
23 security expert?

24 A Most likely see a computer technician.

25 Q And would that computer technician have a firm

1 foundation in hardware, computer components?

2 A At least, the basics, yes.

3 Q So enough to repair a computer?

4 A Yes.

5 Q And you told the jury a few minutes ago that you built
6 your own computer?

7 A Correct.

8 Q Did you ever have occasion to need to go to a computer
9 technician to have a servicing done?

10 A No.

11 Q So you did all your own maintenance yourself?

12 A Well, for the most part, yes. I have a cousin who is
13 in the field as well. That's kind of how I got into it.
14 When I was younger, he would be adamant about me learning --
15 it's not really a trade, but the field.

16 Q That was actually going to be my next question. I was
17 going to ask you what your inspiration was for getting into
18 the computer field. So your cousin, was he a few years
19 older than you?

20 A He's a decent amount of years older than me, I'd say.

21 Q Does he work in the IT field as well?

22 A Yes.

23 Q Is he a cyber security expert?

24 A Yes.

25 Q And I looked through the course work for both -- I

1 wasn't aware that you had changed majors, but both the
2 computer science course of study and cyber security course
3 of study at Benedict. Were there any courses that you would
4 have taken to further your understanding of the computer
5 technician side of things, the actual mechanics of the
6 computer, how to repair it?

7 A If you're in computer science, yes.

8 Q So in 2021/2022 during your first year when the
9 incident arose, you were still a computer science major?

10 A Yes. I was changing -- it was near the end of my
11 sophomore year, beginning of my junior year.

12 Q Do you recall taking any first-year course work under
13 the computer science umbrella?

14 A Yes, just like general programming.

15 Q So do they just expand on your knowledge of computer
16 hardware and components?

17 A Not really. Like, yes, you're going to learn new
18 things in college, but I was doing it for a while.

19 Q I want to talk in detail. I know a few minutes ago
20 during your direct exam, you discussed some of the
21 components of your computer, but I'd like to go -- much like
22 we did in your deposition, go through a description of the
23 components in the computer. When I describe your original
24 computer, can we agree that what I'm referring to is the
25 computer that we saw on display that was left behind?

1 A Yes.

2 Q So your first computer, you testified that you built
3 this yourself?

4 A Yes.

5 Q So if you can just tell the jury from component one
6 through component however many, can you tell the description
7 of the components in a computer?

8 A Well, every computer needs a mother board. So I had a
9 mother board. You have to have -- well, you don't have to
10 have a graphics card. Your central processing unit has
11 integrated graphics, so you don't need a graphics card.
12 But, regardless, mine had a graphics card because I was
13 doing a lot of things with design.

14 You're going to have your cooling unit, which is going
15 to cool your CPU because it can't get too hot. You can,
16 also, have a cooling unit that will cool your EPU, that's
17 less common, but people still do it. You're going to have
18 your casings, which are, also, just another part of cooling
19 your unit.

20 If your mother board isn't Wi-Fi compatible, you might
21 have a Wi-Fi card which allows you to access the internet
22 without having to do a connection. You're going to have
23 your storage. So that could be a solid state drive, it can
24 be a spinning hard drive.

25 That's really the main things you have. I mean, there

1 are other things you can put in there, but those are the
2 basics.

3 Q I probably wasn't clear with my question. What I'd
4 like to ask now is if you can describe precisely what was in
5 your computer that you built?

6 A So I had my graphics card, which was 3080 series. The
7 30 series had just released at that time, like 2021, 2022.
8 I had a Ryzen 5950, I think. What else was in there? My
9 cooling unit. It was water cooled. What else? Like,
10 everything else, I had a solid state drive. I don't know
11 what you're asking specifically.

12 Q I guess I was asking specifically exactly if you were
13 to open up this computer, what would you see inside? So
14 when you came up with an estimate for damages for this
15 computer, did you make a similar list as I just asked you to
16 make for the jury and did you research the prices of those?

17 A Yes.

18 Q So when you brought the tower to Silicon Solutions, do
19 you recall any statements that you made to the technician?

20 A I didn't make any statements to the technician. I gave
21 him the case. I, obviously, I greeted him, hello.

22 Q Did he ask you anything about the computer itself?

23 A No.

24 Q So other than the tower and its components as you've
25 described, what other external components -- again, I'm

1 describing the original computer. What else in addition to
2 the tower and these components were in your unit?

3 A Like when I left?

4 Q Correct. When you left for the summer, the computer
5 was left in your room. So that original computer. Other
6 than the tower and internal components, what additional
7 external components? When I'm talking about external
8 components, I'm referencing keyboard, mouse?

9 A Are you saying things that are directly tied to the
10 computer or things that were used by the computer?

11 Q Both. Anything that was connected to the computer.

12 A So at The Rowan, you have to buy your own router. It's
13 not like they just have a set Wi-Fi network. So my router,
14 my two monitors, my mouse, my keyboard.

15 Q So I believe I heard you testify and I know you
16 testified in your deposition, but I just want you to tell
17 the jury. So this is our Exhibit 17. So of the items that
18 you just listed, you see the computer tower in there,
19 correct?

20 A Yes.

21 Q And you have two monitors that were connected. Do you
22 see them in that?

23 A I see a monitor. I don't see the second one.

24 Q Do you recall that when you picked these items up that
25 there was a second monitor in there?

1 A Yes, I was eventually returned my second monitor.

2 Q What about the keyboard and the mouse?

3 A The keyboard and the mouse, I'm not quite sure. It
4 might have been in something. I don't remember if I was
5 returned it or not.

6 Q And any other items that I failed to mention that were
7 part of this computer setup?

8 A My chair is not directly tied to it, but, like, my
9 chair.

10 Q And that was, I believe, you testified returned to you?

11 A Yes.

12 Q Based on your knowledge as a computer technician and
13 your degree of study -- I believe you testified that nothing
14 was working; is that correct?

15 A Correct.

16 Q So what type of event would have caused everything to
17 stop working?

18 A Anything could have happened. It could have gotten
19 water damage how they stored it. They could have unplugged
20 it incorrectly. They took it out of the unit. There's a
21 multitude of things that could have happened. I don't know.

22 Q Your testimony that nothing was working. So your mouse
23 wasn't working?

24 A I said nothing on the tower was working.

25 Q I think you previously testified that the mouse was --

1 so was the mouse working?

2 A I don't know. If the computer didn't turn on, I
3 wouldn't have been able to tell you if the mouse was
4 working.

5 Q Were there any of these components, both the tower and
6 its internal components and these external components as I
7 described, the keyboard, the mouse, the monitors, were any
8 of them salvageable?

9 A None of the internal components were salvageable.
10 Like, if you tried to turn it on, no power would be supplied
11 to the unit. When I took it back, I tried to even replace
12 the power supply unit to see if it was just that. Still
13 wouldn't turn on. Nothing was working.

14 Q So I assume that shortly after this incident, you set
15 about trying to get this computer working?

16 A Yes.

17 Q Is that correct? I mean, so shortly after August 5th
18 when you returned, did you immediately try to get this
19 computer working?

20 A Yes.

21 Q Let's talk about that for a few minutes. You said you
22 tested the power supply, was that -- what day was that? Was
23 that on the same day, August the 5th, or was that shortly
24 thereafter?

25 A It probably wasn't August the 5th. When I was returned

1 these things, it was late at night. So it definitely
2 wouldn't have been that day, but I can't tell you which
3 specific day I tested it.

4 Q But it was shortly thereafter?

5 A Yes.

6 Q Within a few days?

7 A Yes.

8 Q And what was your procedure for diagnosing the cause of
9 this computer not working?

10 A Like I said, I don't know the cause. I can't tell you
11 what the cause was, but I can tell you that I tried to make
12 sure everything was correctly fitted. Everything was in
13 place correctly. And it still wouldn't turn on.

14 Q I guess I'm asking you --

15 A Like, what I diagnostics I ran?

16 Q Well, if you were the computer technician and someone
17 brought you this computer, someone like me who knows very
18 little about computers, and I said this thing isn't working
19 and your job is to then diagnosis the problem and fix it.
20 So what were the steps that you followed in this incident to
21 diagnosis the problems with your computer?

22 A Well, mostly, I had my cousin doing that. Like I said,
23 that's not my specific field of study. I have the basic
24 knowledge to be able to tell you that the computer isn't
25 going to work, but I can't tell you the direct steps. No, I

1 can't do that.

2 Q But you're comfortable -- you just stated your cousin
3 was the one that diagnosed that it wasn't working?

4 A I said he helped me, but yes.

5 Q Was he physically present when you were diagnosing it?

6 A Yes.

7 Q Where does your cousin live?

8 A He lives in Georgia.

9 Q Did he come to visit you?

10 A No, I went there.

11 Q You took your computer to him?

12 A Yes.

13 Q And when was that approximately?

14 A I can't tell you more than it was after I got it back.

15 Q So was it before Halloween?

16 A I don't know. Like, maybe.

17 Q I guess I'm trying to get a better idea of the
18 timeframe. So your computer wasn't working at all. Give us
19 an approximate date. Was it before Christmas?

20 A It was definitely before Christmas. I would have been
21 home for Christmas. I just can't tell you a specific date.
22 This was two plus years ago.

23 Q Where does your cousin live in Georgia?

24 A Like, around the corner.

25 Q So let's back up for a second. So how quickly did you

1 stop your diagnosis and wait to meet with your cousin and
2 let him diagnose what the problem was?

3 A What are you asking me? I'm sorry.

4 Q So did you -- so what were your efforts, the extent of
5 your efforts to try to diagnose what was wrong with your
6 computer?

7 A Well, like in a general sense, if it was just a power
8 supply issue, just simply switching out the power supply
9 would have fixed it. But none of the parts were getting
10 power. They were damaged. The mother board wouldn't power
11 up. It wouldn't boot. So the fact that it wasn't booting
12 told me that it was unsalvageable.

13 Q You hadn't yet determined before you took it to your
14 cousin that was the computer was salvageable?

15 A I wasn't a hundred percent sure, but I had inklings of
16 an idea.

17 Q So sometime before Christmas, you pack up your computer
18 and you drive to your cousin's. You made plans and you met
19 with him to have him look at your computer?

20 A Are you asking me did I schedule an appointment?

21 Q Well, you met with your cousin. You made plans to meet
22 with your cousin. You didn't just show up, I guess,
23 unannounced?

24 A Like, he's family. Like, I called him, obviously. It
25 wasn't like do you have August 5th available. It wasn't

1 like that.

2 Q So you took your computer to your cousin's. Were you
3 there when he was diagnosing the computer?

4 A Yes.

5 Q And so do you recall what his diagnosis was?

6 A That it wasn't working.

7 Q Can you be a little more detailed and explicit about
8 the steps he followed and what his diagnosis was?

9 A I just said it's not really my field. Like, yes, I
10 have the basic understanding of the process, but not like
11 what he did step by step, no.

12 Q So were you observing him --

13 A Yes.

14 Q -- or was he just telling you what he did?

15 A Like, I guess, the best thing I can tell you is let's
16 say you have a working computer. You can take each
17 individual part out in a working unit and see if those parts
18 are working. If the parts aren't working, then the working
19 unit won't work.

20 Q So was that the process he followed?

21 A I don't know.

22 Q I'm just asking you because you were there when he was
23 doing this. I'm asking you to describe what you observed.

24 A Like, you're asking me what exact steps he did
25 throughout that process, I can't tell you that.

1 Q So what did you observe him doing?

2 A Like I said, him taking the parts out. I did see him
3 do that. Like I said, anything from that, that's not really
4 my field.

5 Q So he was systematically going through and evaluating
6 each of the components by taking them out and putting them
7 into a functioning computer to see if that then functioning
8 computer would stop working to try to isolate the problem?

9 A Correct.

10 Q And was he able to determine which of the components
11 were not working?

12 A As I said originally, none of the components were
13 working.

14 Q So he tested all of the internal components and none of
15 them were working?

16 A Correct.

17 Q Did he have an opinion of what would have caused that
18 similar to yours?

19 A If he did, he didn't tell me. It wasn't really a
20 question at the time. I wasn't really worried out that, I
21 was worried about whether my computer was working.

22 Q How long did it take for this analysis to take place?

23 A Probably over the day.

24 Q So let's fast forward to your return to Columbia. So
25 you returned on August 5th. I heard you testify that you

1 entered your room and it was empty. Was anyone else present
2 in your unit?

3 A In my unit? Are you saying like in my room?

4 Q Not in your bedroom, but in your unit?

5 A My roommate upstairs was.

6 Q Who was your roommate upstairs?

7 A I don't know what his name is honestly. We weren't
8 like friends, I would say. We were cordial, like, hey, how
9 you doing. But like, his name, it was like either Tim or
10 Joseph, something like that.

11 Q Did you ask him what had happened?

12 A I knocked on the door and was like, hey, you know
13 what's going on over here? He was like, yeah, they came in
14 and threw all your stuff out like two weeks ago. I was like
15 okay.

16 Q I think you testified you next called your mother?

17 A No, that was the first thing I did.

18 Q So you called your mother and talked to your roommate.
19 Then you went to the front office?

20 A Yes.

21 Q And you met with Christopher and then, eventually,
22 Katie?

23 A Yes.

24 Q Did you go to Target separately or did you all go in
25 the same vehicle?

1 A We went separately.

2 Q Your mother testified yesterday that you drive a 2009
3 Honda Accord?

4 A Yes.

5 Q Do you know what a cubic foot is?

6 A Yes.

7 Q So if you visualize a cube that's one foot by one foot
8 by one foot, that would be a cubic foot?

9 A Yes.

10 Q So do you know the dimensions of a Honda Accord trunk
11 is 15 cubic feet?

12 A I would not know that.

13 Q And the back seat area is about 40 cubic feet?

14 A I don't know.

15 MR. LYLE: Opposing counsel is testifying. He can ask
16 questions.

17 MR. VANDENBERG: It's cross-examination.

18 THE COURT: I'll allow it.

19 BY MR. VANDENBERG:

20 Q So what is your response?

21 A I'm sorry, are you asking me do I know the dimensions
22 of the car?

23 Q Yes. Do you know the back seat dimensions were 40
24 cubic feet?

25 A No.

1 Q So do you recall who accompanied you to Target?

2 A Chris and one of the desk workers. I believe her name
3 was Myra.

4 Q And they drove separately?

5 A I don't know if they drove -- are you saying with me?

6 Q Yes. They weren't with you?

7 A No, they weren't with me.

8 Q This is what we've marked as Defense Exhibit 6. We
9 talked about this before, but I just want to show it to you.
10 This is a receipt of the contents that were purchased for
11 you at Target. Do you recall -- so you were present,
12 correct? They didn't go in and shop for you?

13 A They shopped with me.

14 Q And how many shopping carts did it take to accumulate
15 all those items?

16 A Like, one.

17 Q So one shopping cart?

18 A Yeah.

19 Q Could you just read for the jury the contents there? I
20 know you were a little fuzzy during your direct, but if you
21 could just read the contents that were acquired.

22 A Shower rod, shower hook, whatever charm strong is, oral
23 care, Method oral B, Colgate, bed pillow, comforter, bath
24 towel, washcloth, shower curtain and shower liner, sheet
25 set, throw rug. I don't quite no what the last thing is.

1 Q So after these items were purchased -- and The Rowan
2 staff paid for these?

3 A Yes.

4 Q And were you present when the items were placed in your
5 car?

6 A In my car?

7 Q Yes.

8 A Yes, I placed them in my car.

9 Q And I think you testified that to your recollection,
10 the contents of your car were a single suitcase and some
11 shoes?

12 A Single suitcase and some shoes and a few nonperishable
13 items my mom gave to me when I was going to school.

14 Q You testified at your deposition that in addition to
15 this desktop computer that you had that you had two
16 additional laptop computers. Do you recall that?

17 A Yes, sir, I have two laptops.

18 Q Were they in the car with you as well?

19 A No, not the second laptop. The second laptop was given
20 to me later, but yes, my Macbook was in the car with me.

21 Q So one additional item was your Macbook Pro?

22 A Yes.

23 Q So one suitcase -- was the suitcase in the trunk?

24 A I can't tell you where the suitcase was.

25 Q So what about the shoes, were they shoes in the trunk

1 or were they in the --

2 A I don't know.

3 Q And the suitcase, do you recall its dimensions? I
4 mean, was this a large suitcase?

5 A It was a decent size suitcase.

6 Q Like, a rolling one?

7 A I wouldn't say it's a carry-on, but it's a decent size
8 suitcase.

9 Q And then the shoes, were they just free standing or
10 were they enclosed in a tote?

11 A I'm kind of particular about my shoes, so they were
12 definitely in their boxes.

13 Q The shoes were in a box and the box was in your car?

14 A Huh?

15 Q The shoes were in a box and the box of the shoes were
16 just placed in your car?

17 A I don't know what you're asking me.

18 Q So where in your car were the shoes in the box?

19 A Where were the shoes in the box?

20 Q Where in your car were the shoes in the shoebox?

21 A The shoes were in the box in the car.

22 Q Was this box containing your shoes, was it in the front
23 seat or was it in the back seat or your trunk?

24 A It probably would have been in the back seat. It could
25 have been in the trunk. I can't really answer that

1 question.

2 Q The bags that contained the items that were purchased
3 from Target, do you recall where in your car they were
4 placed?

5 A Probably in the back seat.

6 Q So after you finished your shopping trip at Target, did
7 you go immediately back to your unit?

8 A Either that or Chris and Katie would have wanted to
9 talk to me. I can't really say I went directly back to my
10 unit, but I know we came back to The Rowan, yes.

11 Q So you got back to The Rowan and if you didn't go to
12 your unit, you may have gone to the front office?

13 A That would have been the only other place I would have
14 gone, yes.

15 Q So at some point, whether you went to your unit or you
16 went directly to the office, you were at the office. And is
17 that -- what we've marked as Defendant's 17, is that where
18 you were shown the contents from your room for the first
19 time?

20 A When that happened, I'm not -- no, it definitely wasn't
21 dark when we came back, so no, it wasn't.

22 Q So your recollection is you didn't see those contents
23 on the evening of August 5th?

24 A I didn't say that.

25 Q So when do you recall seeing them?

1 A It was that day. Like I said, I'm saying -- you're
2 asking me if it was when we first got back to the Rowan from
3 Target. I'm saying that wouldn't make sense because it was
4 still bright outside and when I saw these items, it was
5 dark.

6 Q So sometime after you got back from Target, you went to
7 the front office and that's where you saw these items?

8 A Yes.

9 Q So I want to back up to the summer before this incident
10 occurred. I know Mr. Lyle asked you briefly about the
11 transfer experience. So your mother testified yesterday
12 that the two of you had a conversation over the course of
13 the first year that you really preferred the bedroom unit in
14 this apartment complex closer to the washer and dryer; is
15 that correct?

16 A Yes. I wanted to move downstairs.

17 Q Do you recall approximately when that conversation
18 first started?

19 A It was probably just me talking to my mom, like,
20 complaining that I don't want to go downstairs to do the
21 laundry. So probably just happened over a period of time.

22 Q When did you decide that you wanted to transfer units?

23 A When did I decide or when did I make it known?

24 Q When did you decide that you wanted to -- that you
25 desired to investigate the possibility of transferring

1 units?

2 A I don't know the exact date if that's what you're
3 asking.

4 Q Not the exact date, but approximately. Was it before
5 the end of the school year?

6 A It was before the end of the school year, I decided I
7 didn't want to be upstairs anymore.

8 Q So sometime before the end of the school year, you
9 decided in your mind that you no longer wanted to live in
10 the upstairs apartment?

11 A Yes.

12 Q And when was the first time that you approached The
13 Rowan about the possibility of moving?

14 A Probably on that summer period.

15 Q So is it fair to say that in your mind, you had decided
16 that you didn't want to live upstairs anymore, that you had
17 decided to move when you left for the summer?

18 A Yes.

19 Q So if we can back up a little bit further in the
20 timeline and talk about when you first moved from your mom's
21 home in Georgia to The Rowan. Mr. Lyle was talking about it
22 yesterday and I wanted to ask you some of the same questions
23 you talked about yesterday. So your mom testified about the
24 three vehicles, one of them being yours, one hers and then
25 the third was another SUV. And you testified earlier today

1 that when you moved out that you were starting a new life
2 here in Columbia, weren't sure what that might lead to, but
3 that you were planning to move the majority of your contents
4 from your mother's home; is that correct?

5 A Yes.

6 Q And do you recall any items you might have left behind
7 at your mother's house in Georgia?

8 A Like, in my room, I had a desk, a different desk, maybe
9 like a few jeans and shirts that I didn't really care about.

10 Q And what about, did you leave any computers?

11 A Yes, I had like stray parts sitting around some places,
12 so, yes, there were computer parts at home.

13 Q Were these parts compatible with the original computer?

14 A Probably not because the mother board I had was A&B
15 based, so no.

16 Q So any computer parts that were left behind at your
17 mother's home in Georgia that were compatible with this
18 original computer?

19 A Well, the graphics card could have been compatible.
20 When it comes to computers, you have A&B intel, so your
21 mother board has to be compatible. If your mother board
22 isn't compatible, you can't put any other parts in it.

23 Q So what were the contents -- when you moved to Columbia
24 back in 2021, what were the contents that you carried in
25 your car to Columbia?

1 A Are you asking what was in my car specifically?

2 Q I am asking that.

3 A I don't know. Probably like clothes, shoes.

4 Q Was your car full?

5 A Yes.

6 Q Trunk full?

7 A Yes.

8 Q Back seat full?

9 A Yes.

10 Q Front seat?

11 A Yes.

12 Q What about your mother's car?

13 A Other than the front seat, because my grandma was up
14 there.

15 Q So the back of her car was full as well?

16 A Yes.

17 Q And a third vehicle, what was in the third vehicle?

18 A My stuff.

19 Q And that was where the refrigerator was?

20 A Yeah, the refrigerator was definitely in there, the
21 mini fridge.

22 Q So when you decided to return home after the end of the
23 school year in 2022, what items did you take home with you?

24 A A few pants, maybe. I wasn't going to be there
25 forever. You know, I'm in Columbia ten months out of the

1 year, so probably just a few things.

2 Q Do you recall more specifically what you took home?

3 A Clothes, pants, shirt, underwear.

4 Q So I want to show you what -- this was previously
5 introduced yesterday as -- what we've marked -- I don't
6 recall what the Plaintiff's Exhibit was, but this was --
7 we're marking this Defendant's Exhibit 10. Do you recall
8 this document?

9 A Yes.

10 Q So the numbers at the bottom, do you see the number in
11 the lower right-hand corner?

12 A Like, my name and the number?

13 Q Yes, Postell 0017?

14 A Yes, I see it.

15 Q When I ask you questions, I'll ask you to reference
16 those pages because there is a compilation of a number of
17 documents. The reason they're marked as they are is these
18 are the documents that your attorney turned over to us in
19 discovery.

20 So I want to ask you about -- if you flip back to what
21 we're calling -- it's your page number Postell -- it's,
22 actually, the second page in this stack, but it's Postell
23 0018. Do you see that?

24 A Yes.

25 Q And this is an e-mail -- I'm reading from the top. I

1 want to start out on this section here where it says
2 Thursday, August the 18th at 3:59 p.m.?

3 A Yes.

4 Q And you see Shawndolena Arnold? That's your mother?

5 A Yes.

6 Q And then that e-mail address there, is that her e-mail
7 address?

8 A Yes.

9 Q It's Thursday, August the 18th at 3:59 p.m. I'd like
10 to go ahead and just read for the jury starting at "good
11 afternoon". If you would read the entirety of that e-mail
12 to the jury, please.

13 A Good afternoon, Ms. Floyd and Christopher, per our
14 conversation this afternoon, August 18th, 2022, regarding
15 the unlawful disposal of all property contained in unit
16 3007A of Jamahl Postell and the status regarding the initial
17 payment of \$20,000 excluding the reimbursement of the
18 computer damage. On August 5th, 2022, I was advised by Ms.
19 Floyd and Christopher that the initial installment,
20 excluding the computer damage would be sent by The Rowan
21 Apartments no later than Monday, August 2nd, '22, within a
22 two-week timeline. This was based on me providing the cost
23 of disposed items. The amount of \$20,000 was provided to
24 both Ms. Floyd and Christopher on Monday, August 8th, 2022,
25 excluding the computer damage.

1 As of today, I am not in receipt of anything. Ms.
2 Floyd has assured me that she would be in contact with me
3 today after she speaks with her supervisor. Please allow
4 this letter to serve as an attempt in good faith to resolve
5 this open and close case. I hereby demand the payment of
6 \$20,000 for reimbursement of the unlawful disposal of
7 property by The Rowan Apartments to be paid within three
8 business days of this e-mail, excluding computer damage.
9 The check should be made payable to Shawndolena
10 Arnold-Postell, mailing address 275 Country Roads Circle,
11 Stockbridge, Georgia 30281, Shawndolena Arnold-Postell.

12 Q Now, if you will flip ahead to Postell 24. At the top,
13 it says Selena, one of Mr. Lyle's staff. You see the e-mail
14 referenced in here?

15 A Uh-huh.

16 Q So you agree this e-mail that's sent, again, from your
17 mother, Shawndolena Arnold, same e-mail address, the date is
18 August 24th -- I'm sorry. If you scroll down to this
19 section a little bit further down the page. Monday, August
20 22nd, 2022, 3:43 p.m., Shawndolena Arnold, do you see that
21 section?

22 A Uh-huh.

23 Q So, again, can you read for the jury this section at
24 the bottom of the page?

25 A Per my conversation with Katie and Christopher on

1 Thursday, August 18th, as requested by phone from
2 Katie/Christopher on Thursday, August 18th, at approximately
3 3:30 p.m., please see the attached estimate list of the
4 items that were illegally disposed of from Apartment 3007A.
5 I have yet to receive your request in writing for the list
6 of items. I have followed up with additional questions by
7 e-mail and phone with no contact from The Rowan Apartments
8 since Thursday, August 18th, even after being told by the
9 receptionist that Katie would respond back to me by e-mail
10 or phone.

11 As of today, August 22nd, 2022, no one has responded to
12 my calls or e-mails since Thursday. This is a very painful
13 situation for both my son and myself. Time lost from school
14 and we're dealing with the dreadful/unfortunate situation.
15 Again, if this matter is not resolved within the previously
16 noted three business days mentioned on e-mail dated August
17 18th, I will be referring this issue to my attorney.

18 Q So I want to show you what we've marked -- again, this
19 has already been introduced previously by Mr. Lyle. This is
20 what we marked Defense Exhibit No. 15. This was the
21 document that was attached, estimated list of items. Do you
22 recall this?

23 A Yes.

24 Q So I want to back up and discuss the timeline if we
25 can. So August the 5th is the date you returned to campus?

1 A To campus?

2 Q I'm sorry, returned to The Rowan on August the 5th?

3 A Yes.

4 Q And so August the 7th, over the weekend, there is
5 discussion about contents. And then according to this
6 e-mail that your mother sent on August the 18th -- this is
7 what you just read to the jury on Page 18, Postell 0018. In
8 this e-mail, it says the amount of \$20,000 was provided to
9 both Ms. Floyd and Christopher on Monday, August the 8th,
10 2022. The amount of \$20,000.

11 A Uh-huh.

12 Q And this is based on a conversation that took place on
13 the 7th referencing this \$20,000. So I just want to
14 understand the timeline from your perspective. So you
15 return on the 5th of August to The Rowan. By August the
16 7th, there is a conversation -- were you part of that
17 conversation between your mother, Christopher and Katie?

18 A I probably sat in on it, yes.

19 Q So, typically, the way that these conversations went,
20 since your mother was in Georgia, you would be in the front
21 office with your phone in the presence of Katie and
22 Christopher?

23 A Correct.

24 Q And so you were with Katie and Christopher and your
25 mother was on the phone when this conversation took place on

1 the 7th. So was this the time this \$20,000 figure was
2 mentioned?

3 A Likely.

4 Q I'm sorry?

5 A Likely.

6 Q And so then on August the 8th -- excuse me, August the
7 18th, this e-mail that your mother is referencing that -- on
8 August the 8th, she's referencing this conversation took
9 place. She's memorializing this conversation. And then
10 fast forward to the 22nd, two weeks later. On the 22nd is
11 when this spreadsheet is sent from your mother to
12 Christopher and Katie with this detailed list of items that
13 were missing?

14 A Are you asking me a question?

15 Q Yes. So I'm asking that's the timeline. So the 5th is
16 when you returned. The 7th is this conversation where --
17 was it you that mentioned \$20,000 or was that your mother
18 that mentioned \$20,000?

19 A We both made the list.

20 Q I'm talking about the conversation on the 7th?

21 A Like, we were both in the room. Are you saying who
22 said it first?

23 Q I'm asking did your mother say it or did you say
24 \$20,000?

25 A This was like two years ago. I don't know who said

1 what first on August the 7th of 2022.

2 Q So either you or your mother mentioned \$20,000?

3 A That's correct.

4 Q And then it's memorialized on the 8th in this e-mail
5 that your mother is discussing. And then on the 22nd is
6 when this detailed spreadsheet is provided with a loss?

7 A What day was it provided?

8 Q What you just read August the 22nd.

9 A The spreadsheet was made and sent before the 22nd.

10 Q Well, that's not what this e-mail says. I'm asking you
11 because based on this e-mail from August 22nd that you just
12 read where you say please see attached estimated list of
13 items that were illegally disposed?

14 A What are you asking me?

15 Q I'm asking you if that's the description that was
16 produced?

17 A Yes.

18 Q So let's move on to the items that were in your room.
19 I know we've talked at length about this and you just
20 discussed this. What I'd like to show you is during your
21 deposition, we asked you to do something similar. I'd like
22 to show you Defendant's Exhibit 14. Do you still have the
23 exhibit there, the spreadsheet?

24 A Yes.

25 Q And referencing this is Exhibit 15. So Exhibit 15 is

1 the spreadsheet that was attached to that e-mail. Exhibit
2 14 is the floor plan, that's with your annotations on there
3 that you made during your deposition?

4 A I didn't write this, but yes, I instructed you how to
5 write it.

6 Q Yes. I'll back up. So during your deposition, I had
7 drafted this schematic, which I presented to you and asked
8 you to annotate --

9 A No, I didn't annotate anything. I'm just making sure
10 --

11 Q So did you indicate where your bed was located?

12 A Yes.

13 Q And where the dresser was located?

14 A Yes.

15 Q And your desk was located?

16 A Yes.

17 Q I want to ask this, to the best of your recollection,
18 much like we just asked Ms. Young, is this a fair
19 representation of your bedroom, just the layout of your
20 bedroom?

21 A Yes.

22 Q So I want to ask you some questions. And I'd like you
23 to reference the spreadsheet contents to the items, the
24 closet spaces and your bedroom in general. I'd like you to
25 walk through, much as I did with Mr. Young, and tell the

1 members of the jury where the items on the spreadsheet were
2 located. So let's start with the dresser. So where in the
3 bedroom was the dresser?

4 A Here.

5 Q So here?

6 A Yes.

7 Q And that dresser was the property of The Rowan?

8 A Correct.

9 Q So when you left for the summer, what were the items
10 that were contained in that dresser?

11 A Like, undergarments, so stuff like socks, underwear,
12 tee shirts, my compressions. I used to play a lot of
13 sports, so my compressions. Just like undergarment-type
14 things.

15 Q And you see those items on your list?

16 A Yes.

17 Q And if we move then to closet B, what were the items --
18 in reference to your spreadsheet, what were the items from
19 your spreadsheet that were in closet B?

20 A Anything that's generally like casual attire. So
21 anything I would, like, wear out for a nonformal event.

22 Q So can you point to the list and say -- for example, we
23 have 18 pair of tennis shoes.

24 A They would have been in closet B. That's the bigger
25 closet, correct?

1 Q Yes.

2 A Okay, closet B.

3 Q What about the left-hand column, the clothing list
4 here. We have three dress shirts, five dress pants, et
5 cetera?

6 A Closet A.

7 Q So if you can just go down the list and tell us which
8 closest these items were located in?

9 A So tailored dress suits would have been in closet A,
10 dress pants would have been in closet A, dress shirts would
11 have been in closet A, jeans would be in closet B, graphic
12 tees would be in closet B, shorts would be in B, casual
13 pants would be in B, tee shirts would be in B, undershirts
14 with no sleeves, which is tank tops or wife beaters, would
15 be in B, underwear would be in B. My Nike tank would be in
16 B. My hoodies would be in B. My Nike jacket would be in B.
17 White socks would be in B. Socks would be in B. Dress
18 socks would be in B. And that's the list.

19 Q So the cleaning products, did you have any cleaning
20 products?

21 A Yeah, like, in the bathroom.

22 Q But not on your dresser?

23 A Maybe like Lysol or stuff that you use to clean
24 countertops.

25 Q What about your bed, was your bed made?

1 A That definitely was made. I lived with my dad and my
2 dad was very particular about how I have my room, so I know
3 my bed was made before I left.

4 Q Do you remember approximately when you left the room
5 for the summer?

6 A I had just came back from a trip with my scholarship
7 organization, so maybe like a week or two after.

8 Q So classes ended approximately the end of April of
9 2022?

10 A We get out earlier than most colleges, so, like, late
11 April. Before May definitely.

12 Q So it was before May that you would have returned back
13 to Georgia?

14 A No, I said that we get out before May.

15 Q And I earlier asked you and I just want to be clear, if
16 you don't know the exact date, around it, the early part of
17 May, you would have returned to Georgia?

18 A It would have been like mid-May, early May.

19 Q Okay. So between the time you last set your eyes on
20 the items you just described in your room and when you
21 returned campus on August the 5th, did you ever have
22 occasion to return to your room at The Rowan?

23 A Yes, I came back.

24 Q When was that?

25 A In the summer.

1 Q Was that when you came back with your father to look at
2 optional units?

3 A Yes.

4 Q I know I asked you about the contents, we just went
5 through the contents when you left school at the end of the
6 term early or mid-May, did you remove any items when you
7 were there with your father over the Fourth of July weekend?

8 A No.

9 Q So when you were there on the Fourth of July weekend,
10 the contents were just as you described them when you left
11 previously?

12 A Yes.

13 Q So when you returned to The Rowan on August the 5th,
14 that was the first time you saw anything different than what
15 you had seen?

16 A Correct.

17 Q What I'd like to show you is what we've marked as
18 Defendant's Exhibit 9. This is a text between you and your
19 mother. I don't recall what the Plaintiff's Exhibit number
20 was. Do you recall this exchange with your mother?

21 A Yes.

22 Q So it starts on August the 5th. I think we established
23 during your mother's testimony -- which it's hard to tell,
24 is it fair to say that anything on the left-hand side is
25 your mother's text and you're on the right side?

1 A Correct.

2 Q So I wanted to start -- again, we have these Postell
3 numbers at the bottom. These are the pages of the documents
4 that you produced to us during discovery. So I want to ask
5 you about this. Again, this is not something you said. I
6 just want to ask you what your understanding was.

7 So the first text message here, it starts Friday,
8 August 5th at 6:38, do you see that?

9 A Uh-huh.

10 Q Friday, August 5th at 6:38 p.m., where were you when
11 this exchange was taking place?

12 A The Rowan.

13 Q Were you in the front office or were you still in your
14 unit?

15 A Probably in the front office.

16 Q I'm just asking for your recollection, so was it likely
17 you were in the front office?

18 A Likely.

19 Q So when this message from your mother that says, Please
20 don't say no more than needed. They will have to correct
21 the issue, et cetera. What did you understand this to mean,
22 please don't say no more than needed?

23 A I can't really speak to what somebody else meant, but
24 --

25 Q I'm asking you what your understanding was?

1 A Don't say anything more than needed.

2 Q What does that -- I'm asking what your understanding of
3 that was?

4 A Don't say anything that's not necessary.

5 Q Necessary for what, though?

6 A I don't know. Like, my mom spoke to this yesterday.
7 It wasn't -- these aren't my words, so I'm just doing what
8 my mom told me to do.

9 Q And I'm just asking -- someone asked you to do
10 something, I'm just asking what your understanding of that
11 message was.

12 A Don't think anything more than necessary.

13 Q And further down, we're still on Page Postell 0010,
14 now, it's Friday, August 5th at 9:10 p.m. This is the -- it
15 runs -- the series runs a couple of pages, down to the
16 bottom of Postell 0011.

17 Again, I'm trying to get your understanding. So this
18 is 9:10 p.m. Do you recall where you were at 9:10 p.m.?

19 A I would have been either in my room or just going up to
20 get my items.

21 Q So if you look back at the Target receipt --

22 A What exhibit?

23 Q The Target receipt is Exhibit 6. Do you see that?

24 A Yes.

25 Q So at the top, you see a date and time stamp. So

1 according to what I see, it says August 5th, 2022 at 7:46
2 p.m.?

3 A Uh-huh.

4 Q Is that your understanding of what appears to be the
5 date this receipt that was generated?

6 A Yes.

7 Q So at 9:10, this text message, you're back to your unit
8 when you received that?

9 A The text message?

10 Q Yes.

11 A I don't know. The receipt was printed at 7:46. Target
12 is like 15, 20 minutes away. So I could have been in the
13 office, I could have been in my unit.

14 Q Do you recall receiving this text before or after you
15 were shown the items that we show in what we've marked as
16 Defendant's Exhibit 17. The text message here at 9:10 p.m.
17 on Friday, August 5th. And my question is when you went to
18 the front office to view the items that they had recovered,
19 to the best of your recollection, were you in the office to
20 see those items prior to or after receiving this text
21 message from your mother at 9:10?

22 A The list of items or the text message saying --

23 Q So if you look at Page 10, Postell Page 10, this text
24 message was sent Friday, August 5th at 9:10 p.m., do you see
25 that?

1 A Yes.

2 THE BAILIFF: One of the jurors needs to go to the
3 restroom.

4 MR. VANDENBERG: If you can give me about 30 seconds, I
5 can wrap it up.

6 BY MR. VANDENBERG:

7 Q I'm asking just the sequencing here, do you recall
8 receiving this test message prior to or after receiving --
9 viewing the items?

10 A I don't know. Like I said, this was two years ago. It
11 was a traumatic kind of time during the day, you know what
12 I'm saying.

13 MR. VANDENBERG: Your Honor, out of respect for the
14 jury, I think we may have a few more followup questions, so
15 we'd just like to recall Mr. Postell after the break.

16 THE COURT: I think that's fine.

17 Let's break for lunch. It's 1:10. If y'all will come
18 back and be ready to go at 2:10. I further request that the
19 juror who needs to get out go first.

20 (WHEREUPON, the jury exits the courtroom at 1:10 p.m.)

21 (WHEREUPON, a lunch break was taken.)

22 THE COURT: Let's bring in the jury.

23 (WHEREUPON, the jury enters the courtroom at 2:27 p.m.)

24 THE BAILIFF: The jury is seated, Your Honor.

25 THE COURT: Thank you.

1 Thank you, everyone, for being back and being back on
2 time.

3 Yes, sir.

4 MR. VANDENBERG: Initially, just a little housekeeping.
5 I wanted to make sure that we introduced these exhibits
6 here. We have Exhibits 11, 12 and 13.

7 THE COURT: Any objection?

8 MR. LYLE: None from the Plaintiff.

9 THE COURT: Defendant's 11, 12 and 13 are admitted.

10 (WHEREUPON, Defendant's Exhibit Nos. 11, 12 and 13 were
11 admitted into evidence.)

12 CONTINUED CROSS-EXAMINATION

13 BY MR. VANDENBERG:

14 Q So I want you to take a look at these so we have them
15 on the record. 11 was another exhibit introduced by the
16 Plaintiff. This is a text exchange that goes back to the
17 summer of '22. What we've marked as Exhibit 12 is the
18 initial lease. So, basically, covering the years '21 and
19 '22. And 13 is lease renewal for '22 and 2023.

20 So I want to pick up where we left off. Do you still
21 have in front of you the text message exchange?

22 A I have it.

23 Q This is stamped in the bottom right-hand corner as
24 Postell 0014. Can you find that page? It's six or seven
25 pages in.

1 A Okay.

2 Q And if you flip to the previous page -- I'm assuming
3 these are in sequential order according to the date and
4 time, but if you flip to the previous page, Page Number 13,
5 it's a text thread that originated Saturday, August the 6th,
6 at 1:37 p.m. Do you see that on Page 13?

7 A You said Saturday, August the -- what?

8 Q If you look at the bottom, I'm looking at Page Postell
9 0013?

10 A Yes, I see it.

11 Q Do you see towards the bottom of that page in the
12 middle, there's a date and time stamp, Saturday, August 6th
13 at 1:37 p.m. Do you see that?

14 A Yes.

15 Q So let's flip to the second page. I want to talk about
16 what appears at the top. Again, I think what's on the
17 left-hand side is a text thread from your mother and your
18 response is on the right-hand side; is that accurate?

19 A Yes.

20 Q So I just want to go through this. So your mother
21 says -- I don't know where -- it doesn't really start on the
22 previous page, not as I can tell, but it says, Maybe you
23 should consider having them replace the computer. Think
24 about that and decide this week. And then you say, It's not
25 a matter of replacing. I built the PC, so I can replace the

1 parts. But buying a new one is less frustrating because all
2 of the worry about it is -- and then you correct yourself,
3 software, concerned about software.

4 So at that point in time, again, this is just a day
5 after you had returned, it's I'm assuming, Saturday, August
6 the 6th when this exchange was taking place. Can you
7 describe that exchange and what was going through your mind
8 in your discussions with your mother at that point in time
9 about the condition of your computer?

10 A Well, when I say -- let me read it again, I'm sorry.
11 When I say that's frustrating to just buy a new unit is
12 because when you buy the individual parts, you have to go
13 through the process of maybe -- not maybe, but you have to
14 go through the process of putting each individual part in.
15 It's not like it's such a big deal, but in the moment, I was
16 stressed out from everything that had already happened. It
17 was like do I really want to do that as well.

18 Q So in the suggestion that you just buy a replacement
19 computer, obviously, that would not be a custom-built
20 computer that you built from scratch?

21 A It wouldn't be the custom-built computer that I built
22 from scratch, correct.

23 Q So take the jury through that evaluation. If this was
24 a custom-built computer that you had initially, could you
25 walk into the store and buy something that's comparable off

1 the shelf?

2 A You can't buy that exact unit off the shelf, no.

3 Q So the concern about software, that's just loading the
4 software? Kind of a technicality?

5 A Yeah, loading software, like, old projects I had been
6 working on, all that stuff was lost. So that's what I was
7 referring to.

8 Q Is that for school or is that just for --

9 A As I said before, I was working doing graphics and
10 such. So that was schoolwork, graphics that I was doing for
11 money, just anything like that.

12 Q And so software that was loaded on your original
13 computer, was that software that you had installed as a
14 download file or did you install it from some other means,
15 like a CD or DVD?

16 A Likely, it would be something that I can just download.

17 Q So did you still own the software rights to that, the
18 software that you downloaded?

19 A Some things, no. Some things are software that it's
20 only to one unit, so I couldn't get some of that software
21 back. Some of that software was, like, old to the point
22 that you can't just go buy it in the store. It's not in use
23 anymore, like, they don't sell it.

24 Q Obsolete?

25 A Not obsolete, but not in use as they don't send active

1 updates for that software anymore.

2 Q So what percentage would you say, just a ballpark, of
3 software did you still have the license for that you can
4 still download?

5 A I can't say a percentage. Maybe 75 percent of
6 software, 80 percent of software is stuff I could just
7 easily go access the files for.

8 Q And of the costs, what share of the estimate of damage
9 was attributable to the software?

10 A Little to none.

11 Q So I want to flip ahead now. This is a couple pages
12 back. I think it's maybe the last page. I think it's
13 Postell 0016. I'm assuming -- if you flip back to Page 15,
14 if you look at the date and time stamp on there, it says
15 Friday, August the 19th at 5:07 p.m.?

16 A Yes.

17 Q I'm assuming that what appears on Page 0016 is a
18 continuation of that date and time?

19 A I would assume so.

20 Q At the top of that page, again, this is a text from
21 your mother. What is your understanding of this message
22 that she sends to you, Call me before going to apartment to
23 speak with Katie?

24 A Are we on the right thing? You said 15, right?

25 Q Page 16, the last page at the top.

1 A Okay, I see it. I thought you wanted me to get on 15.

2 Q I just wanted to get the reference date and time. So
3 now, we're on Page 0016?

4 A Okay.

5 Q So I'm just asking what your understanding of that
6 message from your mother where it says, Call me before going
7 to apartment to speak with Katie.

8 A So my mom is the guarantor of the apartment, not me.
9 So yeah, I was living there, but she was handling more, I
10 guess, the business side of things. So yeah, she wanted to
11 be included on the calls with Katie.

12 Q So she was involved in the exchange back and forth with
13 Katie, Christopher and others regarding this incident?

14 A Are you asking was she involved? Yes.

15 Q Yes, I'm just trying to clarify what you're saying. So
16 the only reason of this message is to draw reference to her
17 involvement in the attempt to try and figure out the value
18 of the property that was lost and the contents of the loss?

19 A Yes, because we were having a hard time getting in
20 contact with Katie and Chris. Like every time we would
21 call, it would be like she's in a meeting or Chris is in a
22 meeting or call at the end of that day and they'll give you
23 a call back, but no call back, or e-mail, no e-mails back.
24 So when I went to the office in person, she wanted me to
25 contact her so that she could speak to them.

1 Q And then there's a request here further down the page,
2 Send me the approximate cost of parts for computer, just
3 estimate?

4 A Uh-huh.

5 Q Her estimate, 5,000 or 6,000. She testified yesterday
6 -- not mischaracterizing her, but not a background in
7 computers, she told me to ask you these questions. So where
8 does this 5,000 or \$6,000 figure come from?

9 A Like, my mom's not stupid. She, like, has an idea, but
10 she wouldn't want to, like, say something that's incorrect.
11 Because she thinks something, that doesn't mean that's
12 exactly how it is. Like even at home, I handle all of the
13 internet-type things, like, the internet bill, the phone
14 bill. All those electronic-based items, I pay more
15 attention to for her. She's not just out of the loop, but
16 she would have the best guess -- I don't know. I would be
17 more informed.

18 Q So then towards the bottom of the page, there's a
19 response from you that gives a range of 6500 to 7500?

20 A Uh-huh.

21 Q Do you see where I'm pointing here, where you respond,
22 6500 to 7500?

23 A Correct.

24 Q At that point in time, on August 18th, that was your
25 estimate?

1 A Yes.

2 Q And if I recall correctly from before lunch, you still
3 hadn't gone to see your cousin yet, so you didn't have a
4 good understanding of what the estimated cost or even if the
5 computer was comparable at this point in time?

6 A I knew the cost of the computer. I bought it, so I
7 knew how much the computer cost.

8 Q Actually, let's talk about that for a minute. The
9 components that went into building this computer, did you go
10 in the store and buy these parts and assemble it all in one
11 shot?

12 A No, this was a process. I didn't just have \$7500
13 sitting around. I know I'm blessed, but not blessed like
14 that.

15 Q I asked you at the very beginning of your testimony
16 today and I asked your mother yesterday about receipts, et
17 cetera for these products. You say that you recall how much
18 you paid for this. Where are the receipts or documentation
19 that shows that?

20 A I just don't keep receipts. I really don't know
21 anybody that keeps receipts. Let's say I'm getting the
22 protection plan, I'll keep the receipt, but like I just
23 don't keep receipts.

24 Q So is it maybe in the back of your mind, you were
25 keeping a running tally of how much you had been spending on

1 this computer?

2 A A running talley? You just know what you've bought.
3 Like, I bought a phone. I know the phone was a thousand
4 dollars. It's not like oh, I spent a thousand dollars on
5 August 18th. You just know that type of information.

6 Q Well, I think it's -- if I understand correctly, your
7 testimony was you didn't just go into a store and buy a
8 phone for a thousand dollars. Over a period of time, you
9 built this from scratch?

10 A Uh-huh.

11 Q So you testified it was \$350, for example, this shell
12 of the computer?

13 A Uh-huh.

14 Q But the other components were required over time?

15 A Yes.

16 Q And so all of those in your mind and your memory talley
17 up to \$7500?

18 A Yes, or 6500, 7500 is what I said.

19 Q So I want to go back to the timeline. You should have
20 in front of you what we marked as Exhibits 10 and 15. Just
21 let me know when you find them.

22 A Ten and 15?

23 Q Yes. This is what you were testifying to a few minutes
24 ago. In negotiations back and forth between The Rowan and
25 you and your mother, was your mother primarily handling the

1 discussions?

2 A That's correct.

3 Q And again, just let me know when you find the exhibits.

4 A I'm just putting them in order.

5 Q Again, I'm looking at Exhibit 10. This is the e-mail
6 chain. And it's Page 18 at the bottom. I just want to
7 quickly go through the timeline.

8 A Okay.

9 Q So on the 5th, you return to your apartment and
10 discover the property is missing?

11 A Yes.

12 Q And then according to this e-mail, Page 18, on the 8th,
13 your mother provided -- excuse me, on the 18th, which is the
14 date of this e-mail, your mother is responding to
15 Christopher and Katie memorializing this discussion that
16 took place on August the 8th where you don't recall whether
17 it was you or your motion who mentioned \$20,000 for the
18 first time. One of you mentioned that on the 8th. That's
19 what it says in this e-mail.

20 And then two weeks later, the 22nd, August the 22nd, go
21 to Page 24, this is the e-mail dated August 22nd at 3:43
22 p.m. where it is in reference to the attached estimated list
23 of items. And that's the spreadsheet we have marked as
24 Exhibit 15?

25 A Uh-huh.

1 Q So between the date that the figure of \$20,000 was
2 first provided to The Rowan and the 22nd when this
3 spreadsheet was provided to The Rowan with the details, the
4 contents lost and the value of those contents, including the
5 damage to the computer, was that the period of time when
6 your mother testified and I believe you testified during
7 your direct testimony this morning that you were consulting
8 or Googling the value of items to come up with the specific
9 price that appears here on this spreadsheet?

10 A Yes.

11 Q So I want to draw your attention looking at Exhibit 15.
12 I'm sorry, my copy is pretty poor. So if you look at the
13 top right corner, the computer parts, can you see that
14 clearly on your exhibit?

15 A Not the best.

16 Q Can you see this up here in the top right where it says
17 computer parts?

18 A It's kind of dark.

19 Q It says 7500 in there?

20 A Are you saying that's what it says?

21 Q I'm asking you if that's what it says?

22 A I can't really see it, but if that's what it says, then
23 that's what it says.

24 Q I'm just asking you what you can read. Let me show you
25 my copy here and see if you can see it clearer.

1 A I can't tell you. It's really dark for me. The
2 numbers are dark as well.

3 Q Let's just pause for a second here.

4 Bear with me for a moment, Your Honor.

5 (Pause.)

6 BY MR. VANDENBERG:

7 Q So can you read the figure at the bottom?

8 A Are you talking about where it says total?

9 Q Yes.

10 A Yes, total says 27,500.

11 Q So if that figure in the top right corner next to the
12 computer parts is, indeed, 7500, then that amount is 20,000.
13 Is that simply math?

14 A Yes, that's what we were requesting in the beginning.

15 Q So it appears that on the 8th, that figure of \$20,000
16 was given to The Rowan?

17 A Uh-huh.

18 Q And over the course of the next two weeks, starting
19 with 20,000, you developed a list that added up to 20,000;
20 is that correct?

21 A Uh-huh.

22 Q And the 7500 for the computer parts?

23 A That was the total amount, yes.

24 Q I want to ask you some questions about something that
25 was brought up during Mr. Lyle's opening statement. It's

1 addressed in your complaint. I want to ask you about one of
2 the claims you make in your complaint. So what I would like
3 to ask you and like you to tell the jury, in your mind, what
4 is precisely either the deceptive act or the unfair practice
5 that the Defendant engaged in in this case?

6 A Are you asking me to explain the law or how do I feel?

7 Q Well, I'd like you to answer the question. The
8 allegation here is there's an unfair --

9 MR. LYLE: Judge, may we approach? I think he's asking
10 the witness about a matter of law.

11 THE COURT: Yes.

12 (WHEREUPON, a bench conference was held in the presence
13 of the jury, but outside the hearing of the jury.)

14 THE COURT: Mr. VanDenBerg, please, continue.

15 BY MR. VANDENBERG:

16 Q So back to the question. I'll try to be a little more
17 clear. What I would like for you to explain to the jury is
18 you filed this claim and it was discussed during the opening
19 and in your complaint a violation of South Carolina Unfair
20 Trade Practice Act. And what I'd like you to describe to
21 the jury is in your own words what is the unfair trade
22 practice or deceptive act that my client engaged in that led
23 you to file that claim?

24 A Well, I'm not a lawyer, but if I was to say it would be
25 the fact that we're even here today. Like, when you see

1 that -- even Ashanti, she said this happened multiple times.
2 So when I came and you guys said you would fix it and then
3 didn't fix it and I'm sitting here today testifying about
4 whether you should fix it or not, I feel like that's pretty
5 deceptive. Like, you told me you were going to do something
6 and didn't do it.

7 Q So the deceptive act would be that they promised you to
8 pay money and they didn't?

9 A They told us that this was going to be fixed. I was
10 told that. In an e-mail, I don't know which document it's
11 on, but she says that a minimum financial reimbursement
12 needed is \$20,000. She said that that was a necessary thing
13 to rectify this issue. And the fact that we're here shows
14 that this issue hasn't been rectified.

15 Q So if I can understand correctly, they promised you the
16 \$20,000, plus unspecified damage for your computer and they
17 didn't pay that money?

18 A That's what I said.

19 Q I'm just asking you to clarify that my understanding is
20 what your understanding is.

21 A My understanding is I was told one thing and another
22 was done.

23 Q So since they didn't pay you the 20,000 plus your
24 computer in damages, that's the unfair trade practice or
25 deceptive act?

1 A The deceptive act is saying you're going to do one
2 thing and then doing another.

3 Q Okay.

4 MR. VANDENBERG: Your Honor, I have no further
5 questions.

6 THE COURT: Thank you, sir.

7 Any redirect?

8 MR. LYLE: Very briefly, Your Honor.

9 REDIRECT EXAMINATION

10 BY MR. LYLE:

11 Q Jamahl, you signed a lease with The Rowan?

12 A Yes.

13 Q You had an expectation of being able to stay there in
14 that quiet enjoyment and allow your stuff not be messed
15 with, right?

16 A Yes.

17 Q And then you came back and found out that they took all
18 your stuff and incorrectly cleaned out your apartment, yes?

19 A Yes.

20 Q Is that unfair?

21 A Yes.

22 Q Is that deceptive that you sign a lease thinking you're
23 going to have quiet enjoyment and a safe place to be and
24 yet, they took all your stuff?

25 A Yes.

1 Q Is it, also, deceptive they told you they would make it
2 right and they never did?

3 A Yes.

4 MR. LYLE: No further questions, Your Honor.

5 THE COURT: Thank you, sir. You may step down.

6 I'm sorry, do you have any recross?

7 MR. VANDENBERG: No, Your Honor.

8 THE COURT: Mr. Postell, you may step down.

9 Mr. Lyle, next witness.

10 MR. LYLE: Thank you, Your Honor. At this point, we
11 have a 14-minute deposition for use at trial of Nick Hoosier
12 and then we have approximately 30 minutes of deposition
13 excerpt clips from Melissa Hinton and we'll be done.

14 THE COURT: I'm sorry, what's the gentleman's last
15 name?

16 MR. LYLE: Nick Hoosier. He was former regional VP
17 referenced by Katie Floyd. That was actually videotaped for
18 use at trial. It's 14 minutes. And then the other ones are
19 little clips, kind of like Katie Floyd's, but it's video.

20 THE COURT: Thank you.

21 (WHEREUPON, the deposition of Nick Hoosier was played
22 in open court.)

23 THE COURT: Mr. Lyle, thank you.

24 MR. LYLE: Thank you, Your Honor. At this time, the
25 last thing we would have is just a couple of deposition

1 excerpts of Melissa Hinton, who's the 30(b)(6) courtroom
2 witness for Campus Advantage. They are varying in length
3 between 30 and 40 seconds. There's a few two to three
4 minutes. Overall, it's about 30 to 35 minutes with some
5 breaks in between. We can stop at any point if the jury
6 needs a break. I should wrap up by 3:45.

7 THE COURT: Everybody on the jury okay?

8 THE BAILIFF: A juror needs a break.

9 THE COURT: Okay. Let's try to be back in 15 minutes.

10 (WHEREUPON, the jury exits the courtroom at 3:11 p.m.)

11 THE COURT: I'm certainly conscious of your time if
12 either of you need to leave. If not, I can discuss some
13 issues now.

14 MR. LYLE: That's fine, Judge.

15 THE COURT: So in other words, in about an hour, you'll
16 be through with your case?

17 MR. LYLE: A little faster than that, but yes, Your
18 Honor.

19 THE COURT: Mr. VanDenBerg, can you do anything the
20 remainder of the afternoon?

21 MR. VANDENBERG: I think what we intend to do after the
22 jury is excused, you know, it's great to break down, but we
23 plan to raise a motion for a directed verdict at the close
24 of their case. And then what we intend to do is show the
25 remainder -- actually, we're just going to show the entirety

1 of Melissa's deposition.

2 So as much as we can get through today, I think
3 timing-wise, that might be -- you know, all things
4 considered with the least amount of prejudice to my client,
5 I guess you can give an instruction as you contemplate, but
6 maybe there's the perception that they might not understand
7 that it's really us showing it since they're doing these
8 excerpts. But that way, they can end the day -- rather than
9 listening to me stand up there and talk, they can watch TV
10 an hour or so. I prefer to end the day that way.

11 Todd, do you remember how long it is until we get to --

12 MR. LYLE: About where the screens come up, it's 89
13 minutes.

14 MR. VANDENBERG: The voiceover section?

15 MR. LYLE: When you say voiceover, you mean the screen
16 goes off and we listen to it?

17 MR. VANDENBERG: Yes.

18 MR. LYLE: That's 89 minutes.

19 MR. VANDENBERG: Okay. That's kind of pushing it.

20 THE COURT: If we stop -- if we need to go to 5:30.

21 MR. LYLE: We can stop at 5:30 and pick up exactly
22 where he stops it tomorrow morning.

23 MR. VANDENBERG: That will be fine.

24 THE COURT: Now, let me ask this question, is there a
25 chance we're going to get this case to the jury tomorrow?