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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

William A. McKinnon, Circuit Court Judge

Appellate Case No. 2026-001159

Case No. 2024-CP-46-02996

E.B., a minor, E.R., a minor, S.S., individually and on behalf of E.B., C.B., individually and on behalf of E.B., and K.M., individually and on behalf of E.R., ... Appellants,

v.

Uber Technologies, Inc., Rasier LLC, Andrew Ross Clark, an individual, Elizabeth Caracas, an individual, and DOES 3-25,..... Respondents.

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STATEMENT OF ISSUES ON APPEAL

This appeal challenges the dismissal of claims brought by Plaintiffs E.B. and E.R., two minor girls then twelve and thirteen years old ("Minor Plaintiffs"), and their parents, S.S., C.B., and K.M. ("Parent Plaintiffs"), arising from two Uber rides that carried the unaccompanied children across state lines to and from the home of an adult man who sexually assaulted E.B. The circuit court dismissed Plaintiffs' Third Amended Complaint ("TAC") under Rule 12(b)(6), SCRCP. This appeal presents the following issues:

1. Whether the circuit court erred in dismissing the negligence claims (Counts I and II) for lack of duty, where, under either North Carolina or South Carolina law, the TAC alleges facts satisfying the common-law definition of a common carrier, neither State's transportation network company statute exempts rideshare companies from common-carrier duties, and the scope of the common carrier's duties presented factual questions that could not be resolved against Minor Plaintiffs on the pleadings.
2. Whether the circuit court erred in dismissing Minor Plaintiffs' statutory sex-trafficking claim under S.C. Code Ann. § 16-3-2060 (2012) (Count IV) for failure to plead actual knowledge, where section 16-3-2060 itself contains no actual-knowledge requirement, the TAC also alleges Uber's liability based on its financial benefit from participation in a trafficking venture, and the pleaded circumstances permit a reasonable inference that each driver knew Minor Plaintiffs were being trafficked.
3. Whether the circuit court erred in applying North Carolina law to the common-law claims (Counts I, II, and V), where *lex loci delicti* requires a tort-specific determination of where each injury occurred, and the TAC alleges injuries in South Carolina and does not establish North Carolina as the exclusive locus of those torts.

4. Whether the circuit court erred in dismissing Parent Plaintiffs' claim for tortious interference with parental rights, where no precedential decision of either North Carolina or South Carolina rejects such a claim, North Carolina recognizes civil liability for knowingly carrying a minor away from a parent, and the TAC alleges that each driver knowingly transported the unaccompanied Minor Plaintiffs outside their parents' custody and without parental knowledge or consent.

STATEMENT OF THE CASE

I. Plaintiffs file this action, Uber removes, and the action is remanded.

On July 24, 2024, Minor Plaintiffs E.B. and E.R. and Parent Plaintiffs S.S. and C.B. (E.B.'s parents), and K.M. (E.R.'s mother) commenced this action in the Court of Common Pleas for York County against Defendants Uber Technologies, Inc. and Rasier LLC (collectively, "Uber") and the two Uber drivers, then unidentified and sued as Doe defendants. (Compl.) Plaintiffs asserted several claims alleging that two November 2023 Uber rides transported Minor Plaintiffs across state lines at the request of Fayvion Jarrod Williams ("Williams"), who sexually assaulted E.B., filmed the sexual assault, and later sent E.R. the sexual assault video. (*See generally* Compl.) On August 29, 2024, Uber removed the action to the United States District Court for the District of South Carolina based on diversity jurisdiction and there moved to dismiss the claims against it. (Ntc of Removal; 2025.6.13 Order Granting MTD FAC ("2025 Order") 3.)

On December 12, 2024, Plaintiffs filed the First Amended Complaint ("FAC") in federal court, which substituted Andrew Ross Clark ("Clark") and Elizabeth Caracas ("Caracas"), the drivers of the two rides, for the Doe defendants. (2025 Order 3.) The FAC alleged five causes of action: negligence (Count I); negligence in hiring, supervision, and retention (Count II); intentional infliction of emotional distress (Count III); violation of the Trafficking in Persons article of the

South Carolina Code, S.C. Code Ann. §§ 16-3-2010 et seq. (Count IV); and tortious interference with parental rights (Count V). (FAC ¶¶ 113–44.) Because Clark is a South Carolina resident, his joinder destroyed complete diversity, and the federal court remanded the action. (2025 Order 3; 2025.1.21 Remand Order.) The FAC was docketed in the circuit court on January 28, 2025. (FAC.)

II. The circuit court dismisses the First Amended Complaint without prejudice, and Plaintiffs file an amended complaint.

On February 7, 2025, Uber renewed the motion to dismiss that it had filed in federal court. (Uber Renewed MTD FAC; Uber Mem. ISO MTD FAC ("Uber MTD FAC Mem.").) Caracas and Clark answered the FAC, but neither driver moved to dismiss. (Caracas Answer FAC; Clark Answer FAC.) On February 18, 2025, Plaintiffs renewed their opposition to Uber's motion to dismiss, and Uber replied on April 14, 2025. (Pls. Opp. to MTD FAC ("MTD FAC Opp."); Uber Reply ISO MTD FAC.) The circuit court heard the motion on April 15, 2025. (2025.4.15 Hr'g Tr.)

By order filed June 13, 2025, the circuit court granted Uber's motion and dismissed all claims against Uber without prejudice. (2025 Order 12.) The circuit court held: North Carolina law governed the common-law claims; the negligence claims failed because Uber is not a common carrier and, even if it were, it had no duty to protect Minor Plaintiffs from Williams's criminal conduct or events that took place after the rides concluded; the intentional infliction of emotional distress claim failed because the emotional distress was caused by Williams, not Uber; the tortious interference with parental rights claim failed because neither South Carolina nor North Carolina recognizes such a cause of action; and the statutory sex-trafficking claim failed because Plaintiffs failed to allege that Uber or its drivers had actual knowledge Minor Plaintiffs were being trafficked. (*Id.* at 4–12.) The court expressly found it unnecessary to decide whether the drivers were Uber's employees or agents to resolve the motion. (*Id.* at 5.) The circuit court dismissed without prejudice (*id.* at 12), providing Plaintiffs with an opportunity to amend.

Plaintiffs filed a notice of intent to amend on June 24, 2025, and an amended complaint was entered on the record on July 15, 2025, but a clerical error in the e-filing process caused the wrong version of the pleading to be entered. (Pls. Mem. ISO Mot. to Correct Record or for Leave to Amend 1–3.) After Defendants moved to dismiss that pleading on July 29, 2025, Plaintiffs moved under Rules 60(a) and 15(a), SCRCP, to correct the record or for leave to amend on August 20, 2025. (*Id.* at 3; Pls. Mot. to Correct Record or for Leave to Amend.) By order filed August 21, 2025, the circuit court granted the motion, directed Plaintiffs to file the correct amended complaint labeled as the Third Amended Complaint, and denied the pending motions to dismiss without prejudice as moot. (Order Granting Mot. to Correct Record.)

On August 22, 2025, Plaintiffs filed the Third Amended Complaint ("TAC"), alleging the same five claims with additional factual allegations in support, including that Uber voluntarily undertook to provide safe transportation services. (*See generally* TAC.)

III. The circuit court dismisses the Third Amended Complaint with prejudice and Plaintiffs timely appeal.

On September 5, 2025, Clark filed a brief motion to dismiss the TAC under Rule 12(b)(6), SCRCP, that incorporated any arguments raised by Uber and Caracas. (Clark MTD TAC.) On September 8, 2025, Caracas filed a similarly brief motion to dismiss the TAC incorporating any arguments raised by Uber and Clark and filed an answer. (Caracas MTD TAC; Caracas Answer to TAC.) The same day, Uber filed a motion to dismiss the TAC. (Uber MTD TAC; Uber Mem. ISO MTD TAC.) On October 27, 2025, Clark filed a memorandum in support of his motion to dismiss. (Clark Mem. ISO MTD TAC.)

On October 29, 2025, Plaintiffs filed an opposition to each motion. (Pls' Opp. to Uber's MTD TAC ("MTD TAC Opp."); Pls' Opp. to Clark's MTD TAC; Pls' Opp. to Caracas's MTD TAC.) On December 1, 2025, Uber and Clark replied. (Uber Reply ISO MTD TAC; Clark Reply

ISO MTD TAC.) The circuit court decided the motions without a hearing.

By order filed April 3, 2026, the circuit court granted Uber's motion, joined by Clark and Caracas, and dismissed the TAC with prejudice for failure to state a claim. (Order Granting MTD TAC ("2026 Order").) The court incorporated the reasons stated in its June 13, 2025 order, concluding Plaintiffs' changes to their factual allegations did not change the court's legal analysis and holding the "reasoning set forth in this Court's previous order—and summarized above—is unchanged." (*Id.* at 5 (citing 2025 Order 4–12).) The circuit court also rejected Plaintiffs' request to reconsider its conclusion that Uber is not a common carrier in light of the July 2025 decision in the federal multidistrict litigation ("MDL") against Uber, which had denied Uber's motion to dismiss common-carrier claims under North Carolina law. (*Id.* at 5 (discussing *In re Uber Techs., Inc., Passenger Sexual Assault Litig.*, 2025 WL 1892390 (N.D. Cal. July 8, 2025).) The circuit court reasoned, among other things, that the MDL court did not consider North Carolina's transportation network company ("TNC") statute and that, in any event, the alleged harm here, unlike that in the MDL, occurred after the ride concluded. (2026 Order 5–7.) The circuit court also rejected Count I's newly added voluntary-undertaking theory on the grounds that North Carolina has not and would not adopt the doctrine and the TAC does not plead its elements. (*Id.* at 7–15.) The circuit court dismissed the TAC with prejudice because it had already provided Plaintiffs an opportunity to amend. (*Id.* at 15.)

Plaintiffs timely served their Notice of Appeal on all Defendants on May 1, 2026, and filed it with the circuit court on May 5, 2026. (Ntc of Appeal; Proof of Service.) Plaintiffs seek actual and punitive damages in amounts to be determined, and no judgment amount is involved on appeal.

STATEMENT OF FACTS

I. Uber's transportation system is used for human trafficking.

A. Uber operates and exercises complete control over its transportation system, including its drivers.

Uber is a rideshare company that partners with and employs automobile owners and drivers to provide on-demand transportation services to individuals. (TAC ¶ 20.)[1] Uber's mobile application, the Uber App, connects passengers seeking transportation with drivers who provide it in exchange for compensation. (*Id.* ¶ 21.) At the conclusion of each ride, Uber collects the entire fare from the passenger, retains a portion, and remits a percentage to the driver. (TAC ¶ 23.) Uber designs and operates every component of this transportation system. (*Id.* ¶¶ 24, 29.)

Uber decides which passengers and drivers may have access to the Uber App, and it alone chooses whether and how to screen drivers. (TAC ¶¶ 25–27.) Uber also selects which driver will be paired with which passenger. (*Id.* ¶ 29.) It sets the pick-up and drop-off locations and monitors the entirety of a driver's actions while using the Uber App, including the driver's location and speed through GPS data. (*Id.* ¶¶ 30, 34.) Passengers and drivers alike are subject to Uber's policies and procedures, which Uber has the sole authority to enforce, including by deactivating a driver's account. (*Id.* ¶ 28.) Uber's drivers are largely nonprofessional, untrained individuals, and no preparation or up-front investment is required to work for Uber. (*Id.* ¶ 33.)

B. The FBI and U.S. Senators have warned that rideshare services, including Uber, are used to facilitate human trafficking.

Human trafficking exploits approximately 27.6 million people around the world at any given moment, and children make up 27 percent of victims. (TAC ¶ 45.) Studies have found that

[1] Because this appeal comes before the Court on review of an order granting a motion to dismiss, the following facts are drawn from the TAC.

rideshare platforms, like Uber, have been increasingly used for the transportation of human trafficking victims. (*Id.* ¶¶ 46–47.) In October 2022, more than a year before the events at issue here, the Federal Bureau of Investigation ("FBI") issued a public service announcement warning rideshare companies of the use of rideshare services to facilitate human trafficking. (*Id.* ¶ 84.) Uber's own 2022 safety report likewise recognized the risks presented by human trafficking. (*Id.* ¶ 90.) And in June 2023, a bipartisan group of U.S. Senators publicly warned Uber about the prevalent use of its platform to facilitate human trafficking. (*Id.* ¶ 89.) In the year following the FBI's warning, Uber publicly stated its commitment to combating trafficking but changed none of the policies described below. (*Id.* ¶ 85.) At the time of the rides at issue, Uber had actual knowledge that its service was frequently used to traffic minors. (*Id.* ¶ 83.)

C. Uber prohibits unaccompanied minors from riding but its policies penalize drivers who cancel their rides.

Uber focuses its marketing heavily on safety and promises the public that its business was "built with safety in mind." (TAC ¶ 36.) As part of its promises to transport passengers safely, Uber maintains "Community Guidelines" for its drivers. (*Id.* ¶ 37.) The Community Guidelines include a minimum-age policy stating that children under the age of eighteen are not permitted to ride in an Uber unless accompanied by someone 18 or older and instructs drivers to decline the ride if they suspect the passenger is under 18 or request identification from the passenger if unsure. (*Id.*) The policy's efficacy hinges entirely on driver enforcement. (*Id.* ¶ 43.) Yet Uber does not train its drivers on how to remove a minor from a vehicle or how to verify the age of an apparent minor who lacks an ID or license, as many minors do. (*Id.* ¶ 39.) Uber's sole educational resource on human trafficking is a nineteen-minute video released in 2021 of which mere seconds are devoted to trafficking as it relates to rideshare services, and drivers are not required to watch it. (*Id.* ¶¶ 92–93.)

Uber's policies and practices also affirmatively deter drivers from canceling rides when Uber pairs them with minor passengers. A driver who follows the Community Guidelines and cancels immediately upon discovering an unaccompanied minor receives no compensation for the drive to the pick-up location and a driver who waits five minutes after arriving and then cancels earns only a five-dollar cancellation fee while a driver who completes the ride is fully compensated. (TAC ¶ 40.) Every cancellation, including one made due to safety concerns, also increases the driver's cancellation rate, which lowers overall driver rating, affects eligibility for incentives, and can lead to deactivation. (*Id.* ¶ 44.)[2]

II. Williams, an adult man who groomed E.B. online, uses Uber's transportation system to traffic E.B. and E.R., ages 12 and 13.

In late 2023, Plaintiffs E.B. and E.R. were twelve and thirteen years old, respectively, and resided in South Carolina. (TAC ¶¶ 1–2, 63.) Fayvion Jarrod Williams, an adult resident of North Carolina, sent E.B. a Facebook friend request under the profile name "Tops," and he began messaging her. (*Id.* ¶¶ 54, 56.) Several weeks later, on November 24, 2023, Williams asked E.B. whether she and E.R. would be willing to come to his home, and it was clear from his messages he wanted Minor Plaintiffs there for sexual purposes. (*Id.* ¶¶ 56–58.) But, as a twelve-year-old child who had never had sex, E.B. did not grasp the magnitude of Williams's intentions. (*Id.* ¶ 58.) She was enamored by the attention Williams gave her, saw their chats as a game, and wanted to be agreeable to continue the connection without realizing that doing so might lead Williams to expect a physical encounter she was unprepared to fulfill. (*Id.*)

The following afternoon, Williams told E.B. over Facebook Messenger that he would send

[2] In 2023, Uber rolled out "Uber Teen" profiles in certain cities, allowing minors between the ages of thirteen and seventeen to ride without a parent or guardian present. (*Id.* ¶ 86.) Minor Plaintiffs were not using Uber Teen, the rides at issue were not Uber Teen rides, and E.B. would have been too young for Uber Teen in any case. (*Id.* ¶¶ 86, 88.)

an Uber to pick up Minor Plaintiffs, instructed her to walk to an address down the street from E.R.'s mother's home, and told her to tell the Uber driver that he was their dad. (*Id.* ¶ 59.) Minor Plaintiffs left the house after telling the adult at home that they were going to the park, and E.R. left her phone behind on Williams's instruction because her mother used it to track her location. (*Id.* ¶ 60.)

A. Defendant Clark accepts the ride Williams orders and, after E.R. tells him Minor Plaintiffs are underage, drives them from South Carolina to the drop-off location Williams chose in North Carolina.

Minor Plaintiffs found the Uber vehicle Williams had described waiting near an empty park. (TAC ¶ 60.) The driver, Defendant Clark, did not question Minor Plaintiffs about how old they were, even though they were noticeably underage based on their still-childlike appearances. (*Id.* ¶¶ 61, 63.) E.R. was scared and did not want to go to Williams's home, so she voluntarily told Clark that she and E.B. were only eleven or twelve years old, deliberately understating their ages in an attempt to get him to cancel the ride and refuse to drive them. (*Id.* ¶ 61.) Nevertheless, Clark ignored the comment and allowed the girls to get into the car. (*Id*.) Clark eventually asked the girls whether "Fayvion" was their dad. (*Id.* ¶ 62.) Neither girl verbally responded—both were incredibly nervous—and E.B. slightly nodded. (*Id.*) E.R. was visibly nervous throughout the ride and whispered to E.B. about asking the driver to stop so they could turn around and go home, but Clark never inquired about the purpose of the trip or their nervous demeanor. (*Id.* ¶ 64.)

Clark drove the unaccompanied Minor Plaintiffs across state lines to the destination Williams requested, around a full hour away from the pick-up location. (TAC ¶ 63.) When Minor Plaintiffs arrived at the drop-off location, Clark said nothing and did not wait for their "father" to come verify that they were in safekeeping. (*Id.* ¶ 66.) Had Clark watched the girls exit the car, he would have seen an adult man who was surely not old enough to have middle-school-aged children

of his own waving them over from a few houses down. (*Id.*)

B. Williams gives Minor Plaintiffs marijuana, sexually assaults E.B., records the assault, and ultimately pleads guilty to felony sex offenses.

Williams walked Minor Plaintiffs around the side of his home to the backyard, explaining he did not want them caught on cameras at the front of the house. (TAC ¶ 67.) In the backyard, Williams took out a marijuana cigarette and told Minor Plaintiffs to smoke, and they followed his instructions. (*Id.* ¶ 68.) Williams then brought Minor Plaintiffs inside and propositioned them to have sex. (*Id.* ¶ 70.) E.R. told Williams that she did not want to do anything with him and that she was on her period, so Williams turned his focus to E.B. (*Id.*) Williams directed E.B. to go to his room so they could have sexual intercourse. (*Id.* ¶ 71.) E.B. did not want to engage in any sexual activities, but she was scared to tell Williams no because she thought he might hurt her if she declined. (*Id.*) Williams had previously sent her a video that clearly depicted a gun on his bathroom counter and, while in the house, he had been repeatedly touching his waistband as if he had a gun. (*Id.*) Feeling like she had no other option, E.B. followed Williams into his room, where he vaginally raped her. (*Id.* ¶ 72.) Williams video-recorded the rape, and E.B.'s tear-stained face is clearly visible on the recording. (*Id.*) Before that day, E.B. had been a virgin. (*Id.*)

Williams was ultimately criminally charged in North Carolina, and on July 2, 2024, he pleaded guilty to two felony sex offenses. (*Id.* ¶ 82.)

C. Defendant Caracas accepts Williams's second ride request, returns Minor Plaintiffs to a South Carolina park with no parent present initially, and drives away as E.R.'s mother begs for information.

After the rape, Williams requested another Uber ride and told Minor Plaintiffs to walk down the street to meet the driver, again at a random location. (TAC ¶ 73.) The driver, Defendant Caracas, asked only whether Minor Plaintiffs had requested an Uber ride and they said they had. (*Id.* ¶ 74.) Though Minor Plaintiffs were clearly unaccompanied children, Caracas never inquired

how old they were, who had ordered the Uber for them, or where they were headed. (*Id.* ¶ 75.) During the hour-long drive back across state lines, E.B. quietly told E.R. what had happened in Williams's room, recounting the pain she was in and Williams's attempt to anally rape her, and Minor Plaintiffs discussed what they would tell their parents when they got home. (*Id.* ¶ 76.) Caracas still did not say a word or inquire about their safety. (*Id.* ¶¶ 75–76.)

Williams had programmed the ride to drop Minor Plaintiffs at a park down the street from E.R.'s home. (TAC ¶ 77.) No parents were waiting at the park, but Caracas pulled up and motioned for Minor Plaintiffs to get out. (*Id.*) E.R.'s mother, who had been driving around the neighborhood looking for Minor Plaintiffs, saw them exit the Uber, ran up to the vehicle, and demanded to know where Caracas had taken them. (*Id.* ¶ 78.) Caracas refused to say where she had picked up Minor Plaintiffs, offered only words to the effect that some guy named Fayvion paid for the ride, briefly showed E.R.'s mother the profile of the account that requested the ride, and departed abruptly while E.R.'s mother was still begging for information. (*Id.*) A strong odor of marijuana emanated from Minor Plaintiffs and the vehicle. (*Id.* ¶ 79.) E.R.'s mother took Minor Plaintiffs home and immediately called E.B.'s mother and father, but Minor Plaintiffs, scared of getting in more trouble, would not share what had happened at Williams's home. (*Id.*)

D. Minor Plaintiffs and their parents suffer lasting emotional and physical injuries.

The following day, Williams sent E.R. a message on Facebook Messenger containing the video of the rape. (TAC ¶ 80.) E.R. was terrified, and she decided to show her mother the video and explain what had happened. (*Id.*) Her mother insisted that E.R. forward the video to E.B.'s mother so that E.B. could receive appropriate medical care and the authorities could be alerted. (*Id.*) E.B.'s parents took her to the hospital, where she was given an emergency contraceptive pill. (*Id.* ¶ 81.) The families reported the incident to law enforcement in both South Carolina and North

Carolina, and Williams was charged and pleaded guilty in North Carolina. (*Id.* ¶ 82.)

E.B. has suffered anxiety, insomnia, depression, self-harm, vaginal pain, substantial emotional trauma, anger issues, intense fear, self-isolation, and disordered eating, some or all of which may be permanent. (TAC ¶ 101.) She lost her virginity in an act of violence, endured the further traumas of taking an emergency contraceptive and being questioned by the police, and must live with the fact that the recording of her assault was distributed and could surface on the internet at any moment. (*Id.*) She remains unable to participate in and enjoy school, her relationships with friends, and her family life. (*Id.* ¶ 102.) E.R. has suffered anxiety, weight gain, overwhelming guilt, extreme emotional distress, isolation, emotional trauma, intense fear, disordered eating, and difficulty expressing her emotions, and her distress was worsened when she received the video of the rape. (*Id.* ¶ 104.) She also remains unable to participate in and enjoy school, relationships with friends, and socializing with others. (*Id.* ¶ 105.)

E.B.'s parents have suffered and continue to suffer substantial emotional and physical distress, including a profound loss of enjoyment of family life and of the ability to parent without fear and constant distress. (TAC ¶ 107.) To supervise E.B. full-time, her father has stopped working during the week, and her mother has significantly reduced her working hours, gravely affecting the family's finances. (*Id.* ¶ 108.) E.R.'s mother lives with crippling guilt knowing that Minor Plaintiffs were taken while playing at her home. (*Id.* ¶ 110.) She has suffered horrific nightmares nearly every night, insomnia, anxiety, and debilitating sadness, and she quit her job for a less lucrative one that allows her to work from home so that she can supervise E.R. (*Id.* ¶ 111.)

STANDARD OF REVIEW

In reviewing the dismissal of an action pursuant to Rule 12(b)(6), SCRCP, this Court applies the same standard of review as the trial court. *Doe v. Bishop of Charleston*, 407 S.C. 128, 134, 754 S.E.2d 494, 497 (2014). Thus, "[i]f the facts alleged and inferences reasonably deducible from the allegations set forth in the complaint, viewed in the light most favorable to the plaintiff, entitle him to relief on any theory, dismissal under Rule 12(b)(6) is improper." *Id.* "[T]he pleadings must be construed liberally, and all well pled facts must be presumed true" and "[q]uestions of law are reviewed *de novo*." *Id.* "The complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action." *Id.*

ARGUMENT

This case is not about whether Williams bears criminal responsibility for the crimes he committed. He does. It is about whether Defendants may also be held civilly liable, under the common law and South Carolina's trafficking statute, for their own conduct in twice transporting two unaccompanied children across state lines under circumstances that, as alleged, made the danger to those children apparent. The circuit court's analysis returned repeatedly to the harm Williams inflicted and, in doing so, treated Uber's and its drivers' conduct in enabling that transportation as legally insignificant. That error was compounded by the procedural posture. At the Rule 12(b)(6) stage, Plaintiffs needed only to allege facts and reasonable inferences that, viewed in their favor, could support relief on any theory. Instead, the circuit court demanded proof and resolved disputed inferences against Plaintiffs.

Those errors affected each claim at issue in this appeal. *First*, the circuit court erred in dismissing the negligence claims (Counts I and II) because the TAC plausibly alleges that Uber is a common carrier and that Defendants breached duties owed during the transportation and

discharge of Minor Plaintiffs. *Second*, the circuit court improperly dismissed the South Carolina statutory trafficking claim (Count IV) by imposing an actual-knowledge requirement not found in the statute's civil-remedy provision and by resolving reasonable inferences concerning the drivers' knowledge against Plaintiffs. *Third*, the circuit court erred in applying North Carolina law categorically to the common-law claims without separately examining where the injuries underlying each claim occurred. *Fourth*, the circuit court improperly dismissed Parent Plaintiffs' claim for interference with parental rights (Count V) despite North Carolina authority recognizing civil liability for the knowing abduction of a minor and the absence of any precedential South Carolina decision rejecting the claim.

Plaintiffs respectfully ask this Court to reverse the dismissal of Counts I, II, IV, and V and remand for further proceedings. The Court should also hold that South Carolina law governs the common-law claims or, at minimum, vacate the choice-of-law ruling so that the issue may be reconsidered under the proper standard and on a developed record.

I. The circuit court erred in dismissing Counts I and II because its conclusions that Uber was not a common carrier and that any carrier duty did not encompass the alleged harm are wrong under both North Carolina and South Carolina law (Issue 1).

Although the general rule under both States' laws is that there is no duty to protect others against harm from third persons, there is an exception when a special relationship exists between the parties. *Doe ex rel. Doe v. Wal-Mart Stores, Inc.*, 393 S.C. 240, 246–47, 711 S.E.2d 908, 911–12 (2011); *King v. Durham Cnty. Mental Health Developmental Disabilities & Substance Abuse Auth.*, 113 N.C. App. 341, 345, 439 S.E.2d 771, 774 (1994). One such special relationship is that which exists between common carrier and passengers, and both States have long required common carriers to exercise the highest degree of care for their passengers' safety, including reasonable protection from foreseeable harm at the hands of third parties. That duty supplies the legal duty

element for both Count I, which alleges that Defendants breached duties in accepting, transporting, and discharging the unaccompanied Minor Plaintiffs (TAC ¶¶ 113–20), and Count II, which alleges that Uber negligently trained and supervised the drivers who performed that transportation (*id.* ¶¶ 121–24).

Despite the TAC's well-pleaded allegations supporting both Uber's common-carrier status and its breach, the circuit court dismissed the negligence claims asserted in Counts I and II together for lack of duty. The circuit court held Uber was not a common carrier under North Carolina law and thus owed Minor Plaintiffs no duty of care to protect them from the intentional misconduct of a third party. (2025 Order 5–8; 2026 Order 5–7.) The circuit court also held that even if Uber were a common carrier, it did not breach any duty of care because, in its view, a common carrier's duty protects the passenger only while in transit and Minor Plaintiffs had completed what the circuit court characterized as an uneventful ride and allegedly alighted safely. (2025 Order 7; 2026 Order 7.) Both conclusions rest on the circuit court improperly resolving questions of fact against Minor Plaintiffs and misapplying North Carolina and South Carolina law.

A. The TAC plausibly alleges that Uber is a common carrier under both States' laws.

In dismissing the TAC, the circuit court declined to follow an earlier ruling from the federal MDL against Uber, faulting the MDL court for having "assumed without any analysis" that Uber is a common carrier under North Carolina law. (2026 Order 5 (discussing *In re Uber Techs., Inc., Passenger Sexual Assault Litig.*, 2025 WL 1892390 (N.D. Cal. July 8, 2025)).) One week after the circuit court dismissed the TAC, the MDL court supplied that analysis: on a developed summary-judgment record, it issued a new decision holding that "Uber clearly qualifies as a common carrier" under North Carolina law notwithstanding its TNC statute. *In re Uber Techs., Inc., Passenger Sexual Assault Litig.*, No. 3:24-CV-04900, 2026 WL 974509, at *1 (N.D. Cal. Apr. 10, 2026)

("*2026 Uber MDL Order*"). The same conclusion follows more readily at the pleading stage, where the court is required to accept the well-pleaded allegations as true and construe reasonable inferences in Plaintiffs' favor, because the TAC alleges the facts both States' common-law common carrier definitions require. Neither State's TNC statute alters that result, because neither exempts rideshare companies from common-carrier duties—an exemption other legislatures enacted expressly when they desired that outcome.

1. The TAC alleges facts satisfying both States' common-law definitions of a common carrier.

North Carolina defines a common carrier as one that holds itself out to the public as engaged in the business of transporting persons from place to place for compensation and offers its services generally to those who choose to employ it. *Jackson v. Stancil*, 253 N.C. 291, 300, 116 S.E.2d 817, 824 (1960). Its "distinctive characteristic" is undertaking as a business to carry for all people indifferently. *Id.* (quoting *State ex rel. Utilities Commission v. Gulf-Atlantic Towing Corp.*, 251 N.C. 105, 109, 110 S.E.2d 886, 889 (1959)). The "crucial test" is whether the operator "holds himself out as such, either expressly or by a course of conduct," as one who "will carry for hire on a uniform tariff all persons applying" so long as it has room. *Id.* at 302 (quoting Rowland W. Fixel, *Aviation*, 3d Ed. (1948) s 372, p. 261). A fixed route, regular schedule, or unlimited capacity is not required. *Id.* at 301, 116 S.E.2d at 824. Moreover, the "carrier's descriptive label is not determinative; it is not what the carrier declares himself to be but is what the facts and circumstances show him to be." *Id.*

South Carolina applies the same basic test. A common carrier is "one who undertakes for hire to transport from place to place the property of others who may choose to employ him, offering such services to the public generally, and neither the maintenance of a station nor the issuance of a bill of lading is required." *Huckabee Transp. Corp. v. W. Assur. Co. of Toronto, Canada*, 238

S.C. 565, 571, 121 S.E.2d 105, 108 (1961). "The basic test of a common carrier is whether the carrier offers to carry all alike for hire." *Williams v. Addison*, 314 S.C. 35, 40 n.3, 443 S.E.2d 582, 585 (Ct. App. 1994) (quoting 5 S.C. Jur. Carriers § 3 at 105–106 (1991)). South Carolina similarly looks to the operator's method of operation rather than its label. *See Bovain v. Canal Ins.*, 383 S.C. 100, 109, 678 S.E.2d 422, 427 (2009) ("Thus, it has been said that a carrier's status is determined by what it does rather than by what it says it does." (quoting 13 Am. Jur. 2d Carriers § 5 (2000))).

Under both States' laws, while what constitutes a common carrier is a question of law, whether the carrier is acting as a common carrier is a question of fact. *Jackson*, 253 N.C. at 300, 116 S.E.2d at 824; *Avinger v. S.C. Ry. Co.*, 29 S.C. 265, 7 S.E. 493, 497–98 (1888) (whether a railway company was acting as a common carrier on a specific route was a question of fact for the jury). If the facts are not in dispute, then it becomes a question of law for the court, but where the facts are in conflict, it is a question for the jury. *Jackson*, 253 N.C. at 300–01, 116 S.E.2d at 824–25. At the pleading stage there is no evidence to weigh. The court accepts the complaint's well-pleaded allegations as true and asks only whether they are sufficient to state a claim. Here, the TAC alleges sufficient facts to state a claim against Uber as a common carrier.

The TAC alleges that Uber operates an on-demand transportation system available to the public through the Uber App. (TAC ¶¶ 20–21.) The Uber App connects "people seeking transportation" with drivers who "provide transportation in exchange for compensation," and "[a]nyone from the public may download" it to request a ride. (*Id.* ¶¶ 21–22.) Passengers "pay Uber a fee in exchange for safe transportation to their destination" and Uber determines the fares passengers pay, including additional fees, when to implement dynamic pricing, and when to make promotional offers. (*Id.* ¶¶ 22, 30.) At the end of each ride, Uber "receives an online payment from the passenger for the entirety of the fare," retains a portion, and then remits a percentage to the

driver. (*Id.* ¶ 23.)

Uber is the designer and operator of its transportation system and exercises complete control over its drivers. (TAC ¶¶ 24–35.) "It alone selects which driver will be paired with which rider, and the basis on which that match will occur." (*Id.* ¶ 29.) Uber also controls the transportation experience, including by setting the pick-up and drop-off locations, determining the markings and tools by which the driver and passenger will recognize one another, collecting GPS data from drivers and passengers, and requiring drivers and passengers to communicate through the Uber App. (*Id.* ¶ 30.) Uber also handles and decides all complaints, issues, and grievances regarding an Uber ride. (*Id.* ¶ 31.) Uber also exercises significant control over its drivers, including providing them with Uber-branded decals, requiring they comply with its Community Guidelines and policies regarding vehicle maintenance, and monitoring the entirety of a driver's actions while using the Uber App. (*Id.* ¶ 34.) In addition to the fact that many of these aspects of how Uber controls its transportation system are public facing, it also actively advertises its purported commitment to providing safe rides. (*Id.* ¶ 36.) These allegations describe a company that holds itself out as providing transportation to the public for compensation, not a passive publisher or neutral bulletin board. They therefore satisfy both States' common-law definitions at the pleading stage.

In holding that "Uber clearly qualifies as a common carrier," the MDL court reasoned that the "undisputed factual record in this litigation demonstrates that Uber holds itself out to the public as a transportation provider through its ubiquitous advertising as well as the control it exerts over Uber rides and the safety of its passengers." *2026 Uber MDL Order*, 2026 WL 974509, at *1. The court also rejected Uber's arguments that it could not qualify as a common carrier because ride pricing varies and it maintains the ability to deactivate passenger accounts. *Id.* The court explained

that variable ride pricing still yields a uniform tariff because Uber's terms are uniformly available to all on the same terms rather than individually bargained, and that Uber carries all people indifferently even though it may occasionally bar unruly riders, as any bus driver may. *Id.* Other courts have similarly refused to let rideshare companies escape carrier status under various states' laws. *See*, *e.g.*, *Barnes v. State Farm Fire & Cas. Co.*, 373 Ga. App. 331, 338–40, 907 S.E.2d 305, 311–13 (2024), *reconsideration denied* (Oct. 28, 2024), *cert. denied* (July 22, 2025) (holding the Georgia Motor Carrier Act's broad "motor carrier" definition includes rideshare network services like Lyft, which the legislature never expressly exempted, unlike certain taxicabs and limousines); *Doe v. Uber Techs., Inc.*, No. CV JKB-20-0370, 2021 WL 2382837, at *5 & n.5 (D. Md. June 9, 2021) (noting the Maryland Public Service Commission's "jurisdiction to issue orders affecting Uber appears to confirm that Uber is a common carrier under Maryland law" and that "Uber offers no plausible reason to believe that it is not a common carrier").

2. Neither State's TNC statute displaces common-law carrier duties.

The circuit court nevertheless held that Uber could not be a common carrier because North Carolina separately regulates Uber as a TNC, Uber connects riders with drivers rather than physically operating the vehicles, and TNC drivers are presumptively independent contractors. (2025 Order 8; 2026 Order 5–7.) Those regulatory classifications do not answer the distinct common-law question.

North Carolina's TNC statute defines TNCs and TNC drivers and creates a rebuttable presumption concerning the driver's employment status. N.C. Gen. Stat. §§ 20-280.1(4), (6), 20-280.8. It does not state that a TNC is exempt from common-law carrier duties. States that have actually chosen to exempt TNCs from common-carrier liability have done so explicitly. *See, e.g.,* R.I. Gen. Laws § 39-14.2-2 ("TNCs or TNC drivers are not common carriers, as defined in this

title . . . ."); Fla. Stat. Ann. § 627.748(2) ("A TNC or TNC driver is not a common carrier, contract carrier, or motor carrier and does not provide taxicab service."). The MDL court concluded that North Carolina's TNC statute did not preclude finding that Uber was also a common carrier. The court reasoned that "[h]ad the North Carolina legislature so desired, it could have modeled its TNC statute after states like Florida and Texas that explicitly exempted Uber and other rideshare providers from common carrier liability." *2026 Uber MDL Order*, 2026 WL 974509, at *1. "But the legislature did not do so, and therefore Uber cannot use its strained explanation of the TNC regulatory environment to manufacture a statutory limitation on Uber's common law tort liability where one does not actually exist." *Id.* The MDL court grounded that conclusion in North Carolina's own rules of construction. *Id.* (citing *Arter v. Orange Cnty.*, 386 N.C. 352, 354–55, 904 S.E.2d 715, 717 (2024)).[3] Under North Carolina law, when "statutes are in derogation of common law principles, they must be strictly construed," which requires limiting application of the statute to its express terms. *Mid-Am. Apartments, L.P. v. Block At Church St. Owners Ass'n, Inc.*, 257 N.C. App. 83, 93, 809 S.E.2d 22, 29 (2017) (quoting *Happ v. Creek Pointe Homeowner's Ass'n,* 215 N.C. App. 96, 109, 717 S.E.2d 401, 409 (2011)); *see also Arter*, 386 N.C. at 355, 904 S.E.2d at 717 (holding "because zoning laws 'are in derogation of common law rights,' they 'cannot be construed to include or exclude by implication that which is not clearly their express terms.'" (quoting *Yancey v. Heafner*, 268 N.C. 263, 266, 150 S.E.2d 440 (1966))).

Other courts have reached the same conclusion where the state's TNC statute also did not expressly exempt TNCs from common carrier liability. *See*, *e.g.*, *Hoffman v. Silverio-Delrosar*, No. 20-CV-13291, 2021 WL 2434064, at *4 (D.N.J. June 15, 2021) (concluding that because the

[3] The MDL court distinguished the circuit court's 2026 dismissal order in this case, treating its TNC-statute discussion as dicta because the circuit court held Plaintiffs' claims failed even if Uber were a common carrier. *Id.* at *1.

New Jersey TNC statute did not address the common carrier duty or tort liability for companies that provide prearranged rides, it "does not seem to have an impact on the common law common carrier duty"); *Murray v. Uber Technologies, Inc.*, 486 F. Supp. 3d 468, 475 (D. Mass. 2020) (holding plaintiff plausibly alleged that Uber, notwithstanding the TNC statute, "should be held to the common carrier standard of liability because it operates in substantially the same manner as taxi cab companies"). And the decisions holding that TNCs are exempt from common carrier duties confirm the divide, because such decisions rest on an express statutory disclaimer that neither State enacted. *See*, *e.g.*, *Doe v. Lyft, Inc.*, 2020 IL App (1st) 191328, 176 N.E.3d 863, ¶ 21 (concluding that because Illinois's TNC statute expressly stated TNCs are not common carriers, Lyft was exempt from common-carrier standards of liability, while acknowledging that "[a]ccepting these well-pleaded allegations as true, we cannot say that Lyft and other TNCs would not be deemed common carriers under the traditional definition of that term").[4]

The circuit court's reliance on North Carolina's common carrier statutory framework provided in Chapter 62 is misplaced. Although Chapter 62 uses a similar definition of common carrier, *see* N.C. Gen. Stat. § 62-3(6), Minor Plaintiffs' negligence claim is a common-law tort claim distinct from the statutory framework and Chapter 62's definitions apply only "[a]s used in this Chapter." N.C. Gen. Stat. § 62-3. Contrary to the circuit court's claim (2026 Order 6), *Beavers v. Federal Insurance Co.*, 113 N.C. App. 254, 256–57, 437 S.E.2d 881, 882–83 (1994) does not stand for the proposition that courts apply North Carolina's statutory and common-law tests for common carrier status interchangeably. Because the insurance contract in *Beavers* did not define

[4] The Illinois provision on which *Doe v. Lyft* rested has since lapsed by its own terms, becoming "inoperative on and after January 1, 2024." 625 ILCS 57/25(e); *see Barnes*, 373 Ga. App. at 340 n.13, 907 S.E.2d at 313 n.13 (contrasting Georgia's statutory silence with the Illinois and New York statutes that expressly declared TNCs not to be common carriers, and noting the Illinois provision's expiration).

"common carrier," the court consulted the statutory and common-law definitions as similar interpretive aids in interpreting the contract. *Id.* It did not adopt the statute as the measure of common-law tort duties. *Id.*

The circuit court's characterization of Uber as simply connecting users with drivers based on the TNC statute's definition of a TNC in concluding that Uber could not be a common carrier as a matter of law also fails. As noted above, the TAC alleges that Uber controls every aspect of how the transportation system operates, such as by controlling ride booking, driver-passenger pairing, dispatching, fare-setting, payment processing, vehicle quality, ride monitoring, and complaint responses. Indeed, many courts have rejected Uber's attempts to distance itself from the transportation services it provides. *See People v. Uber Techs., Inc.*, 56 Cal. App. 5th 266, 292, 270 Cal. Rptr. 3d 290, 311 (2020), *as modified on denial of reh'g* (Nov. 20, 2020) ("A number of cases have considered contentions that ride-sharing companies such as Lyft and Uber are in the business solely of creating technological platforms, not of transporting passengers, and have dismissed them out of hand."); *see also Hoffman*, 2021 WL 2434064, at *5 (rejecting Uber's argument it was merely a technology company connecting riders with transportation providers and concluding plaintiff sufficiently alleged Uber is a common carrier for purposes of surviving a motion to dismiss because it employs drivers who transport passengers for a fee).

Nor does the fact that individual drivers own and operate the vehicles refute finding that Uber is a common carrier. The common-law definition asks whether the operator holds itself out as a transportation service to the public and undertakes to provide it. *Jackson*, 253 N.C. at 300–02, 116 S.E.2d at 824–25. Neither that definition nor the factors identified as important to carrier status—an established place of business, regular operation as a business, and a fixed schedule of charges—makes ownership of the vehicles a prerequisite. *Id.* at 301, 116 S.E.2d at 824–25. And,

to the extent control over the vehicles is relevant, the TAC alleges that Uber exercises control over vehicle maintenance through its policies. (TAC ¶ 34.) Further, the circuit court's reliance on *Patterson v. Duke Power Co.*, 226 N.C. 22, 24, 36 S.E.2d 713, 714 (1946), (2026 Order 6) is misplaced. *Patterson* does not address what makes an entity a common carrier because defendant's status as a carrier was not in question. The question in *Patterson* was one of passenger status: whether a rider transferring between buses remained a passenger, entitled to the carrier's high degree of care, while crossing a public street between them. *Patterson,* 226 N.C. at 24–26, 36 S.E.2d at 714–16. The passage the circuit court quoted describes the control railroads exercise over their stations, platforms, and yards, explaining why railroad passengers retain passenger status during transfers. *Id.* at 24, 36 S.E.3d at 714. And *Patterson* expressly declined to extend that reasoning to urban bus companies. *Id.* at 24–26, 36 S.E.2d at 714–16. The circuit court thus mistook a description of railroad operations, offered to resolve a passenger-status question, for a definition of common carrier status.

South Carolina's TNC statute supplies no better basis for the circuit court's ruling because, like North Carolina's, it does not expressly exempt TNCs from common carrier liability. *See* S.C. Code Ann. § 58-23-1610, *et seq.* (2026). The circuit court concluded South Carolina's TNC statute precluded treating Uber as a common carrier because it states "TNC's and TNC drivers are governed exclusively by this article and by any regulations promulgated by the Office of Regulatory Staff consistent with this article." (2025 Order 8 n.4 (quoting S.C. Code Ann. § 58-23-1710(A) (2015)).) But that is a regulatory-preemption provision about who regulates TNCs. Section 58-23-1710's other provisions specify that TNC drivers remain subject to local ordinances outside the statute's scope, such as parking and traffic regulations, and prohibit political subdivisions from taxing TNCs or TNC drivers. *See* S.C. Code Ann. § 58-23-1710(A), (B) (2015)

. It does not state that TNCs are exempt from common-law carrier liability or immunized from ordinary tort principles. For example, even a different state's TNC statute that expressly exempted TNCs from "common carrier requirements" was held to reach only specified rate and regulatory requirements, without conclusively resolving whether Uber owed common-carrier duties in tort. *Murray*, 486 F. Supp. 3d at 475–76 (explaining that the Massachusetts TNC statute's express exemption of TNCs from the Department of Public Utilities' "rate or common carrier requirements," "simply clarifie[d] that Uber is not bound by certain DPU rate and regulatory requirements," far from "resolving the issue of what standard applies to Uber's tort liability").

The existence of specialized TNC regulation therefore does not establish, as a matter of law, that Uber cannot also satisfy both States' common-law definitions of a common carrier.

B. Under both States' laws, Uber's heightened duty of care owed as a common carrier applied from the start of the ride through safe discharge, including reasonable protection from foreseeable third-party harm.

A common carrier owes its passengers the highest degree of care. Under North Carolina law, "a common carrier owes its passengers the highest degree of care for their safety so far as is consistent with the practical operation and conduct of its business." *Jackson*, 253 N.C. at 297, 116 S.E.2d at 822. South Carolina likewise requires a common carrier "to exercise the highest degree of care for [its passengers'] safety that is consistent with the practical operation and conduct of its business so long as the relationship of passenger and carrier exists; and a failure to do so is negligence." *Thomas v. Atl. Greyhound Corp.*, 204 S.C. 247, 29 S.E.2d 196, 198 (1944).

That duty does not end merely because a passenger has physically stepped out of the vehicle. Under North Carolina law, the "carrier's legal duty to its passenger continues until such time as it affords its passenger an opportunity to alight safely from its conveyance to a place of safety." *Harris v. Atl. Greyhound Corp.*, 243 N.C. 346, 350, 90 S.E.2d 710, 713 (1956). The

passenger is entitled to "'a safe landing', which refers to the act of the passenger in alighting from the carrier's conveyance, and to 'a landing in safety', which refers to the condition in which he finds himself immediately after he has alighted from the carrier's conveyance." *Id.* (quoting *Loggins v. S. Pub. Utilities Co.*, 181 N.C. 221, 106 S.E. 822, 823 (1921)). Whether the passenger was discharged at a place of safety depends on the surrounding circumstances and, where those circumstances are in dispute, is a question for the jury. *Id.* at 350–52, 90 S.E.2d at 713–15 (explaining that if the driver discharged the passenger near the edge of a roadside ditch, "it would be for the jury to say whether the bus driver failed to exercise due care to stop at a place where plaintiff might alight safely from the bus to a place of safety or to warn plaintiff of a danger of which the bus driver was aware, or of which he should have been aware had he exercised due care"). The duty owed also accounts for the passenger's youth and vulnerability. *White v. Chappell*, 219 N.C. 652, 662, 14 S.E.2d 843, 851 (1941), recognized that a carrier may ordinarily rely on an accompanying parent to protect a child, but not when its employees know or reasonably should know that the child is or will be exposed to danger through the carrier's acts or negligence.

South Carolina follows the same safe-discharge principle and considers the duty owed in light of the passenger's characteristics. The carrier-passenger relationship ordinarily ends only when the passenger steps from the vehicle into a reasonably safe place, and the care owed "toward an alighting passenger must be proportionate to the degree of danger inherent in the particular passenger's personal situation and to his obvious needs." *Flynn v. Carolina Scenic Stages*, 237 S.C. 340, 345–47, 117 S.E.2d 364, 366–67 (1960) (holding that an eighty-one-year-old passenger's impaired hearing, her age, and the stormy conditions presented jury questions even assuming she had alighted safely and was no longer a passenger); *see also Hurd v. Williamsburg Cnty.*, 363 S.C. 421, 427, 611 S.E.2d 488, 491 (2005) (holding trial judge properly submitted the case to the jury

where plaintiff presented evidence that the shoulder of the highway was not a reasonably safe place to allow plaintiff to exit the bus). Thus, neither State treats a passenger's exit from the vehicle as automatically establishing safe discharge as a matter of law, and each State also takes into consideration who the passenger is.

While the carrier relationship continues, the duty includes reasonable protection from foreseeable violence by third parties. In *Smith v. Camel City Cab Co.*, the North Carolina Supreme Court held that a common carrier has a duty to protect passengers from assault by an intruder "when by the exercise of due care the acts of violence might have been foreseen and avoided" and this duty "continues until the journey expressly or impliedly contracted for is concluded." 227 N.C. 572, 574–75, 42 S.E.2d 657, 658–59 (1947). In *Leake v. Queen City Coach Co.*, the North Carolina Supreme Court reaffirmed this rule: once a person "has been accepted as a passenger and has entered the conveyance, the duty is imposed upon the carrier to exercise due care and vigilance to protect the passenger in transit from violence threatened by third parties when the circumstances are such as to indicate that injury to the passenger might Reasonably be Anticipated and avoided by the exercise of proper care." 270 N.C. 669, 672, 155 S.E.2d 161, 163 (1967) (quoting *Smith*, 227 N.C. at 574–75, 42 S.E.2d at 658–59).

South Carolina imposes the same duty on common carriers as North Carolina. "It is the duty of a carrier to use the highest degree of care to protect a passenger from the attacks of a fellow passenger, when the carrier has knowledge of the existence of danger from this cause, or of facts from which the danger may be reasonably anticipated." *Lentz v. Carolina Scenic Coach Lines*, 208 S.C. 278, 287, 38 S.E.2d 11, 15 (1946) (quoting *Spires v. Atl. Coast Line R. Co.*, 92 S.C. 564, 75 S.E. 950, 952 (1912)). Applying that rule at the pleading stage, the South Carolina Supreme Court in *Lentz* affirmed the overruling of demurrers in a wrongful-death action where a passenger died

after a bottle was thrown into the bus in which he was riding, holding a defendant "cannot escape liability by saying that the particular act and particular injury was not foreseeable" because the law requires only foresight that negligence "would probably result in injury of some kind to someone." 208 S.C. 278, 287–90, 38 S.E.2d 11, 15–17 (1946) (second quotation quoting *Tobias v. Carolina Power & Light Co.*, 190 S.C. 181, 2 S.E.2d 686, 688 (1939)).

Although the circuit court recognized the duty to protect from foreseeable assaults by third parties under North Carolina law, it focused on the "in transit" language from *Leake* in concluding that Uber's duty to protect Minor Plaintiffs ended as soon as they exited Clark's car. (2025 Order 7.) But *Leake* did not focus on the exact boundaries of what qualifies as being in transit or when a journey has expressly or impliedly concluded. *See Leake*, 270 N.C. at 671–74, 155 S.E.2d at 162–65. Rather, the focus of *Leake* was on whether the third-party passenger's assault on plaintiff was foreseeable, which the court held it was not. *See id.*

The circuit court's reliance on *Scadden v. Holt*, 222 N.C. App. 799, 733 S.E.2d 90 (2012) fares no better. (2025 Order 7.) *Scadden* was not a carrier case at all and did not decide when a passenger has been safely discharged. In *Scadden*, a deputy sheriff sued an emergency medical services provider for negligently failing to properly restrain a patient who injured the deputy sheriff. 222 N.C. App. at 799, 733 S.E.2d at 91. Dismissal of the deputy sheriff's negligence claim was affirmed because the court concluded defendant had no special relationship with the patient. *Id.* at 805–06, 733 S.E.2d at 94–95. The sentence the circuit court quoted is *Scadden's* descriptive parenthetical about *Smith*, offered in a "see, e.g." citation to support the proposition that reasonable foreseeability would also be the correct test for proximate cause, were a special relationship found. *Id.* at 804, 733 S.E.2d at 93–94. The limiting word "only" in the circuit court's formulation is the order's own insertion, not *Scadden's*. *Compare* 2025 Order 7 *with Scadden*, 222 N.C. App. at 804,

733 S.E.2d at 93–94. Thus, the circuit court's narrow focus on the "in transit" language does not establish that, as a matter of law, Uber's carrier duty toward Minor Plaintiffs ended the moment they arrived at the designated destination. In any event, that focus does not support dismissal even on its own terms. Clark accepted two unaccompanied children at the request of an absent, unverified stranger and then transported them for an hour to that stranger's chosen destination. That conduct began the moment Minor Plaintiffs became passengers and continued while they were in transit.

Further, a common carrier's heightened duty of care is nondelegable under both States' laws. North Carolina treats the heightened carrier duty as nondelegable, so a passenger may hold the carrier responsible when the required care was not exercised even if the immediate negligence was that of an independent contractor. *Mann v. Va. Dare Transp. Co.*, 283 N.C. 734, 744, 198 S.E.2d 558, 565 (1973) ("The high degree of care, which a carrier operating under a public franchise owes to its passengers, is a nondelegable duty."). Applying North Carolina law, the MDL court held precisely this: "as a common carrier Uber owes a non-delegable duty to Plaintiff and other riders to transport them safely, and that duty is breached when an Uber driver assaults a passenger—regardless of whether the driver is properly classified as Uber's employee or an independent contractor under North Carolina law." *2026 Uber MDL Order*, 2026 WL 974509, at *2. South Carolina's nondelegable-duty decisions likewise identify common-carrier obligations as a recognized application of the doctrine: a party may delegate performance but remains liable when an independent contractor negligently breaches an absolute duty owed to another. *Rock Hill Tel. Co. v. Globe Commc'ns, Inc.*, 363 S.C. 385, 390–91, 611 S.E.2d 235, 238 (2005) ("[A] person who delegates to an independent contractor an absolute duty owed to another person remains liable for the negligence of the independent contractor just as if the independent contractor were an

employee." (quoting *Durkin v. Hansen*, 313 S.C. 343, 347, 437 S.E.2d 550, 552–53 (Ct. App. 1993))); *Simmons v. Tuomey Reg'l Med. Ctr.*, 341 S.C. 32, 42–43, 533 S.E.2d 312, 317–18 (2000) (noting the "party which owes the nondelegable duty is vicariously liable for negligent acts of the independent contractor," and recognizing a common carrier's "nondelegable duty to ensure that cargo is properly loaded and secured, and remains vicariously liable for injuries caused by an unsecured load"). Thus, Uber's heightened duty of care as a common carrier cannot be avoided by labeling its drivers independent contractors. Uber remains answerable when that duty is negligently breached, whatever the drivers' classification.[5]

C. The TAC plausibly alleges breach and causation, and the circuit court improperly resolved those issues against Minor Plaintiffs on the pleadings.

Both States treat breach and proximate cause as questions of fact when more than one reasonable inference may be drawn, just as they do the safety of the discharge location. *See supra* Section I.B; *Miller v. City of Camden*, 317 S.C. 28, 31, 451 S.E.2d 401, 403 (Ct. App. 1994) ("the jury determines whether a breach of the duty has occurred"), *aff'd as modified*, 329 S.C. 310, 494 S.E.2d 813 (1997). Yet, the circuit court drew inferences and resolved questions of fact against Minor Plaintiffs, concluding Minor Plaintiffs "arrived at the designated destination safely" and that the alleged harm therefore occurred after any carrier duty ended. (2025 Order 7; 2026 Order 7.) The well-pleaded allegations in the TAC establish the opposite. They also establish that the alleged breaches were not confined to the moment of discharge. The TAC alleges that Defendants breached their duties at every stage of the two rides, beginning when each driver accepted two

[5] Plaintiffs maintain that as Uber drivers, Clark and Caracas are employees and agents of Uber for the reasons outlined in their TAC and the briefing below, although they acknowledge the issue is not before this Court as the circuit court expressly declined to reach the issue. (2025 Order 11 n.5; *see* TAC ¶¶ 9, 11, 20–35, 98, 118, 121, 136, 143; MTD FAC Opp. 11–20; MTD TAC Opp. 13–25.) In any event, employment and agency present questions of fact that could not be resolved against Plaintiffs on the pleadings.

unaccompanied children for transportation ordered by an absent stranger, continuing throughout each hour-long interstate trip, and ending with each unsafe discharge, all while Minor Plaintiffs were passengers in Defendants' care.

Clark encountered Minor Plaintiffs, two visibly underage children, waiting without an adult near an empty park. E.R. expressly told him that the girls were only eleven or twelve years old because she hoped he would refuse the ride. Clark nevertheless accepted them, asked whether the absent adult requester was their father, received only a nervous nod, and drove the nervous Minor Plaintiffs approximately an hour across state lines. (TAC ¶¶ 60–64.) At the designated destination, no parent or guardian was present. Clark did not wait for the supposed father or determine whether Minor Plaintiffs were in safe keeping. Had he watched, he would have seen an adult man, who was surely not old enough to have middle-school-aged children of his own, a few houses down waving them over. (*Id.* ¶¶ 66–67.) Those allegations plausibly describe neither a safe transportation nor a landing in safety.

The TAC also alleges separate negligence during the return transportation. Caracas accepted Minor Plaintiffs, still unaccompanied, for another hour-long interstate ride, made no inquiry despite their apparent age and distress, was present in the vehicle while they discussed what had happened, and discharged them at a park where no parent or guardian was waiting. (TAC ¶¶ 74–79.) Those allegations support the claim that Defendants again breached the common carrier duties governing transporting and discharging vulnerable minor passengers. The scope of the injuries attributable to each ride is a matter for factual development, not dismissal based on a categorical absence of duty.

The later criminal act does not sever causation as a matter of law merely because Williams committed it. North Carolina recognizes that the wrongful conduct of another may be "the very

risk" created by a defendant's negligence. *Hairston v. Alexander Tank & Equipment Co.*, 310 N.C. 227, 233–35, 311 S.E.2d 559, 564–66 (1984). An intervening act is not superseding when the resulting harm was reasonably foreseeable. *Id.* Proximate cause is ordinarily for the jury unless the facts permit only one inference. *Id.* at 234–35, 311 S.E.2d at 565-66. South Carolina applies the same general principles. *Hurd*, 363 S.C. at 427–29, 611 S.E.2d at 491–92 (holding that proximate cause and foreseeability are typically questions for the jury, and that "injury is foreseeable if it is the natural and probable consequence of a breach of duty"). The TAC alleges foreseeability generally and in the circumstances here. Uber knew traffickers use rideshares to move victims: the FBI said so publicly in October 2022, more than a year before these rides. (TAC ¶¶ 83–84, 90.) Uber was publicly warned again in June 2023, and other trafficking suits have been filed against rideshare companies. (*Id.* ¶¶ 89, 95.) Uber also knew minors regularly ride unaccompanied in violation of its own minimum-age policy while its payment and cancellation protocols penalize drivers who refuse such rides. (*Id.* ¶¶ 37–38, 40–44, 85, 94.) And the circumstances of each ride gave Clark and Caracas ample reason to recognize the danger to the unaccompanied Minor Plaintiffs. Those allegations permit a reasonable inference of foreseeability and causation.

The circuit court reached its contrary conclusions only by impermissibly resolving factual questions against Minor Plaintiffs on the pleadings and misreading both States' law. Neither approach can support dismissal, and this Court should reverse.

II. The circuit court erred in dismissing Minor Plaintiffs' claim under South Carolina's trafficking statute by imposing an actual-knowledge requirement on the civil remedy and resolving the knowledge inferences against them (Issue 2).

South Carolina's trafficking statute gives trafficking victims a civil remedy: a "person who is a victim of trafficking in persons may bring a civil action in the court of common pleas." S.C.

Code Ann. § 16-3-2060(A) (2012).[6] The provision identifies who may sue and what relief is available, and it imposes a heightened "wilful and malicious" standard only for treble damages. It does not expressly require that a civil defendant have actual knowledge of the trafficking. The circuit court nevertheless dismissed Count IV for failure to plead exactly that, importing the knowledge language of the criminal-liability provisions and concluding that the TAC's allegations showed at most "knowledge of suspicious facts." (2025 Order 10–11.) Each step of that ruling was error.

A. The circuit court improperly imposed actual knowledge as an element of civil liability under the trafficking statute.

The circuit court's actual-knowledge requirement cannot be reconciled with the civil provision's text. The "cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature," and the statutory text is the best evidence of that intent. *Grier v. AMISUB of S.C., Inc.*, 397 S.C. 532, 535–36, 725 S.E.2d 693, 695–96 (2012) (quoting *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000)). Courts therefore must follow the statute's plain language and have "no right to impose another meaning." *Id.* (quoting *Hodges*, 341 S.C. at 85, 533 S.E.2d at 581). Where the statute is clear on its face, courts may not "engraft extra requirements to legislation" even if it furthers the intent behind the statute. *Id.* at 540, 725 S.E.2d at 698 (quoting *Berkebile v. Outen*, 311 S.C. 50, 55–56, 426 S.E.2d 760, 763 (1993)).

1. The civil provision, section 16-3-2060, does not impose an actual knowledge requirement.

The circuit court nevertheless required Plaintiffs to allege that Uber had actual knowledge that Minor Plaintiffs were being trafficked. The court derived that requirement from language

[6] Below, the parties agreed that because Count IV is a statutory claim, there is no need to perform a choice-of-law analysis and South Carolina law governed. (2025 Order 9–10.)

governing particular forms of criminal liability under sections 16-3-2020(A)[7] and 16-3-2030(A), rather than the civil remedy itself. (2025 Order 10.) In doing so, the court added to section 16-3-2060 a limitation the General Assembly did not include.

The circuit court cited *Grier*, 397 S.C. at 532, 725 S.E.2d at 698, for the rule that, when a statute uses a legal term with a settled meaning, the General Assembly ordinarily intends that meaning. (2025 Order 10.) But that rule does not answer the question presented here: whether the terms "knowing" and "knowingly participates," which appear in specified criminal-liability provisions, govern every action under the separate civil remedy. *Grier* itself demonstrates they do not. There, after identifying the established meaning of the statutory phrase before it, the Supreme Court refused to add a separate proximate-cause requirement the legislature had omitted. *Grier*, 397 S.C. at 537–40, 725 S.E.2d at 696–98. The Court rejected the argument that causation was implicitly required by the broader statutory scheme, explaining that courts are "confined to what the statute says, not what it ought to say." *Id.* at 540, 725 S.E.2d at 698. Thus, the settled-meaning canon establishes what "knowingly participates" means where that phrase governs. It does not authorize transferring that phrase into section 16-3-2060 or applying it to a distinct statutory basis for liability that does not contain that language. The decisions from which the circuit court drew the settled meaning do not change the analysis. *Gibson v. Ameris Bank*, 420 S.C. 536, 545, 804 S.E.2d 276, 281 (Ct. App. 2017), and *Future Group, II v. Nationsbank*, 324 S.C. 89, 99–100, 478 S.E.2d 45, 50 (1996), *overruled on other grounds by Paradis v. Charleston County School District*, 433 S.C. 562, 861 S.E.2d 774 (2021), construe "knowingly participated" as an element of the cause of action for aiding and abetting a breach of fiduciary duty. Neither decision construes section 16-

[7] Section 16-3-2020 was amended effective July 2, 2024, see Act No. 213, § 2, 2024 S.C. Acts (R238, S.142), but the amendments did not impact the language of section 16-3-2020(A).

3-2060 or anything else in the statute.

The statute's definition of "victim" does not justify a different result. It defines a "victim of trafficking in persons" as a person who has been subjected to the crime of trafficking. S.C. Code Ann. § 16-3-2010(9). That definition requires a civil plaintiff to establish that she was subjected to an underlying trafficking offense. It does not state that every civil defendant must personally be criminally guilty of trafficking or possess the mental state necessary for criminal punishment. The circuit court thus conflated two distinct questions: whether Plaintiffs were victims of an underlying trafficking crime and what conduct and mental state make a particular defendant civilly responsible for the resulting harm.

The surrounding provisions confirm that the omission of an actual-knowledge requirement from the civil remedy was meaningful. Section 16-3-2020(A)(1) expressly attaches knowledge to one form of direct criminal liability: performing specified acts against a victim—including transporting the victim, "knowing that the victim will be subjected to" trafficking. Section 16-3-2030(A) likewise expressly makes a business criminally liable when it "knowingly aids or participates" in an offense. And section 16-3-2020(A)(3) separately uses both "knowingly" and "knows." The General Assembly therefore demonstrated throughout the same statute that it knew how to impose an express knowledge requirement when it intended to do so. It omitted comparable language from section 16-3-2060.

This Court treats such textual differences as significant. In *Scholtec v. Estate of Reeves*, the Homestead Act extended five exemptions to the "debtor or dependent of the debtor," while eight others applied only to the "debtor." 327 S.C. 551, 558, 490 S.E.2d 603, 606 (Ct. App. 1997). Because the General Assembly had "contemplated the option" of extending exemptions to others and had done so in several provisions, this Court found its omission of comparable language

elsewhere "significant." *Id.* at 559, 490 S.E.2d at 607. Similarly, in *State v. Leopard*, this Court declined to carry a cohabitation requirement from one statutory phrase into another, reasoning that "[t]he fact that it is included in one phrase but not in the other implies it should not be read into the other." 349 S.C. 467, 473–74, 563 S.E.2d 342, 345 (Ct. App. 2002). Although *Leopard* cautioned that this principle must be applied with care and in service of legislative intent, the omission here does not stand alone. The General Assembly repeatedly imposed express knowledge requirements in specified criminal provisions, while omitting comparable language from section 16-3-2060. Read in that context, the textual distinction weighs against importing actual knowledge into section 16-3-2060.

2. The circuit court's actual-knowledge ruling cannot sustain dismissal of Plaintiffs' separate beneficiary theory against Uber.

Even if section 16-3-2060 requires a civil defendant's conduct to satisfy an offense under section 16-3-2020, the circuit court's actual-knowledge ruling cannot sustain dismissal. Section 16-3-2020(A)(1) establishes two distinct, disjunctive theories of liability. The direct-actor theory applies when a person performs an enumerated act against a victim, including transportation, "knowing that the victim will be subjected to" trafficking. The subsection then separately reaches a person who "benefits, financially or by receiving anything of value, from participation in a venture which has engaged in" one of the enumerated acts. S.C. Code Ann. § 16-3-2020(A)(1) (2024). The beneficiary clause contains no express knowledge requirement.

Plaintiffs invoked the beneficiary theory below. Both oppositions quoted the beneficiary clause as enacted. (MTD FAC Opp. 21; MTD TAC Opp. 25.)[8] The TAC alleged that Uber received the entire fare for each ride, retained a portion of the payment, and financially benefited from

[8] The TAC paraphrased the beneficiary clause by adding "knowingly" before "benefit." (TAC ¶ 132.) But that allegation does not alter the statutory text or resolve its legal meaning.

Williams's payments for the rides used to transport Minor Plaintiffs. (TAC ¶¶ 23, 132–34.) By holding that actual knowledge was required to state a claim under the trafficking statute and dismissing Count IV in its entirety, the circuit court necessarily rejected the beneficiary theory alleged.

But the beneficiary clause must be construed according to its own language. The circuit court's analysis relied on the direct-actor clause and section 16-3-2030's business-criminal-liability provision. Neither provision answers what mental state governs a person who receives value from participation in a venture that has engaged in the conduct described in section 16-3-2020(A)(1). The beneficiary clause's materially different language cannot be disregarded merely because it appears in the same subsection as the direct-actor clause.

United States v. Clemons confirms that mens rea must be analyzed by reference to the particular statutory theory at issue. 442 S.C. 670, 673, 901 S.E.2d 280, 282 (2024). There, the South Carolina Supreme Court rejected a "one-size-fits-all mens rea" for statutes establishing several disjunctive methods of committing an offense because the required mental state depended on the particular actus reus. *Id.* at 673, 901 S.E.2d at 282. Although *Clemons* arose in the criminal context, its reasoning applies here because the direct-actor and beneficiary clauses use different operative language. The knowledge requirement attached to the former cannot automatically be assigned to the latter. *Scholtec* and *Leopard* also support the same conclusion. The General Assembly placed express knowledge language in the direct-actor clause, then omitted it after the disjunctive phrase "or who benefits." Reading the knowledge phrase across that disjunction would erase a textual distinction that must be considered in the context of the statute as a whole.

Accordingly, the circuit court erred in treating actual knowledge that Minor Plaintiffs were being trafficked as a required element. Section 16-3-2060 contains no such requirement. Even if

the civil provision incorporates an underlying offense, the beneficiary clause contains no express actual-knowledge language. The circuit court's actual-knowledge ruling therefore cannot sustain dismissal of the claim.

B. Even if actual knowledge is required, the TAC alleges facts from which the reasonable inference is that Clark and Caracas had actual knowledge.

Actual knowledge need not be established by direct evidence. Because proving another person's state of mind is "inherently difficult," this Court has recognized that actual knowledge "usually must be proved circumstantially, taking into account all inferences which can be reasonably drawn from the evidence." *Mylin v. Allen-White Pontiac, Inc.*, 281 S.C. 174, 178–79, 314 S.E.2d 354, 356 (Ct. App. 1984); *see also* Rule 9(b), SCRCP ("knowledge, and other condition of mind of a person may be averred generally"). At the pleading stage, those inferences must be drawn in Plaintiffs' favor.

The circuit court concluded that the alleged circumstances showed, at most, "knowledge of suspicious facts," which it found insufficient to establish actual knowledge. (2025 Order 10–11.) But describing the facts as suspicious does not resolve the inference that may reasonably be drawn from them. Suspicious circumstances are circumstantial facts, and circumstantial facts may collectively support an inference of actual knowledge. Here, the TAC's allegations considered together and in Plaintiffs' favor, permit the inference that the drivers understood Minor Plaintiffs would be subjected to, or were being transported for the purposes of, sex trafficking.

Clark found Minor Plaintiffs, two visibly underage children, waiting without an adult near an empty park. E.R. told him they were only eleven or twelve years old. His question whether the absent requester was their father drew no verbal answer, only E.B.'s slight nod, and he then drove the visibly nervous Minor Plaintiffs an hour across state lines to a drop-off where no parent or guardian was waiting. (TAC ¶¶ 60–64, 66.) Those facts permit the inference that Clark understood

the essential circumstances. His own question shows he recognized that the absent requester's relationship to the two children mattered, and the equivocal answer did not dispel that concern as a matter of law. A factfinder could conclude that Clark recognized what the circumstances indicated and proceeded anyway. The circuit court reasoned that Williams "could have been an adoptive parent." (2025 Order 11.) That theoretical possibility—implausible for a man the circuit court itself recognized "was eighteen at the time" (2025 Order 1; *see also* TAC ¶ 66)—is a competing explanation for a single fact, and selecting the innocent explanation over the inference favorable to Plaintiffs was inconsistent with the Rule 12(b)(6) standard. (2025 Order 10–11.)

Caracas's knowledge developed during the return trip. She accepted the still-unaccompanied Minor Plaintiffs at a pick-up location chosen by an absent third party, asking only whether they had requested the ride. (TAC ¶¶ 73–75, 134.) During the hour-long drive, E.B. recounted inside Caracas's vehicle what Williams had done to her, and Caracas never said a word or inquired about Minor Plaintiffs' safety. (*Id.* ¶¶ 75–76.) At a park where no parent was initially waiting, Caracas refused E.R.'s mother's demands to know where Minor Plaintiffs had been, briefly displayed the requester's profile, and drove away. (*Id.* ¶¶ 77–78.) Those allegations permit the inference that Caracas heard enough during the continuing transportation to understand that E.B. had been sexually assaulted by the person who arranged the ride. Her silence, initial refusal to provide information, and abrupt departure may be susceptible to competing explanations, but the circuit court could not resolve those inferences against Plaintiffs on a motion to dismiss. Whether Caracas heard the conversation, understood its significance, and knowingly continued the return trip presents a factual question that cannot be decided from the pleadings.

For both drivers, the TAC therefore alleges more than isolated warning signs or a generalized reason for concern. It expressly alleges knowledge and pleads circumstances from

which that knowledge may reasonably be inferred. Those allegations are sufficient even under the circuit court's actual-knowledge standard. At a minimum, they support constructive knowledge. If this Court agrees that section 16-3-2060 does not require actual knowledge, the same allegations necessarily satisfy that lesser civil standard.

C. The circuit court's imputation ruling cannot sustain dismissal if constructive knowledge is sufficient.

The circuit court did not decide whether Clark and Caracas were Uber's employees or agents. Instead, it assumed without deciding that they were Uber's agents and held that their actual knowledge would impute only constructive knowledge to Uber. (2025 Order 11.) Because the court believed actual knowledge by Uber was required, it concluded that the drivers' knowledge could not support Uber's liability. (*Id.*)

That conclusion depends entirely on the actual-knowledge requirement challenged above. South Carolina law provides that when an agent acquires material knowledge while acting within the scope of the agency, that knowledge is imputed to the principal as constructive knowledge. *Independence National Bank v. Buncombe Professional Park*, *LLC*, 411 S.C. 605, 608–09, 769 S.E.2d 663, 665 (2015). Thus, if constructive knowledge satisfies the civil provision, the fact that imputation gives Uber constructive rather than actual knowledge does not defeat the claim.

The TAC alleges that Clark and Caracas were Uber's employees or agents and were acting within the scope of that relationship when they accepted and completed the two rides through Uber's platform. (TAC ¶¶ 9, 11, 98, 118, 136.) It further alleges that Uber controlled access to its platform, paired drivers with riders, set fares, processed payments, established the terms governing the rides, monitored drivers through the Uber App, and retained authority to discipline or deactivate drivers. (*Id.* ¶¶ 20–35.) Plaintiffs also presented their agency and employment theories in opposition to dismissal. (MTD FAC Opp. 11–20; MTD TAC Opp. 13–25.)

This Court need not determine whether those allegations ultimately establish an employment or agency relationship. The circuit court expressly left that question undecided. It need only hold that the constructive nature of imputed knowledge was not a valid basis for dismissal if section 16-3-2060 permits constructive knowledge. In any event, whether the drivers were Uber's employees or agents and whether they acquired their knowledge within the scope of that relationship are questions of fact that could not be resolved against Plaintiffs on the pleadings and remain for consideration on remand.

III. The circuit court erred in applying North Carolina law to the common-law claims because the TAC alleges injuries in South Carolina and does not establish North Carolina as the exclusive locus of the claims (Issue 3).

Focusing on Williams's assault, the circuit court characterized the common-law claims in the FAC as seeking relief for physical and emotional injuries suffered in North Carolina and concluded that Plaintiffs identified no injury occurring in South Carolina. (2025 Order 4–5.) The court adhered to that conclusion for the TAC, finding its changes did not alter the analysis. (2026 Order 5.)

That ruling answered a factual question of where each injury occurred against Plaintiffs at the pleading stage. As pleaded, Minor Plaintiffs were harmed beginning with the transportation Clark commenced in York County, and Parent Plaintiffs suffered a distinct custodial injury the moment their children were carried away without their consent. Because the governing law follows each tort's injury and because the TAC's allegations and their reasonable inferences control at this stage, South Carolina law governs. At the very least, nothing on the face of the TAC establishes North Carolina as the exclusive place of injury, and a choice-of-law ruling built on that premise cannot stand.

A. The *lex loci delicti* analysis turns on where each tort's injury occurred.

Under South Carolina choice-of-law principles, "the substantive law governing a tort action is determined by the lex loci delicti, the law of the state in which the injury occurred." *Boone v. Boone*, 345 S.C. 8, 13, 546 S.E.2d 191, 193 (2001); *see also Rogers v. Lee*, 414 S.C. 225, 231, 777 S.E.2d 402, 405 (Ct. App. 2015) ("South Carolina law clearly provides *lex loci delicti* is determined by the state in which *the injury occurred*, not where the results of the injury were felt or where the damages manifested themselves." (emphasis in original)).

In *Rogers*, the alleged injury was the loss of the plaintiff's opportunity to pursue his workers' compensation claim further or settle it for a greater amount. 414 S.C. at 231, 777 S.E.2d at 405. That injury occurred in North Carolina, where he accepted counsel's advice and entered the binding settlement, not in South Carolina merely because he lived there and experienced the resulting financial consequences there. *Id.* Similarly, in *Lister v. NationsBank of Delaware, N.A.*, 329 S.C. 133, 143–45, 494 S.E.2d 449, 455–56 (Ct. App. 1997), this Court explained that the injury from a fraudulent misrepresentation occurred where plaintiffs suffered the financial loss (South Carolina), not where the misrepresentations were made. The same injury focused analysis applies in physical injury cases. *Bannister v. Hertz Corp.*, 316 S.C. 513, 515–16, 450 S.E.2d 629, 630 (Ct. App. 1994) (North Carolina law governed where a van accident injured the passengers in North Carolina).

These decisions illustrate that identifying the locus requires identifying the injury alleged and determining where that injury occurred. On a Rule 12(b)(6) motion, that inquiry remained subject to the requirement that the TAC be viewed in the light most favorable to Plaintiffs and that reasonable inferences be drawn in their favor. *Bishop of Charleston*, 407 S.C. at 134, 754 S.E.2d at 497.

B. The TAC permits the inference that the injuries underlying Counts I and II occurred in South Carolina.

As explained, Counts I and II concern Defendants' own transportation conduct: the acceptance, transportation, and discharge of Minor Plaintiffs and Uber's training and supervision of the drivers who performed it. The TAC's venue allegations expressly state Plaintiffs "were harmed when Defendant Clark picked up" Minor Plaintiffs in York County. (TAC ¶ 19.) Plaintiffs do not ask this Court to defer to that label alone. The specific facts alleged locate the injury in South Carolina on their own. Clark picked Minor Plaintiffs up near an empty park in South Carolina, E.R. disclosed their ages there in the hope that he would refuse the ride, and her visible distress began there and continued throughout the hour-long interstate trip. (*Id.* ¶¶ 60–64.)

Construed favorably, these allegations permit the inference that injury attributable to Clark's transportation began when he accepted the children and carried them away in South Carolina. While Williams's assault was a major source of the alleged injuries, particularly E.B.'s, the circuit court could not treat the events at Williams's home as the only possible point at which either Minor Plaintiff sustained injury. The return transportation points the same way: Caracas discharged the still-unaccompanied children at a York County park where no parent was waiting, so the alleged negligent discharge, and any injury attributable to it, occurred in South Carolina. (TAC ¶¶ 11, 74–79.)

Further, the same reasoning that supports a South Carolina locus for Count I applies to Count II because the locus of that claim turns on where the injuries attributed to Uber's alleged training and supervision failures occurred, not where Uber made those decisions. Count II alleges that those failures led to the trafficking of Minor Plaintiffs and caused the same physical and emotional injuries alleged in Count I. (TAC ¶¶ 121–24.) Thus, if the TAC permits the inference that injury attributable to the rides occurred in South Carolina, it permits the same inference for

Count II.

The circuit court ruled that Plaintiffs identified no injury occurring in South Carolina. (2025 Order 4–5.) That ruling cannot be reconciled with the TAC's allegation of harm beginning in York County or its allegations of fear and visible distress during the ride, and the court reached it only by treating the events at Williams's home as the sole source of every Plaintiff's injury. But the place of injury is the fact that selects the governing law. *Boone*, 345 S.C. at 13, 546 S.E.2d at 193. And on a Rule 12(b)(6) motion, that fact had to be drawn from the TAC's allegations viewed in Plaintiffs' favor. *Bishop of Charleston*, 407 S.C. at 134, 754 S.E.2d at 497. Selecting North Carolina law at the pleading stage required construing those allegations against Plaintiffs, and a selection made that way cannot support dismissal.

C. Parent Plaintiffs' custodial injury occurred in South Carolina.

The circuit court's blanket analysis is even less tenable as to Count V. The injury alleged by that claim is the invasion of Parent Plaintiffs' own rights to custody and control of their children, not the bodily harm Williams inflicted on E.B.

The TAC alleges that S.S. and C.B. had the exclusive right to control E.B.'s care, safety, and well-being and to decide where she could go, when, and with whom. (TAC ¶ 139.) It alleges that K.M. possessed the same rights concerning E.R. (*Id.* ¶ 140.) It further alleges that Clark and Caracas affirmatively removed the children from their parents' custody without parental consent, carried them an extended distance outside their parents' protection, and prevented their return to parental custody. (*Id.* ¶¶ 141–42.) The injury alleged against Clark thus occurred when he took the children into his vehicle in York County and carried them away without their parents' knowledge or consent, beyond the place where their parents understood them to be. Williams's later conduct increased the resulting harm and damages; it did not determine where Clark invaded the parents'

custodial interest.

The same result follows for Caracas. Although she accepted the children in North Carolina, the interference alleged against her concluded in South Carolina. The TAC alleges that Caracas kept the children in her custody, without any parent's consent, until she discharged them at a park where no parent was initially waiting. (TAC ¶ 77.) When E.R.'s mother reached the vehicle and demanded to know where her daughter had been, Caracas refused to say, briefly displayed the requester's profile, and drove away while the mother was still asking for information. (*Id.* ¶ 78.) The conduct that withheld the children, and information about them, from their parents occurred in South Carolina.

If the Court concludes both that North Carolina law governs Count V and that North Carolina affords no remedy for the alleged intentional carrying away of the children, South Carolina's public-policy exception provides an alternative basis for applying South Carolina law. Plaintiffs pressed this exception below (MTD FAC Opp. 10–11; MTD TAC Opp. 12–13), and the circuit court's selection of North Carolina law over that opposition necessarily rejected it. Under the public-policy exception, South Carolina courts "will refuse to follow [the law of *lex loci delicti*] when it is against good morals or natural justice, or 'for some other such reason the enforcement of it would be prejudicial to the general interests of our own citizens.'" *Rogers*, 414 S.C. at 235, 777 S.E.2d at 407 (quoting *Boone*, 345 S.C. at 14, 546 S.E.2d at 193 (alteration in original)). But the exception is narrow. The "good morals or natural justice" of South Carolina "are not violated when foreign law is applied to preclude a tort action for money damages" that might otherwise be available under South Carolina law and a mere difference between two states' laws "does not necessarily imply that the law of one state violates the public policy of the other." *Id*. (quoting *Dawkins v. State*, 306 S.C. 391, 393, 412 S.E.2d 407, 408 (1991)). The exception thus turns not

on the fact that foreign law would bar recovery, but on whether the rule producing that result itself offends South Carolina's public policy.

In *Boone*, the South Carolina Supreme Court applied the exception because Georgia's interspousal-immunity doctrine conflicted with South Carolina's established policy of providing married persons the same legal rights and remedies possessed by unmarried persons. 345 S.C. at 13–16, 546 S.E.2d at 193–95. Count V likewise implicates a fundamental family relationship and the custodial rights of South Carolina parents over South Carolina children. If North Carolina law would deny any remedy for the alleged intentional carrying away of those children from their parents' custody, enforcing that law would implicate more than an ordinary difference in available tort recovery and would be "prejudicial to the general interests of our own citizens." *Rauton v. Pullman Co.*, 183 S.C. 495, 508, 191 S.E. 416, 422 (1937).

IV. The circuit court erred in dismissing Parent Plaintiffs' claim for tortious interference with parental rights because North Carolina recognizes civil liability for knowingly carrying a minor away from a parent, and no precedential South Carolina decision rejects the cause of action (Issue 4).

Count V is Parent Plaintiffs' claim against the drivers who transported Minor Plaintiffs outside their parents' custody and without parental knowledge or consent, and against Uber for the drivers' conduct. The circuit court dismissed it based on its conclusion that South Carolina and North Carolina do not recognize a cause of action for tortious interference with parental rights. (2025 Order 11–12; 2026 Order 4–5.) For that conclusion, the circuit court cited one unpublished federal decision applying North Carolina law and one South Carolina practice treatise. (2025 Order 11–12 (citing *Berg v. Murratti*, No. 17-cv-491, 2017 WL 5340383, at *2 (W.D.N.C. Nov. 13, 2017), and James L. Ward, Jr. & Edward J. Westbrook, *South Carolina Damages* § VI.29.B.14 (2d ed. 2017)).) But neither authority supplies a precedential holding of either State rejecting the claim, and North Carolina recognizes a civil action arising from the knowing carrying away of a

minor against the parent's will. Count V states a claim under North Carolina law, which is the law the circuit court applied, and if South Carolina law governs as Plaintiffs contend (*see supra* Section III.C), the question is open, not foreclosed.

A. Under North Carolina law, the TAC states a claim for civil abduction.

Count V states a claim under North Carolina's common-law cause of action for the abduction of a minor child. In opposing dismissal, Plaintiffs cited *Murphy v. I.S.K. Con. of New England, Inc.*, 409 Mass. 842, 571 N.E.2d 340 (1991), which recognizes the modern tortious interference with parental rights claim as a contemporary expression of that common-law action. (MTD TAC Opp. 38.) Uber itself briefed whether Parent Plaintiffs stated a viable claim if the circuit court construed the tortious interference claim as a common-law civil abduction claim. (Uber MTD FAC Mem. 27–29.) The abduction framework was thus before the circuit court, and the circuit court's holding that no cause of action exists necessarily rejected it. The label attached to Count V does not control because dismissal under Rule 12(b)(6) is improper if the facts alleged, viewed in the light most favorable to plaintiff, "entitle him to relief on any theory." *Bishop of Charleston*, 407 S.C. at 134, 754 S.E.2d at 497. The inquiry is whether the alleged facts state a claim recognized by North Carolina law, regardless of the label attached to Count V.

Berg, the unpublished federal decision the circuit court relied on, rested on the absence of any North Carolina law recognizing the tortious interference with parental rights claim against non-parent third parties. 2017 WL 5340383, at *2. That premise does not account for North Carolina's common-law civil cause of action for the abduction of minor children. While Uber characterized North Carolina's common-law civil abduction cause of action as "moribund," it did not provide any North Carolina cases disapproving of the cause of action and, indeed, cited a case from 1986 acknowledging the cause of action. (Uber MTD FAC Mem. 27–29 (citing *Morris v.*

Bruney, 78 N.C. App. 668, 672, 338 S.E.2d 561, 564 (1986)).) In *Morris*, the Court of Appeals of North Carolina recognized that "there are several cases decided by [its] Supreme Court in the late nineteenth century and in the early part of this century that recognize civil causes of action for the seduction or the abduction of minor children." 78 N.C. App. at 672, 338 S.E.2d at 564 (citing, among others, *Little v. Holmes*, 181 N.C. 413, 107 S.E. 577 (1921) and *Howell v. Howell*, 162 N.C. 283, 287, 78 S.E. 222, 224 (1913)). *Morris* found the allegations before it insufficient, but it did not question the claim's continued viability. *Id.* at 672–73, 338 S.E.2d at 564–65.

Below, Uber contended that a civil-abduction claim consists of two elements: that the defendant must have acted "knowingly and wittingly interrupt[ed] the relations[hip]" and there must be "some allegation that the minor child was taken or carried away, actually or constructively, by the defendant." (Uber MTD FAC Mem. 28 (first quoting *Little*, 181 N.C. 413, 107 S.E. at 578, then quoting *Morris*, 78 N.C. App. at 672, 338 S.E.2d at 564).) Even under Uber's own formulation of the elements, the TAC states a claim.

Clark accepted two unaccompanied children after E.R. disclosed their ages, drove them an hour across state lines to a drop-off location chosen by an absent, unverified requester, and left without confirming any parent or guardian was present. (TAC ¶¶ 60–64, 66.) Caracas's alleged conduct likewise satisfies the elements. She accepted the still-unaccompanied children into her custody without any parent's knowledge or consent, discharged them at a park where no parent was initially waiting, and refused to tell E.R.'s mother where the children had been. (*Id.* ¶¶ 74–78.) Both drivers thus performed the act that took or carried the children away from their parents' custody, and Minor Plaintiffs' willingness to go is not dispositive. *See Little*, 181 N.C. at 413, 107 S.E. at 579 (noting "even on an indictment for abduction, it is not necessary that it should be against the will of the minor child. It is sufficient if it is against the will of the father, and that it is

committed by violence, fraud, or persuasion."). The allegations further permit the reasonable inference that the drivers knew no parent had authorized either ride.

Because the circuit court held that no cause of action exists, it had no occasion to evaluate those allegations, which state a claim against each driver. Uber's derivative liability turns on the employment and agency questions the circuit court expressly declined to decide. In any event, those questions are ones of fact that could not be resolved against Plaintiffs on the pleadings and remain for consideration on remand.

B. Alternatively, if this Court agrees South Carolina law applies, whether South Carolina recognizes a tortious interference with parental rights claim is an open question.

The treatise the circuit court cited notes only that the claim is not yet recognized in South Carolina, signaling an open question rather than a rejection. Other states to consider the claim have adopted it. The Virginia Supreme Court adopted it after finding that the "overwhelming majority of the high courts of our sister states that have considered the issue have also recognized such a tort, many of them tracing its evolution in the common law." *Wyatt v. McDermott*, 283 Va. 685, 695–96, 725 S.E.2d 555, 559–60 (2012) (collecting cases). Similarly, the Supreme Judicial Court of Massachusetts "acknowledge[d] the tort of intentional interference with the parent-child relationship as a contemporary expression encompassing actions for abduction, enticement, harboring, and secreting of a minor child from the parent having legal custody." *Murphy*, 409 Mass. at 861, 571 N.E.2d at 352. And the Alabama Supreme Court acknowledged that Alabama recognized a cause of action for intentional or malicious custodial interference and held parents stated such a claim against their daughter's boyfriend and his parents. *Anonymous v. Anonymous*, 672 So. 2d 787, 789–90 (Ala. 1995). These decisions protect what "is perhaps the oldest of the fundamental liberty interests" the United States Supreme Court recognizes: "the interest of parents

in the care, custody, and control of their children." *Troxel v. Granville*, 530 U.S. 57, 65, 120 S. Ct. 2054, 2060 (2000).

Because the modern tortious interference with parental rights claim is the contemporary expression of the same common-law civil abduction claim, the allegations that state a civil abduction claim under North Carolina law accordingly state the analogous claim if South Carolina law governs. Each driver, without parental knowledge or consent, took or carried the unaccompanied children away from their parents' custody and discharged them where no parent was waiting.

The absence of a South Carolina appellate decision expressly recognizing the claim did not, by itself, establish that Count V failed as a matter of law or justify dismissal with prejudice. If recognition of the claim under South Carolina law is reserved to the South Carolina Supreme Court, Plaintiffs preserve the question for that Court's review. *See Fabian v. Lindsay*, 410 S.C. 475, 481, 490–91, 765 S.E.2d 132, 135, 140–41 (2014) (reversing a Rule 12(b)(6) dismissal and recognizing a cause of action not previously available in South Carolina, on certification from the Court of Appeals under Rule 204(b), SCACR, noting "[j]oining the majority of states that have recognized causes of action is the just result"). The Court should reverse the dismissal of Count V and remand for further proceedings.

CONCLUSION

The Court should reverse the circuit court's dismissal of Counts I, II, IV, and V and remand for further proceedings. It should also hold that South Carolina law governs the common-law claims or, at minimum, vacate the choice-of-law ruling and remand for a claim-specific determination.

Respectfully submitted,

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