

JEANNETTE BELLIVEAU,

Petitioner,

v.

AIRBNB, INC.,

Respondent.

*
*
*
*
*
*
*
*
*
*

**IN THE
COURT OF APPEALS
OF MARYLAND**

September Term, 2019

Petition Docket No. _____

PETITION FOR WRIT OF CERTIORARI

JEANNETTE BELLIVEAU, (hereinafter, “Petitioner”), respectfully requests that this Court issue a writ of certiorari to the Circuit Court for Baltimore City to review that Court’s determination of a de novo appeal from the District Court for Baltimore City in favor of AIRBNB, INC. (Respondent) (hereinafter, “Airbnb”). In ruling against the Petitioner, the Circuit Court enforced the provisions of Airbnb’s Terms of Service that, in part, insulate Airbnb from liability in “contract, tort (including negligence) . . . or any other legal theory.” In finding the Terms of Service enforceable, the Circuit Court (1) improperly extended case law regarding the enforceability of arbitration clauses to the context of exculpatory clauses and (2) failed to consider *Wolf v. Ford*, 335 Md. 525, 644 A.2d 522 (1994) in evaluating Airbnb’s exculpatory clause. The Petitioner requests that this Court take the opportunity to consider the enforceability of an exculpatory clause where—in the novel context of the internet-based short-term rental industry—an individual must consent to the corporation’s Terms of Service as a prerequisite to access its digital platform. In support of her petition and in accordance with Md. Rule 8-303(b), Petitioner states as follows:

STATEMENT OF FACTS

Petitioner resides in an Upper Fells Point rowhome in Baltimore City. Since 1991, she has supported herself in part by renting out two suites in her home. From 2014 to the present, she has relied solely on this income, with 99% of her business coming from Airbnb. In the pre-internet era, Petitioner located tenants by placing fliers on bulletin boards at Johns Hopkins and Broadway Market in Fells Point. In the mid-1990s, the Internet—and Craigslist—superseded the bulletin boards, and by 2013, Airbnb became the dominant means of accommodating visitors to Hopkins, the Petitioner’s main market.

Airbnb¹ is an online platform designed to match individuals seeking short-term housing accommodations (“Guests”) with property owners (“Hosts”) looking to rent either their entire property, individual rooms, or suites. Hosts upload photographs and descriptions of their accommodations, and interested Guests can search the available accommodations by date, location, and price range for those that fit their schedule and budget. For many, Airbnb presents an affordable alternative to a hotel. It generates revenue by assessing fees to Guests and Hosts. The company is valued at approximately thirty-eight (38) billion dollars.

For a potential Guest or Host (collectively, “Members”) to access the platform, a prospective Member must first create an account, which can be done by simply visiting Airbnb.com and signing up via Facebook account, Google account, or e-mail address, and providing a date of birth. After submitting that information, a potential Member is

¹ “Airbnb” is used interchangeably in reference to both the Respondent corporation and the online platform for which it is generally known.

presented with a screen where he or she is prompted to accept the Airbnb Terms of Service,² which are hyperlinked but not displayed. Airbnb does not require potential Members to click the hyperlink before clicking “Accept.” This type of digital contract has been termed a “sign-in-wrap.”³

Among the Terms of Service⁴ are the following:

15.4 Airbnb may immediately, without notice, terminate this Agreement and/or stop providing access to the Airbnb Platform if . . . (iii) Airbnb believes in good faith that such action is reasonably necessary to protect the personal safety or property of Airbnb, its Members, or third parties . . .

(hereinafter, “Section 15.4”).

17. Liability

. . . Neither Airbnb nor any other party involved in . . . creating, the Airbnb Platform . . . will be liable for any incidental, special, exemplary or consequential damages, including lost profits . . . whether based on warranty, contract, tort (including negligence), product liability or any other legal theory, and whether or not Airbnb has been informed of the possibility of

² The Terms of Service and other agreements used by other platform hosts have been called “relational contracts of adhesion.” See *David A. Hoffman*, Relational Contracts of Adhesion, 85 U. Chi. L. Rev. 1395, 1403 (2018) (“. . . **unlike traditional relational contracts between firms, these contracts are not negotiated, the parties are at best loosely bound, and the users are both merchants and consumers at the same time. That is, successful precatory terms are neither fish nor fowl: they take on aspects of both the fabled past of individualized contracting and the cynical present of exploitative standard terms . . .**”) (emphasis added).

³ See, e.g., *Selden v. Airbnb, Inc.*, No. 16-CV-00933 (CRC), 2016 WL 6476934, at *4 (D.D.C. Nov. 1, 2016) (explaining various forms of digital contracts).

⁴ Airbnb periodically updates its Terms of Service. The version referenced here was effective in August 2018, wherein Petitioner’s cause of action arose, and is included as an Exhibit to Airbnb’s Motion to Dismiss (Attachment A-1). The language of Sections 15.4 and 17 has not since changed.

such damage, even if a limited remedy set forth herein is found to have failed of its essential purpose.

. . . in no event will Airbnb's aggregate liability arising out of or in connection with these Terms . . . exceed . . . if you are a Host, the amounts paid by Airbnb to you in the twelve (12) month period prior to the event giving rise to the liability, or one hundred U.S. dollars (US\$100), if no such payments have been made . . .

(hereinafter, "Section 17").

In December 2013, Petitioner joined Airbnb. From January 2014 to August 2018, Petitioner hosted more than 650 Airbnb Guests over approximately 800 visits. She was designated as a "Superhost"⁵ throughout this period.

During this period, Petitioner also actively maintained accounts on six (6) other short-term rental platforms—Craigslist, TripAdvisor, Furnished Finder, Booking.com, Homestay.com and Houfy.com. Of her total bookings, 800 out of 811 (or 99.1%) came through Airbnb.

From July 27-29, 2018, Petitioner hosted a Guest named Stephanie Akker. Days after an otherwise uneventful stay, Petitioner's listings suddenly became inaccessible. Petitioner then received notifications that five (5) then-scheduled Guests had been cancelled. On August 9, 2018, Airbnb notified the Petitioner via e-mail that there had been a report of a weapon in her listing. No further details were provided. Petitioner replied two (2) hours later and assured the representative that no weapons were present. Airbnb delisted the Petitioner on August 14, 2018, stating explicitly that the matter was closed and

⁵ This designation, only attained by about 7% percent of hosts, applies to those with 5-star ratings from at least 80% percent of their Guests.

would not be reconsidered. Petitioner later learned that Ms. Akker, upon returning home to Massachusetts, informed Airbnb of an unsecured “9mm handgun” on the premises. The “weapon” was a rubber training pistol stowed in a basket among the Petitioner’s dog toys.

The Petitioner e-mailed Airbnb on October 3, 2018 and December 3, 2018 with photographic evidence, hoping to resolve the issue. On December 5, 2018, Airbnb replied that the case was closed and would remain so.⁶ Airbnb since reinstated Petitioner on March 2, 2019, but her earnings continue to suffer. Before the de-listing, Petitioner was averaging around \$20,000 annually through Airbnb. In the first half of 2019, her income was \$2,690, roughly 27% of her typical earnings.

PROCEDURAL HISTORY

Petitioner initiated this action in the District Court for Baltimore City (Case No. 010100281782018) by filing a *pro se* tort complaint against Airbnb seeking damages for lost revenue in connection with her de-listing. The District Court entered judgment in favor of Petitioner, remarking that Airbnb had denied the Petitioner her due process rights, but found that the Terms of Service precluded recovery.

Petitioner requested a de novo appeal in the Circuit Court for Baltimore City (Case No. 24-C-19-001836). While the appeal was pending, Petitioner filed a Request for Leave to Amend Complaint and for Conversion of Matter to Record Appeal (Cir. Ct., #6/0 and

⁶ Petitioner filed a separate action against Ms. Akker (District Court Case No. 01010027479). Ms. Akker failed to appear at trial and Petitioner was granted a default judgment and \$5,000.00 in damages. Ms. Akker appealed to the Circuit Court (Case No. 24-C-19-001421). The de novo appeal was held on June 11, 2019 and the Court’s ruling is pending.

#6/1) seeking to modify her ad damnum clause to account for additional damages that continue to accrue since the filing of her District Court complaint. In response, Airbnb filed an Opposition to the Request (Cir. Ct., #6/2) as well as a Motion to Dismiss the de novo appeal or, in the alternative, to compel arbitration. (Cir. Ct. #8/0 and #9/0) (Attachment A). Petitioner filed an opposition to the motion to dismiss. (Cir. Ct. 8/2) (Attachment B). Following a hearing on May 10, 2019, the Circuit Court (Pierson, J.) (1) denied Petitioner's request to amend and convert to record appeal, (2) denied Airbnb's motion to dismiss the de novo appeal and compel arbitration, and (3) ruled in favor of Airbnb on Petitioner's complaint.

In ruling for Airbnb on the Petitioner's complaint, the Circuit Court found the Terms of Service enforceable. Specifically, the Circuit Court referred to *Walther v. Sovereign Bank*, 386 Md. 412, 872 A.2d 735 (2005), *Bond v. Nibco, Inc.*, 96 Md. App. 127, 623 A.2d 731 (1993), and cases from other jurisdictions that have enforced the arbitration clause in Airbnb's Terms of Service.⁷ Despite ruling against Petitioner, the Circuit Court noted that it would watch "with interest" if petition were made to this Court.

The Circuit Court judgment of which Petitioner seeks review adjudicated all claims, rights and liabilities of all parties in their entirety and was entered via written Order docketed on May 14, 2019. (Attachment C). A copy of the Circuit Court Docket is included as Attachment D. This case has not been decided by the Court of Special Appeals.

⁷ The Circuit Court specifically cited to *Selden v. Airbnb, Inc.*, 2016 WL 6476934, (D.D.C. Nov. 1, 2016) and *Plazza v. Airbnb, Inc.*, 289 F. Supp. 3d 537 (S.D.N.Y. 2018).

QUESTION PRESENTED

Are the provisions of Airbnb's Terms of Service that exculpate and/or limit Airbnb's liability unenforceable as unconscionable, contrary to public policy, or otherwise?

PERTINENT CONSTITUTIONAL PROVISIONS AND STATUTES

Md. Code Ann., Commercial Law, § 2-302.

U.S. Const. amend. XIV.

ARGUMENT

Sections 15.4 and 17 of the Terms of Service are unenforceable as unconscionable and/or against the public interest.

A. The Terms of Service are procedurally unconscionable in their entirety.

The Terms of Service are a form contract, prepared by Airbnb and presented to all prospective Guests and Hosts, who must consent prior to accessing Airbnb's platform. Petitioner had no opportunity to negotiate any provisions she may have found objectionable nor the option to access the platform without first consenting.

Further, simply declining to create an account with Airbnb in favor of alternative rental platforms was not a reasonable option for Petitioner, who (1) solely relies on income from this industry to support herself and (2) was already active on alternative platforms that, collectively, accounted for less than 1% of her income.

B. Section 15.4(iii) of the Terms of Service is substantively unconscionable.

Section 15.4(iii) purportedly excuses Airbnb's conduct in de-listing the Petitioner pursuant to a baseless complaint without any meaningful inquiry into its merits. In its

Motion to Dismiss (Cir. Ct. Docket No. 8/0) (Attachment A), Airbnb argued that the language is clear and unambiguous and that upon receipt of a Guest's report of an unsecured firearm on Petitioner's property, it removed Petitioner from the Platform "to protect the safety of its guests in accordance with its [Terms of Service] and its Standards and Expectations." Also in its Motion to Dismiss, Airbnb seemed to suggest Petitioner had some affirmative duty to present evidence that there was no safety risk, despite its prior statement that the matter was closed and would not be reconsidered.

On October 3, 2018 . . . [Petitioner] forwarded an explanatory e-mail that . . . included for the first time photographs of the rubber gun [Petitioner] claimed the Guest had mistaken for a real firearm. [Petitioner] had not previously provided photographs or other documentation to Airbnb to support her contention that she had no firearms in her listing, or otherwise clarify that the reported firearm was a rubber toy . . . Subsequent review of the photographs that purportedly demonstrated the gun was was a real firearm led Airbnb to reverse its decision . . .

Attachment A, at 4-5.

As demonstrated by the factual scenario from which this proceeding stems, this provision allows Airbnb to unilaterally and without notice remove a Host from its platform without undertaking any sort of meaningful investigation or inquiry into the merits of a complaint. As such, Airbnb's obligation to exercise "good faith" has proven to be both ambiguous and illusory. It is also important to note that Ms. Akker notified Airbnb of the "weapon" on August 1, 2018 and the Petitioner was not de-listed until August 14, 2018. Without enumerating a procedure for even a cursory examination into the merits of such a complaint, this provision is unconscionable, as a Host is completely vulnerable and without

recourse to address Airbnb’s decision to terminate him or her from the Platform, while Airbnb retains total control over the interpretation of the provision. By itself, this term has proven to be so one-sided in application as to shock the conscience in its lack of due process. In conjunction with Section 17, discussed directly *infra*, the Terms of Service constitute a “one-two punch” that afford Airbnb complete control over a Host while simultaneously absolving it from liability.

C. Section 17 of the Terms of Service is unenforceable as unconscionable and/or against public policy.

In finding the Terms of Service were enforceable, the Circuit Court overextended the holdings in *Walther* and *Nibco* and failed to consider *Wolf*.

The Circuit Court identified *Walther v. Sovereign Bank*, 386 Md. 412, 872 A.2d 735 (2005), as determinative authority on unconscionability and focused specifically on Judge Wilner’s explanation in *Meyer v. State Farm Fire and Cas. Co.*, 85 Md.App. 83, 582 A.2d 275 (1990), recited in *Walther*, 386 Md. at 430–431, that “the fact that a contract is one of adhesion does not mean that either it or any of its terms are invalid or unenforceable” and a court “will not simply excise or ignore terms merely because, in a given case, they may operate to the perceived detriment of the weaker party.” The *Walther* Court then explained that even if a particular contract is determined to be adhesive, “that is not the end of the inquiry—we must examine the *substance* of the particular provision at issue, the arbitration clause, then decide whether it is unconscionable.” *Id.*, at 431. The Circuit Court then extended this analysis to the exculpatory language in the Terms of Service, finding that a clause limiting damages was not so one sided or egregious as to make it unconscionable.

While it is true that *Walther* generally identifies the appropriate analysis for evaluating a contract for unconscionability—whether the contract itself or provision therein is both procedurally and substantively unconscionable—the *Walther* Court’s determination that a particular clause was enforceable under the circumstances of that case does not establish a precedent that automatically applies to other contracts and contexts. For one, *Walther*’s analysis was limited to an arbitration provision, as were the Airbnb cases from other jurisdictions noted by the Circuit Court. (*See* page 6, n.7, *supra*). Such provisions—generally speaking—may be more resistant to challenge from the outset in consideration of the Federal Arbitration Act (FAA) and the nationally recognized policy in favor of arbitration. In enforcing mandatory arbitration clauses, a court compels a party to resolve its dispute in an alternative forum. The presumption of impartiality and competence of this nation’s arbitration tribunals and extensive regulation under the FAA and its state equivalents must necessarily be a factor inherent in courts’ decisions to uphold arbitration clauses in adhesive contracts. This is all to say: arbitration provisions necessarily stand on different footing from other provisions of adhesive contracts—particularly, exculpatory provisions.

The Circuit Court cited to *Bond v. Nibco*, 96 Md.App. 127, 623 A.2d 731 (1993), in support of its extension of *Walther* to an exculpatory clause. In *Nibco*, the intermediate appellate court upheld a contractual provision excluding a faucet manufacturer from liability for incidental and consequential damages in a breach of warranty action where the only injury was commercial. In so ruling, the *Nibco* Court referenced *Md. Code Ann., Com. Law* § 2-719(3) (“[c]onsequential damages may be limited or excluded unless the limitation

or exclusion is unconscionable. Limitation of consequential damages for injury to the person in the case of consumer goods is prima facie unconscionable but limitation of damages where the loss is commercial is not”). *Nibco* does not control here, as the *Nibco* Court only generally stated that limiting consequential damages for a purely commercial loss is not *prima facie* unconscionable. Moreover, unlike Petitioner does here, Bond did not raise the issue that the exclusion of incidental and consequential commercial damages was in fact unconscionable. *Nibco*, 96 Md.App. at 143.

D. The Circuit Court failed to consider *Wolf*.

In upholding the enforceability of the Terms of Service, the Circuit Court overlooked *Wolf v. Ford*, 335 Md. 525, 644 A.2d 522 (1994), wherein this Court’s analysis focused specifically on exculpatory clauses. In *Wolf*, this Court explained that “there are circumstances [where] the public interest will not permit an exculpatory clause in a contract” and grouped these exceptions into three categories: (1) where a party attempts to prohibit its liability for intentional harms or more extreme negligence; (2) when the contract containing the provision is the product of grossly unequal bargaining power; and (3) in transactions affecting the public interest. 335 Md. at 531–32. These three exceptions to the general rule upholding exculpatory clauses have since been used by this Court and the Court of Special Appeals in evaluating exculpatory clauses.⁸

⁸ See, e.g., *BJ's Wholesale Club, Inc. v. Rosen*, 35 Md. 714, 723, 80 A.3d 345, 350 (2013) (considering “the contours of our decision in *Wolf*, which held that an exculpatory agreement will be permitted except in certain circumstances, including ‘in transactions affecting the public interest’”); *Seigneur v. Nat'l Fitness Inst., Inc.*, 132 Md. App. 271, 752 A.2d 631 (2000); *Cornell v. Council of Unit Owners Hawaiian Vill. Condominiums, Inc.*, 983 F. Supp. 640 (D. Md. 1997).

Section 17 is unenforceable under both the second and third categories. The second category, prohibiting such clauses in the context of grossly unequal bargaining power, was described by the Court of Special Appeals in *Seigneur v. Nat'l Fitness Inst., Inc.* to include those situations where “the bargaining power of one party to the contract is so grossly unequal so as to put that party at the mercy of the other’s negligence.” 132 Md. App. 271, 282–83, 752 A.2d 631, 638 (2000). As Section 17 explicitly states that Airbnb will not be liable for negligence, it is therefore unenforceable on these grounds.

The third category, relating to transactions affecting the public interest, includes those regarding the performance of a public service obligation; for example, public utilities, common carriers, innkeepers, and public warehousemen. It also includes transactions that are not readily susceptible to definition or broad categorization, but that are so important to the public good that an exculpatory clause would be “patently offensive” such that the common sense of the entire community would pronounce it invalid. *Wolf*, 335 Md. at 532.

Both the “innkeeper” and “catch-all” language concerning transactions not readily susceptible to definition rings true to the circumstances of case. Transactions between a corporation such as Airbnb and a Host, like Petitioner, presents a transaction not readily interpreted through the lens of traditional commercial contracts. Is a Host a consumer? A franchisee? A subcontractor? Something else?

While this Court is now presented with the opportunity to make that determination, this is not essential to address the enforceability of the exculpatory clause at issue. That is because six (6) factors enumerated in *Tunkl v. Regents of the Univ. of Calif.*, 60 Cal.2d 92, 383 P.2d 441 (1963) provide a framework to determining whether a transaction affects the

public interest. Although the *Wolf* Court declined to accept these factors as *the* determinative analysis in favor of a more comprehensive and fact-specific approach, it held that the *Tunkl* factors may still guide a court in determining whether a transaction affects the public interest. The *Tunkl* Court held that a transaction affects the public interest when it “exhibits some or all of the following characteristics”:

1. It concerns a business of a type generally thought suitable for public regulation.
2. The party seeking exculpation is engaged in performing a service of great importance to the public, which is often a matter of practical necessity for some members of the public.
3. The party holds himself out as willing to perform this service for any member of the public who seeks it, or at least for any member coming within certain established standards.
4. As a result of the essential nature of the service, in the economic setting of the transaction, the party invoking exculpation possesses a decisive advantage of bargaining strength against any member of the public who seeks his services.
5. In exercising a superior bargaining power the party confronts the public with a standardized adhesion contract of exculpation, and makes no provision whereby a purchaser may pay additional reasonable fees and obtain protection against negligence.
6. Finally, as a result of the transaction, the person or property of the purchaser is placed under the control of the seller, subject to the risk of carelessness by the seller or his agents.

Wolf, 335 Md. at 532–33; *citing Tunkl*, 60 Cal.2d at 98–101.

As applied to Airbnb’s Terms of Service, all of the factors are met to varying degrees. Baltimore City and Montgomery County now regulate and tax short-term rentals. Airbnb provides an affordable alternative to hotels for those looking for short-term

accommodations and a way for those—like Petitioner—who make their living as a “contemporary innkeeper.” Airbnb’s Nondiscrimination Policy requires Hosts in effect to meet *Tunkl*’s third factor by taking all Guests unless they become disruptive.⁹ There is no bargaining or negotiation opportunity for prospective Members looking to use Airbnb’s platform—acceptance of the Terms of Service is required to use the platform. The Terms of Service, a form contract presented to both prospective Hosts and Guests during account creation, exculpate Airbnb from liability for negligence. Finally, as demonstrated by Airbnb’s baseless de-listing of Petitioner from its platform, Airbnb has total control over its Members.

REASONS FOR GRANTING REVIEW

Internet-based short-term rentals present a new, massive industry that—until recently—has been unregulated in this State. Its inner workings are controlled by adhesive contracts prepared by tech giants and unilaterally imposed on the Guests and Hosts essential to its continued operation. The European Union has enacted regulations that protect individuals’ rights within this lopsided power dynamic. As a result, Airbnb’s E.U. Terms of Service, as of September 2018, do not contain Section 17’s exculpatory language found in the U.S. version. In the absence of similar regulation protecting the rights of Maryland residents in this industry, this Court should take the opportunity to place a check

⁹ *Airbnb’s Nondiscrimination Policy: Our Commitment to Inclusion and Respect* (2019), <https://www.airbnb.com/help/article/1405/airbnb-s-nondiscrimination-policy--our-commitment-to-inclusion-and-respect>.

on the presently unfettered authority of Airbnb to abide by their own rules at the citizen's expense.

Respectfully Submitted,



William L. Rodowsky, Esq.
SEIFERT & RODOWSKY, P.A.
427 Eastern Boulevard, Suite C
Baltimore, Maryland 21221
(410) 391-7902
(410) 391-7001 (facsimile)
WLR@srlawmd.com

Counsel for Petitioner

CERTIFICATION OF FORM

1. This Petition contains 3,893 words.
2. This Petition is presented in 13 point, Times New Roman font.



William L. Rodowsky, Esq.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of May, 2019, a copy of the foregoing

Petition was mailed, via electronic and first-class mail, to:

Spencer A. Evans, Esq.
NILES BARTON & WILMER, LLP
111 S. Calvert Street, Suite 1400
Baltimore, Maryland 21202

Counsel for Airbnb, Inc.



William L. Rodowsky, Esq.

ATTACHMENT A

JEANNETTE BELLIVEAU,

Appellant,

v.

AIRBNB, INC.,

Appellee.

* **IN THE**

* **CIRCUIT COURT OF**

* **BALTIMORE CITY**

*

Case No. 24-C-19-001836 AN

*

* * * * *

OPPOSITION TO APPELLANT’S AMENDED REQUEST FOR LEAVE TO AMEND COMPLAINT AND FOR CONVERSION OF MATTER TO RECORD APPEAL, MOTION TO DISMISS APPELLANT’S DE NOVO APPEAL OR, IN THE ALTERNATIVE, MOTION TO COMPEL ARBITRATION

Airbnb, Inc. (“Airbnb” or “Appellee”), through undersigned counsel, hereby submits its (1) Opposition to Jeannette Belliveau’s (“Appellant”) Request for Leave to Amend Complaint and for Conversion of Matter to Record Appeal (docket #0006000), filed April 17, 2019 and Appellant’s Amended Request for Leave to Amend Complaint and for Conversion of Matter to Record Appeal (docket #0006001), filed April 19, 2019, (2) Motion to Dismiss Appellant’s De Novo Appeal of the March 6, 2019, Judgment of the District Court (docket #00001000), filed March 22, 2019, or, in the Alternative, (3) Motion to Compel Arbitration.

Appellant seeks to use this small claims appeal to accomplish what she could not do under the parties’ contractual agreement: litigate a claim for \$75,000 in the courts, rather than through contractually agreed-upon arbitration before the AAA. Her motion to amend her complaint fails for four reasons: (1) she cannot change her causes of action and request for relief on appeal; (2) she cannot exclude claims and damages at the time of her original complaint only to later add them during appeal; (3) her motion, if granted, would cause prejudice to Appellee; and (4) her proposed amendment is futile because any claim greater than \$5,000 is outside the jurisdiction of the small

claims court, and must be arbitrated under her contractual agreement with Airbnb and regardless of forum, her claims fail on the merits because the parties' contract expressly excludes liability for her alleged damages. In support, Appellee states:

I. FACTS COMMON TO ALL MOTIONS

A. THE TERMS OF SERVICE ("TOS")

1. The Airbnb Platform

Airbnb provides an online platform that connects third-parties who wish to offer their unique accommodations (called "Hosts") with third-party travelers seeking to book accommodations (called "Guests"). Ex. 1, Miller Decl. ¶ 2. Airbnb's relationship with both hosts and guests is contractual and is governed by Airbnb's Terms of Service ("TOS"). Appellant could not create and access a member account or user profile or publish a listing through the Airbnb platform without first assenting to the TOS. A copy of the applicable TOS is attached hereto as Exhibit E to the Miller Declaration, which is attached as Exhibit 1. Appellant also agreed to be bound by other policies, including Airbnb's Standards and Expectations, which are explicitly incorporated by reference into the TOS. A copy of the applicable version of the Standards and Expectations is attached hereto as Exhibit 2.

Appellant has been and is currently a host with Airbnb. Appellant agreed to the TOS version 8 on June 27, 2018. Ex. 1, Miller Decl., ¶ ¶ 13–14. The TOS permit Airbnb to "immediately, without notice...stop providing access to the Airbnb Platform if...Airbnb believes in good faith such action is reasonably necessary to protect the personal safety...of...its members." Ex. 1, Miller Decl., Ex. E, TOS, Section 15.4. The TOS also explicitly state that Airbnb is not liable for lost profits for the loss or inability to use its online platform. *Id.* at Section 17.1. The TOS also contain an arbitration provision that require arbitration of claims outside of a

jurisdiction's small claims court. *Id.* at Section 19. The arbitration provision's requirements are detailed further in Section IV, *infra*.

2. Appellant Assented to the TOS

The relationship between Airbnb and those who use its services and site is contractual and governed by the TOS. Before a user can book an accommodation through Airbnb's online platform, she must first consent to the TOS, which is presented via hyperlink during the account registration process; users must affirmatively click a checkbox next to the hyperlink that reads: "By signing up I agree to Airbnb's Terms of Service...." Ex. 1, Miller Decl. ¶ 10, Exs. C, D. Airbnb captures and records the date upon which each user accepts the TOS in its business records. Airbnb's records confirm that Appellant created an Airbnb account on December 20, 2013 and consented to the TOS on that date. *Id.* ¶ 9.

Airbnb updates the TOS from time to time. When the TOS is updated, existing account holders must accept the updated TOS before they can access their existing accounts and/or book accommodations. Specifically, the first time that existing account holders access the Airbnb website after a TOS update, they are presented with a screen that: (1) notifies them of the nature of the update; and (2) presents a scroll box that includes the full text of the updated TOS. Ex. 1, Miller Decl. ¶¶ 7, 11–13. Account holders must click a checkbox next to a statement confirming that they "agree to the updated Terms of Service" and then click a button (located under the checkbox) indicating acceptance of the updated TOS in order to continue with their search. The page also includes a "Disagree" button. Users who click "Disagree" are automatically logged out of the system and are thereafter unable to list or book an accommodation. Airbnb's records confirm that, in addition to consenting to the TOS when she created her account on December 20, 2013. *Id.* at ¶ 9. Appellant subsequently assented to the TOS seven (7) additional times. *Id.* at ¶ 13.

B. AIRBNB REMOVED APPELLANT’S ACCOUNT IN RESPONSE TO A REPORT OF AN UNSECURED, UNDISCLOSED FIREARM AT HER LISTING.

On August 1, 2018, a guest (the “Guest”) staying in Appellant’s listing reported to Airbnb an unsecured firearm near the front door of the residence. The Guest also left a review, emailed to Appellant on August 11, 2018, regarding the unsecured firearm on the Appellant’s page, noting that she would not have rented Appellant’s listing had she known there was a firearm. On August 9, 2018, after eliciting more information from the Guest, Airbnb contacted Appellant regarding the report. Ex. 3, Messages Between Appellant and Appellee. Appellant denied that she had any weapons in the listing. *Id.* Based on the information provided by both sides, Airbnb found that Appellant had violated the Standards and Expectations by having an undisclosed, unsecured weapon in her listing. *Id.* On August 14, 2018, Airbnb informed Appellant that it was removing Appellant from its online platform. *Id.*

On October 3, 2018, nearly two months after Appellant denied having weapons in her listing, she forwarded Airbnb an explanatory e-mail that she had sent the Guest. *Id.* The e-mail included for the first time photographs of a rubber gun that Appellant claimed the Guest had mistaken for a real firearm. *Id.* Appellant had not previously provided photographs or other documentation to Airbnb to support her contention that she had no firearms in her listing, or otherwise clarify that the reported firearm was a rubber toy. *Id.*

On November 16, 2018, Appellant filed a Complaint in District Court of Maryland for Baltimore City for “lost earnings” related to Airbnb’s removal of her listing and account from its website.¹ Subsequent review of the photographs that purportedly demonstrated the gun was not a

¹ Appellant also filed suit against the Guest who left the review in the District Court of Maryland for Baltimore City for defamation on November 7, 2018. Despite filing a Notice of Intention to Defend and the Guest’s counsel appearing for the hearing, a judgment of default was entered against the Guest. That case has been appealed to the Circuit Court for Baltimore City. The Case Number for the District Court matter is 010100274792018, and the appeal is 24-C19-001421.

real firearm led Airbnb to reverse its decision. Airbnb reinstated Appellant's access to its platform on February 14, 2019. Appellant was informed of the same on February 19, 2019, by phone.

On March 6, 2018, the parties appeared before the District Court. The District Court entered judgment in favor of the Appellant, but did not award Appellant damages on the basis that the TOS governs and precludes liability for lost profits. During the hearing, the District Court ordered that Airbnb address the Guest's review on Appellant's profile on Airbnb's web page, but did not order specific relief related to the review. Following the hearing, Airbnb removed the Guest's review on March 6. On March 13, 2019, Appellant appealed the District Court's judgment. On April 17, 2019, Appellant filed her Amended Request for Leave to Amend Complaint and for Conversion of Matter to Record Appeal (docket #0006000) and her Amended Request for Leave to Amend Complaint and for Conversion of Matter to Record Appeal (docket #0006001) on April 19, 2019. (collectively "Amended Request for Leave").²

II. OPPOSITION TO APPELLANT'S AMENDED REQUEST FOR LEAVE TO AMEND COMPLAINT AND FOR CONVERSION OF MATTER TO RECORD APPEAL

A. INTRODUCTION

Appellant filed her Request for Leave to Amend Complaint and for Conversion of Matter to Record Appeal (docket #0006000) on April 17, 2019 and Amended Request for Leave to Amend Complaint and for Conversion of Matter to Record Appeal (docket #00060001) on April 19, 2019 (collectively, "Amended Request for Leave"). Specifically, and pursuant to MD. Rule 2-341(b), Appellant has filed for leave to amend the ad damnum clause in her Complaint against Airbnb, Inc. from \$5,000 to an amount in excess of \$75,000 to account for what she alleges are continuing

² The Amended Request for Leave appears to correct a small number of typos in the original Request for Leave and does not differ in its substance or requests.

damages resulting from Airbnb's purported negligence in connection with its investigation and removal of Appellant's profile from its platform between August 14, 2018, through February 14, 2019, and the Guest's review on Airbnb's web page. *See generally*, Appellant's Amended Request for Leave. Appellant has also requested that this Court convert the pending *de novo* appeal to an appeal on the record in accordance with Md. Rule 7-113. *Id.* Appellant's Amended Request for Leave to Amend Complaint and for Conversion of Matter to Record Appeal should be denied because (1) Appellant should not be permitted to add an additional cause of action, negligence, and request fifteen times more damages, to the breach of contract action originally pled in her Complaint; (2) Appellant should not be permitted to exclude existing claims from the computation of the amount in controversy at the time of appeal, in order to proceed *de novo* in the circuit court, and then add those previously existing claims to the controversy on appeal in the circuit court; (3) Appellant's amendment would result in prejudice for Airbnb; and (4) Appellant's amendment would be futile because her proposed amendment would bring her claim within the scope of the TOS' arbitration provision³ and would otherwise fail irreparably. In support, Appellee states:

B. LEGAL STANDARDS

Maryland Rule 2-341 governs the amendment of pleadings in circuit court.⁴ It provides, in pertinent part:

(b) With leave of court. A party may file an amendment to a pleading after the dates set forth in section (a) of this Rule only with leave of court. If the amendment introduces new facts or varies the case in a material respect, the new facts or allegations shall be treated as having been denied by the adverse party. The court shall not grant a continuance or mistrial unless the ends of justice so require.

³ See Section III, In the Alternative, Motion to Compel Arbitration, *infra*.

⁴ Maryland Rule 7-112 governs appeals heard *de novo* and details the procedure to be followed in circuit court: "(1) The form and sufficiency of pleadings in an appeal to be heard *de novo* are governed by the rules applicable in the District Court. A charging document may be amended pursuant to Rule 4-204. (2) If the action in the District Court was tried under Rule 3-701, there shall be no pretrial discovery under Chapter 400 of Title 2, the circuit court shall conduct the trial *de novo* in an informal manner, and Title 5 of these rules does not apply to the proceedings. (3) Except as otherwise provided in this section, the appeal shall proceed in accordance with the rules governing cases instituted in the circuit court." Md. Rule 7-112(d).

(c) Scope. An amendment may seek to (1) change the nature of the action or defense, (2) set forth a better statement of facts concerning any matter already raised in a pleading, (3) set forth transactions or events that have occurred since the filing of the pleading sought to be amended, (4) correct misnomer of a party, (5) correct misjoinder or nonjoinder of a party so long as one of the original Appellants and one of the original defendants remain as parties to the action, (6) add a party or parties, (7) make any other appropriate change. Amendments shall be freely allowed when justice so permits. Errors or defects in a pleading not corrected by an amendment shall be disregarded unless they affect the substantial rights of the parties.

Md. Rule 2-341 (b) and (c).

In interpreting Md. Rule 2-341, Maryland courts have observed that “amendments to pleadings are to be allowed freely and liberally, so long as the operative factual pattern remains essentially the same, and no new cause of action is stated invoking different legal principles.” *Burdyck v. Phoenix Affiliates, Inc.*, 2015 Md. App. LEXIS 491, *14 (Md. Ct. Spec. App. 2015) (citing *Gensler v. Korb Roofers, Inc.*, 37 Md. App. 538, 543 (Md. 1977) (internal citation omitted)). Maryland courts have also held that parties “should not be permitted to exclude existing claims from the computation of the amount in controversy at the time of appeal, in order to proceed de novo in the circuit court, and then add those previously existing claims to the controversy once the matter is in the circuit court.” *Ro v. Heredia*, 341 Md. 302, 13–14 (Md. 1996). Moreover, an “amendment should not be allowed if it would result in prejudice to the opposing party or undue delay, such as where amendment would be futile because the claim is flawed irreparably.” *RRC Northeast, LLC v. BAA Md., Inc.*, 413 Md. 638, 674, 994 (Md. 2010).

C. ARGUMENT

1. *Appellant’s proposed amendment invokes a new cause of action invoking different legal principles seeking substantially more in damages*

Appellant filed her Complaint in the small claims court for the District Court of Maryland for Baltimore City on November 16, 2018. Appellant’s Complaint sought “lost earnings” related

to her delisting with Airbnb's platform. During trial, Airbnb's compliance with its Terms of Service (TOS) was at issue and the District Court entered judgment in favor of Appellant in the amount of zero dollars based on the parties' contractual agreement in the TOS. Appellant now seeks to amend her original Complaint to address "continuing damages resulting from [Airbnb's] negligence" related to what she alleges is a "defamatory review" and seeks "in excess of \$75,000."⁵ See generally Appellant's Req. for Leave. Based on Appellant's Amended Request for Leave, it appears that her claims are evolving to allege substantially more damages based on new allegations of negligence and defamation in connection with the Guest's review. As her proposed amendment to the complaint "invokes a new cause of action invoking different legal principles," specifically additional torts in the form of negligence and defamation, her amendment should not be permitted. *Burdyck v. Phoenix Affiliates, Inc.*, 2015 Md. App. LEXIS at *14.

2. Appellant should not be permitted to exclude existing claims from the computation of the amount in controversy at the time of appeal, in order to proceed de novo in the circuit court, and then add those previously existing claims to the controversy once the matter is in the circuit court

Appellant's proposed amendment adds claims for damages and a cause of action that should have been pled in her original Complaint.⁶ The factual basis for her claims, notwithstanding her alleged damages, existed at the time she filed her original claim and prior to her March District Court trial. Although Appellant claims in her Amended Request for Leave that she did not know that the Guest's report of the firearm was the basis for her removal from Airbnb's platform, an e-mail dated August 11 containing the substance of the Guest's review, and Appellant's October

⁵ It is unclear how Appellant's claimed damages related to the Guest's review are "continuing," or even substantial. The review she has placed at issue was not online between August 14, 2018, when she was removed, and February 14, 2019, when she was reinstated. The review was removed on March 6, 2019, following the District Court hearing in this matter. Thus, the review was online for a total of fourteen (14) days in August and twenty (20) days in February-March 2019.

⁶ As detailed in Section II c, iv., *infra*, and Section III, generally, *infra*, the Amended Request for Leave attempts to circumvent the TOS' arbitration provision by litigating this matter in Maryland's courts.

2018 correspondence to both Airbnb and the Guest claiming the Guest had mistaken a plastic training pistol as a real firearm demonstrate otherwise. *See* Appellant's Amend. Req. for Leave, ¶ 2; Ex. 3, Messages Between Appellant and Appellee, p. 3. As this predates the filing of her Complaint, Appellant should have then pled what she now seeks to add to her Complaint. Appellant Maryland law makes clear that parties "should not be permitted to exclude existing claims from the computation of the amount in controversy at the time of appeal, in order to proceed de novo in the circuit court, and then add those previously existing claims to the controversy once the matter is in the circuit court." *Ro*, 341 Md. at 13–14.

In *Ro v. Heredia*, tenants filed an action of rent escrow in the amount of \$1,700 in the district court when their landlady failed to make necessary repairs. 341 Md. 302 (Md. 1996). At the district court hearing, the court determined that the tenants had failed to prove their entitlement to the rent escrow. *Id.* at 4. The tenants appealed, and the Circuit Court for Frederick County conducted a de novo, non-jury trial and entered judgment in favor of the tenants, awarding the tenants the \$1,700 in escrow as well as \$2,776.67, representing a 100% rebate of rents paid from August to November 1993. *Id.* at 5. The landlady petitioned the Court of Appeals for certiorari, which the Court granted. *Id.* at 6.

The Court of Appeals considered whether the circuit court had the authority to award a judgment of \$2,776.67 when the tenants had only pled \$1,700 in their original complaint. *Id.* at 12. The Court observed that during the circuit court trial, the tenants' counsel sought additional monies in the form of the security deposit and rents paid but should have sought leave to amend their complaint prior to the trial to add these claims. *Id.* at 13. However, the Court noted:

Had leave of the circuit court been sought, it should not have been granted. The potential claim for the security deposit existed at the time the rent escrow action was tried in the District Court, but if that claim literally had been in controversy in the District Court rent escrow case, \$ 2,600 would have been the amount in

controversy at the time the order for appeal was filed. **A party should not be permitted to exclude existing claims from the computation of the amount in controversy at the time of appeal, in order to proceed de novo in the circuit court, and then add those previously existing claims to the controversy once the matter is in the circuit court.** Unlike rent regularly paid into an escrow after a tenant's appeal has been filed, Tenants' potential claim for the security deposit in this case was extant when the District Court rent escrow case was tried, but it was not asserted in that case.

Id. at 13–14 (emphasis added). Similarly, here, Appellant seeks to add a negligence cause of action seeking over \$75,000 in alleged damages for what was originally filed as a breach of contract action in small claims court for the District Court of Maryland. She should not be permitted to exclude negligence, defamation and over \$75,000 in damages that should have been asserted at the time of her original Complaint.

3. Appellant's amendment would result in prejudice to Airbnb

Appellant seeks to substantially change the nature of the *de novo* trial presently scheduled for May 10, 2019. Not only does Appellant seek to add an additional cause of action, but she is also seeking over fifteen (15) times in claimed damages from Airbnb. This will cause grave prejudice to Airbnb. Under Md. Rule 7-112, appeals *de novo* from small claims court are not afforded discovery and are not subject to the rules of evidence. Md. Rule 7-112(d). Should Appellant's Amended Request for Leave be granted, Airbnb could be liable for a judgment in excess of \$75,000 in a matter the parties agreed to arbitrate, where Airbnb would not have the opportunity to conduct discovery, and where the rules of evidence are not applicable. Moreover, Appellant seeks to substantially alter the nature of this case less than thirty days before trial, which does not permit Airbnb to raise a thorough, prepared defense of her additional claims and damages. As Appellant's Amended Request for Leave to Amend, if granted, would cause substantial prejudice to Appellee, it should be denied. *RRC Northeast, LLC*, 413 Md. at 673.

4. Appellant's amendment would be futile because her proposed amendment would bring her claim within the scope of the TOS' arbitration provision and would otherwise fail irreparably

Appellant's proposed amendment to her Complaint is futile because her proposed amendment would bring her claim within the scope of Airbnb's TOS' arbitration provision and would otherwise fail irreparably. *RRC Northeast, LLC*, 413 Md. at 673. Airbnb's TOS contain a mandatory and binding arbitration provision for claims that are outside of the jurisdiction of the applicable small claims court. See Ex. 1, Miller Decl., Ex. E, TOS, Section 19; see generally Section IV, *infra*, which seeks to compel arbitration in the alternative in the event Appellant's Amended Request for Leave is granted. As Appellant's proposed amendments here exceed the jurisdiction of Maryland's small claims court⁷, they are subject to arbitration. Moreover, for reasons discussed in Section III, *infra*, Appellant's proposed amendments fail because her asserted claims and damages are barred by her agreement to Airbnb's TOS. Thus, Appellant's Amended Request for Leave, if granted, would only cause undue delay and burden the courts with needless litigation, because her proposed amendment is futile. *RRC Northeast, LLC.*, 413 Md. at 994.

D. CONCLUSION

For the foregoing reasons, this Court should deny Appellant's Amended Request for Leave to Amend Complaint and for Conversion of Matter to Record Appeal (docket #0006000), filed April 17, 2019, and Amended Request for Leave to Amend Complaint and for Conversion of Matter to Record Appeal (docket #00060001), filed April 19, 2019.

III. MOTION TO DISMISS APPELLANT'S DE NOVO APPEAL

A. INTRODUCTION

⁷ Md. Code Ann., Cts. & Jud. Proc. § 4-405 provides jurisdiction for small claims actions "in which the amount claimed does not exceed \$ 5,000 exclusive of interest, costs, and attorney's fees."

Airbnb removed Appellant's account from its online platform following a guest's report of an unsecured firearm in Appellant's listing, in violation of Airbnb's Standards and Expectations. Appellant initially denied having a firearm in her listing, but nearly two months later provided photographs to claim that the reported firearm was a rubber toy. The Terms of Service ("TOS") govern the parties' relationship and permit Airbnb's removal of Appellant's account, and also preclude Appellant's claim for damages. For the aforementioned reasons, Airbnb was entitled to remove Appellant from its online platform in accordance with its TOS, and is not liable for the lost profits Appellant seeks. Lastly, Airbnb previously provided Appellant the other relief her District Court complaint sought when it reinstated her account on the platform in February 2019. Any appeal on her request for reinstatement is moot.

B. STANDARDS

1. District Court Appeals

Maryland Rule 7-101 et seq. authorizes appeals from the District Court to the Circuit Court. Rule 7-102(b) provides for appeals on the record made in the District Court in:

1) a civil action in which the amount in controversy exceeds \$5000 exclusive of interest, costs, and attorney's fees if attorney's fees are recoverable by law or contract, 2) any matter arising under §4-401(7)(ii) of the Courts article, 3) any civil or criminal action in which the parties so agree, 4) an appeal from an order or judgment of direct criminal contempt if the sentence imposed by the District Court was less than 90 days' imprisonment; and 5) an appeal by the State from a judgment quashing or dismissing a charging document or granting a motion to dismiss in a criminal case.

All other appeals from District Court are heard *de novo*. Md. Rule 7-102(a). Here, the amount in controversy does not exceed \$5,000 and none of the other four exceptions apply, the appeal is *de novo*. *De Novo* means "anew; afresh; a second time." *Pinkett v. State*, 30 Md. App. 458, cert. denied, 278 Md. 730 (1976).

2. Contract Interpretation

Maryland adheres to an objective theory of contract interpretation, “giving effect to the clear terms of agreements, regardless of the intent of the parties at the time of contract formation.” *Myers v. Kayhoe*, 391 Md. 188, 198 (Md. 2006). Maryland courts have observed that “[w]hen the clear language of a contract is unambiguous, the court will give effect to its plain, ordinary, and usual meaning, taking into account the context in which it is used.” *John L. Mattingly Constr. Co. v. Hartford Underwriters Ins. Co.*, 415 Md. 313, 326 (Md. 2010) (quoting *Sy-Lene of Washington, Inc. v. Starwood Urban Retail II, LLC*, 376 Md. 157, 167 (Md. 2003); accord *Langston v. Langston*, 366 Md. 490, 506 (Md. 2001).

C. ARGUMENT

1. Appellee removed Appellant from its online platform in accordance with Section 15.4 of its Terms of Service

Airbnb acted in accordance with its Terms of Service. Section 15.4 of the TOS states, in pertinent part, that:

Airbnb may immediately, without notice, terminate this Agreement and/or stop providing access to the Airbnb Platform if...Airbnb believes in good faith that such action is reasonably necessary to protect the personal safety or property of Airbnb, its Members, or third parties (for example in the case of fraudulent behavior of a Member).

Ex. 1, Miller Decl., Ex. E, TOS, Section 15.4. Pursuant to the TOS to which Appellant agreed, Airbnb was entitled to “immediately, without notice...stop providing access to the Airbnb Platform if...Airbnb believes in good faith such action is reasonably necessary to protect the personal safety...of...its members.” *Id.* This language is clear and unambiguous, and it should be afforded its plain and usual meaning. *John L. Mattingly Constr. Co. v.*, 415 Md. at 326. Airbnb received a Guest’s report of an unsecured firearm in Appellant’s listing. Airbnb removed

Appellant's account, including her listing, from its platform to protect the safety of its guests in accordance with its TOS and its Standards and Expectations.

2. *Appellee is not liable for lost profits pursuant to Section 17.1 of its Terms of Service*

Here, Appellant's District Court Complaint sought lost profits in the amount of \$5,000. *See Compl.* (“[Appellant] typically earns \$6,600-7,500 in the prime months of Sept/Oct/Nov/Dec. Due to delisting these earnings are lost.”). Appellant's claim for lost profits is unequivocally foreclosed by Section 17.1 of the TOS, which states:

Neither Airbnb nor any other party involved in creating, producing, or delivering the Airbnb Platform or Collective Content will be liable for any incidental, special, exemplary or consequential damages, including lost profits...loss of goodwill ...service interruption... or for any damages for personal or bodily injury or emotional distress arising out of or in connection with (i) these Terms, [or] (ii) from the use of or inability to use the Airbnb Platform or Collective Content.

Ex. 1, Miller Decl., Ex. E, TOS, Section 17.1. Airbnb's TOS governs and Appellant is not entitled to recover lost profits. Her appeal should be dismissed as a matter of law.

3. *Airbnb provided Appellant with reinstatement on Airbnb's website, which is the other relief sought in her Complaint*

Airbnb reinstated Appellant's account on February 14, 2019. Airbnb informed Appellant of her reinstatement on February 19, 2019. To the extent Appellant's appeal is based on her claim for reinstatement, that request is moot, as her account has already been reinstated.

C. CONCLUSION

For the foregoing reasons, Appellee's Motion to Dismiss Appellant's *De Novo* Appeal should be granted.

IV. IN THE ALTERNATIVE, MOTION TO COMPEL ARBITRATION

A. INTRODUCTION

Appellant filed her Request for Leave to Amend Complaint and for Conversion of Matter to Record Appeal (docket #0006000) on April 17, 2019 and Amended Request for Leave to Amend Complaint and for Conversion of Matter to Record Appeal (docket #00060001) on April 19, 2019 (collectively, “Amended Request for Leave”). Specifically, and pursuant to MD. Rule 2-341(b), Appellant has filed for leave to amend the ad damnum clause in her Complaint against Airbnb, Inc. from \$5,000 to an amount in excess of \$75,000 to account for what she alleges are continuing damages resulting from Airbnb’s purported negligence in connection with its investigation and removal of Appellant’s profile from its platform between August 14, 2018, through February 14, 2019, and the Guest’s review on Airbnb’s web page. Thus, Appellant concedes that her claims against Airbnb arise expressly out of her use of Airbnb’s website and services. The relationship between Airbnb and Appellant is contractual and is governed by Airbnb’s Terms of Service (“TOS”), to which Appellant agreed on multiple occasions. The TOS includes an arbitration provision that requires individual arbitration of nearly all disputes against Airbnb in accordance with Rule 9 of the Consumer Arbitration Rules of the American Arbitration Association (“AAA”). Ex. 4, Rule 9 of AAA.⁸ Should the Court elect to grant Appellant’s Amended Request for Leave, the Court should enter an order directing the parties to arbitration because the claims in her amended complaint are subject to mandatory, individual arbitration.

On a motion to compel arbitration, this Court’s inquiry is limited to two questions: (1) whether Appellant assented to the arbitration provision and, if so, (2) whether Appellant’s claims fall within its scope. Assent is unquestionably established here. Appellant admits that her claims arise out of an Airbnb booking, and that she has an Airbnb account. Airbnb’s records (filed herewith) confirm this fact, and unambiguously show that Appellant assented to Airbnb’s TOS,

⁸ The complete Consumer Arbitration Rules of the AAA can be found at https://www.adr.org/sites/default/files/Consumer_Rules_Web_0.pdf.

and the arbitration agreement contained therein, when she created her Airbnb account. In fact, Airbnb's records further show that Appellant confirmed her agreement to arbitrate when she consented to the eighth updated version of the TOS, which included substantially the same binding arbitration provisions.

Appellant's assent to the TOS ends the Court's inquiry because the arbitration provision delegates all threshold issues regarding the arbitrability of Appellant's claims to the arbitrator. The Supreme Court, California state courts⁹, and Maryland federal courts agree that "clear and unmistakable" delegation clauses are enforceable and, when present, all questions of arbitrability must be resolved by the arbitrator, not the court.¹⁰ The delegation clause here is plainly "clear and unmistakable": the TOS expressly authorizes the arbitrator to resolve all issues pertaining to the "breach, termination, enforcement, interpretation or validity" of the TOS, including the arbitration provision. Ex. 1, Miller Decl., Ex. E, TOS, Section 19. Accordingly, whether Appellant's particular claims fall within the scope of the TOS and whether any defense to arbitration exists are questions that must be resolved by the arbitrator, not this Court.

Courts have routinely enforced Airbnb's arbitration provision and compelled claims against Airbnb to arbitration. There are no facts here that would dictate a different result.

B. RELEVANT FACTS

1. The TOS Requires Individual Arbitration of All Disputes

⁹ The TOS contain a choice-of-law provision dictating that they be interpreted in accordance with the laws of the State of California. Ex. 1, Miller Decl., Ex. E, TOS, Section 21.

¹⁰ The Supreme Court recently reaffirmed this rule, holding that "[w]hen the parties' contract delegates the arbitrability question to an arbitrator, the courts must respect the parties' decision as embodied in the contract"—even in cases where one party asserts that the other party's argument that the arbitration agreement applies to their particular dispute is "wholly groundless". See *Henry Schein, Inc., v. Archer & White Sales, Inc.*, 2019 U.S. LEXIS 566, *5 (Jan. 8, 2019); see also *Varon v. Uber Techs., Inc.*, 2016 U.S. Dist. LEXIS 58421, *15 (D. Md. 2016) (recognizing that the parties to an arbitration agreement may delegate arbitrability questions to an arbitrator).

The TOS applies broadly to any and all uses of Airbnb’s online platform, content, and services. The very first paragraph of the version of Airbnb’s TOS to which Appellant consented to on June 27, 2018 (the “TOS”) expressly notified Appellant in **bold** and all caps that Section 19 includes an agreement to arbitrate all disputes. Ex. 1, Miller Decl., Ex. E, TOS, p.1. The paragraph states:

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

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

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

Id. at Section 19.4. However, Section 19.2 provides that “[p]arties retain the right to seek relief in small claims court for certain claims, at their option.” *Id.* at Section 19.2. It follows that if a claim is outside of the jurisdiction of the small claims court, it must be submitted to arbitration.

In relevant part, the TOS also specifies that the Federal Arbitration Act governs the interpretation and enforcement of the arbitration clause, and that “[t]hese Terms and your use of the Services will be interpreted in accordance with the laws of the State of California and the United States of America, without regard to its conflict-of-law-provisions.” *Id.* at Section 21.

C. ARGUMENT

1. *The Federal Arbitration Act and California Law Govern*

The arbitration provision in the TOS expressly states that it is governed by the Federal Arbitration Act (“FAA”): “The Federal Arbitration Act will govern the interpretation and enforcement of this section.” Ex. 1, Miller Decl., Ex. E, TOS, Section 19.6. As the United States Supreme Court recently made clear, the FAA—and the body of federal law developed pursuant to it—governs the interpretation and application of an arbitration provision that is made expressly subject to its provisions. *DirectTV, Inc. v. Imburgia*, 136 S. Ct. 463, 468 (2015) (confirming parties can contractually agree to designate FAA as governing law). As the Supreme Court has further held, the FAA preempts any inconsistent state law. *Id.* (holding that the Supremacy Clause forbids state courts from dissociating themselves from federal law, and that as the law of the United States, “the judges of every State must follow” the FAA). Accordingly, the FAA and the body of federal law developed pursuant to it applies here.

The TOS specify also that “[t]hese Terms and your use of the Services will be interpreted in accordance with the laws of the State of California and the United States of America, without regard to its conflict-of-law-provisions.” Ex. 1, Miller Decl., Ex. E, TOS, Section 21. In Maryland, it is “generally accepted that the parties to a contract may agree as to the law which will govern their transaction, even as to issues going to the validity of the contract.” *National Glass v. J.C. Penney Properties*, 336 Md. 606, 610 (Md. 1994) (quoting *Kronovet v. Lipchin*, 288 Md. 30, 43, 415 A.2d 1096, 1104 (1980); see also *Jackson v. Pasadena Receivables, Inc.*, 398 Md. 611, 617 (Md. 2007) (observing that “[w]ith limited exceptions, this Court has long recognized the ability of contracting parties to specify in their contract that the laws of a particular State will apply in any dispute over the validity, construction, or enforceability of the contract, and thereby trump the conflict of law rules that otherwise would be applied by the court.”).¹¹ Thus, the arbitration

¹¹ Maryland also recognizes that arbitration agreements are enforceable. The Maryland Uniform Arbitration Act (“Maryland Arbitration Act”) provides:

provision in Section 19 of the TOS is interpreted in accordance with the laws of the State of California.

2. *The Court Must Compel Arbitration of Appellant's Newly Asserted Claims Because Appellant Agreed to Arbitrate Her Claims Against Airbnb.*

Section 2 of the FAA codifies a strong federal policy favoring arbitration, making arbitration provisions “valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.” 9 U.S.C. § 2; *see AT&T Mobility v. Concepcion*, 563 U.S. 333, 339 (2011) (federal policy requires rigorous enforcement of arbitration agreements). Section 2 creates a heavy presumption in favor of arbitrability that requires courts to resolve all doubt as to the scope of arbitrable issues in favor of arbitration. *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983) (“questions of arbitrability [must] be addressed with a healthy regard for the federal policy favoring arbitration,” and “any doubts concerning the scope of arbitral issues should be resolved in favor of arbitration . . .”); *Volt Info. Sciences, Inc. v. Bd. of Trustees of Leland Stanford Jr. Univ.*, 489 U.S. 468, 475-76 (1989) (“settled” rule that questions

Except as otherwise provided in this subtitle, a written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy arising between the parties in the future is valid and enforceable, and is irrevocable, except upon grounds that exist at law or in equity for the revocation of a contract.

Md. Code Ann., Cts. & Jud. Proc. § 3-206. Maryland courts have observed that the Maryland Arbitration Act embodies a public policy favoring arbitration. *Walther v. Sovereign Bank*, 386 Md. 412, 425, 872 (Md. 2005). In construing an arbitration provision, Maryland courts “follow the objective law of contract interpretation.” *Koons Ford of Balt., Inc. v. Lobach*, 398 Md. 38, 47 (Md. 2007). Under this approach, the court:

must first determine from the language of the agreement itself what a reasonable person in the position of the parties would have meant at the time it was effectuated. In addition, when the language of the contract is plain and unambiguous there is no room for construction, and a court must presume that the parties meant what they expressed. In these circumstances, the true test of what is meant is not what the parties to the contract intended it to mean, but what a reasonable person in the position of the parties would have thought it meant. Consequently, the clear and unambiguous language of an agreement will not give away to what the parties thought that the agreement meant or intended it to mean.

Id. (internal quotation and citation omitted).

of arbitrability in contracts subject to the FAA “must be resolved with a healthy regard for the federal policy favoring arbitration”); *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 626 (1985) (while the parties’ intentions control interpretation of a contract subject to the FAA, “those intentions are generously construed as to issues of arbitrability”).¹²

The strong presumption in favor of arbitration limits the court’s analysis on a motion to compel arbitration to two questions: (1) whether the parties agreed to arbitrate (i.e., whether they assented to the arbitration contract); and (2) if so, whether the agreement encompasses the asserted claims (i.e., whether the claims asserted are within the scope of the arbitration contract). *Chiron Corp. v. Ortho Diagnostics Sys., Inc.*, 207 F.3d 1126, 1130 (9th Cir. 2000); *Bruni v. Didion*, 160 Cal. App. 4th 1272, 1283 (2008); *Kropfelder v. Snap-On Tools Corp.*, 859 F. Supp. 952, 953 (D.Md. 1994) (quoting *Weston v. ITT-CFC*, 1992 U.S. Dist. LEXIS 21200 (N.D. Tex. 1992)).

Airbnb’s burden of establishing assent is not a heavy one, and it is easily satisfied here. Because arbitration agreements are contracts, assent is analyzed under ordinary principles of state contract law. *First Options of Chi., Inc. v. Kaplan*, 514 U.S. 938, 943–45 (1995) (arbitration is a matter of contract law, and analysis turns on whether an agreement was formed). The TOS contains a California choice of law provision¹³ and, under California law, assent is established by either actual or constructive knowledge of contract terms. Online contracts are no different than other contracts, and Courts applying California law¹⁴ regularly enforce “clickwrap” or “scroll-

¹² Although the question here is one of federal law, California state law, which controls the rest of the TOS, (see TOS at 22), also favors enforcement of the arbitration agreement. Cal. Code Civ. Proc. §§ 1281-1294; *Trujillo v Gomez*, 2015 WL 1757870, at *3 (S.D. Cal 2015). California has a strong public policy in favor of arbitration. *Sanchez v. Valencia Holding Co., LLC*, 61 Cal. 4th 899, 935 (Cal. 2015); *Larkin v. Williams, Woolley, Cogswell, Nakazawa & Russell*, 76 Cal. App. 4th 227, 229 (1999) (“It is well established that under California law there is a strong public policy in favor of arbitration.”).

¹³ See TOS, Section 21. As noted in Section Section IV, C, 1., *supra*, Maryland courts routinely enforce choice-of-law provisions.

¹⁴ Although Maryland appellate courts and federal courts applying Maryland law have not explicitly addressed the issue of clickwrap agreements, they routinely uphold online agreements on the basis of traditional rules of contract interpretation. See *Grant-Fletcher v. Collecto, Inc.*, 2014 U.S. Dist. LEXIS 64163 (D. Md. 2014) (enforcing

wrap” agreements—such as the TOS—because they require users to manifest their assent by clicking “Agree” or an equivalent button. *See* Ex. 1, Miller Decl., Exs. C and D; *Loewn v. Lyft, Inc.*, 129 F. Supp. 3d 945, 957–58 (N.D. Cal. 2015) (enforcing an arbitration provision within a TOS where Appellants had the opportunity to scroll through the terms prior to assent and then clicked “I agree” to assent to the terms of the TOS); *Tompkins v. 23andMe, Inc.*, Case No. 5:13-CV-05682-LHK, 2014 WL 2903752, at *8 (N.D. Cal. June 25, 2014) *aff’d* 840 F.3d 1016 (9th Cir. 2016) (holding that Appellants received adequate notice and consented to the TOS—and the arbitration provision contained therein—where they clicked a button “during the account creation and registration process . . . that appeared near a hyperlink to the TOS to indicate acceptance of the TOS”); *Swift v. Zynga Game Network, Inc.*, 805 F. Supp. 2d 904, 910–11 (N.D. Cal. 2011) (same); *Zynga Game Network, Inc.*, 805 F. Supp. 2d 904, 911–12 (N.D. Cal. 2011) (under California law, click-through agreements require acknowledgment of assent by click); *United States v. Drew*, 259 F.R.D. 449, 462 n.22 (C.D. Cal. 2009) (“Clickwrap agreements have been routinely upheld by circuit and district courts.”).

Multiple courts in various jurisdictions throughout the United States have already considered Airbnb’s sign-up procedure and have compelled arbitration upon finding that the process adequately notifies users that they are agreeing to arbitrate their disputes with Airbnb. *See e.g. Hernandez v. Airbnb Inc., et al.*, Los Angeles County California Superior Court Case No. BC706648 (Mar. 7, 2019) (holding that Airbnb’s TOS and arbitration clause are not substantively

arbitration provision contained within online terms of service without deciding whether the terms of service were a “click wrap” agreement); *Koch v. Am. Online, Inc.*, 139 F. Supp. 2d 690 (D. Md. 2000) (granting motion to dismiss for improper venue on the basis of forum selection clause contained within online terms of service agreement). At least one Maryland Circuit Court, the Circuit Court for Montgomery County, has held that click-wrap agreements are enforceable. *Blue Bird, LLC v. Nolan*, 2009 Md. Cir. Ct. LEXIS 9 (Md. Cir. Ct. 2009). In that case, which also outlined the broad acceptance of the enforceability of click-wrap agreements around the country, the Court concluded that click-wrap agreement was “enforceable contract because by clicking on the “I Agree” button, the defendants manifested their assent to its terms.” *Id.* at *13.

nor procedurally unconscionable, including the arbitration provision's limitation on discovery); *Does v. Natt, et al.*, Circuit Court for Manatee County Florida Case No. 2018-CA-2203 (Mar. 7, 2019) (holding that "Appellant's theory of recovery can affect only whether an arbitrable issue exists, and does not affect the existence or non-existence of a written agreement."); *Hatfield v. Bauer*, Sonoma County California Superior Court Case No. SCV-263276 (Mar. 5, 2019) (compelling non-booking Guest to arbitration because: "1) Appellant received the benefits conferred by the terms of service containing the agreement to arbitrate disputes 'arise out of or related to' the use of Airbnb's platform [agreed to by the booking Guest]; 2) [booking Guest] acted as Appellant's agent by booking the accommodation through his Airbnb account, and Appellant ratified [booking Guest's] conduct; and 3) Appellant created an Airbnb account and consented to the terms and conditions containing the arbitration clause when he agreed to the Terms of Service *himself* after the incident and before the Complaint was filed." (emphasis in original)); *Krivickas v. Airbnb*, Circuit Court of Cook County, Illinois Case No. 18M112834 (Dec. 19, 2018); *Du Ju v. Lacombe, et al.*, Case No. 3:18-cv-05309-BHS (W.D. Wash. Dec. 5, 2018); *McCluskey v. Henry, et al.*, San Francisco Superior Court Case No. CGC-18-567741 (Nov. 7, 2018); *Fontebo, et al. v. Airbnb, Inc., et al.*, Los Angeles Superior Court Case No. BC686407 (June 14, 2018) (compelling arbitration of non-booking guests' disputes); *McCluskey v. Airbnb, Inc.*, San Francisco Superior Court Case No. CGC-18-563528 (May 30, 2018) (the delegation clauses in versions 6 and 7 of the TOS require that the arbitrator, not the court, decide whether the arbitration agreement is enforceable); *Senders v. Airbnb, Inc. et al.*, San Francisco County Superior Court Case No. CGC-17-561710 (March 14, 2018); *Plazza, et al. v. Airbnb, Inc., et al.*, Case No. 1:16-cv-01085-VSB (S.D.N.Y Jan. 26, 2018); *Mazaheri et al. v. Bob, et al.*, Los Angeles Superior Court Case No. BC658417 (Sep. 21, 2017); *Fogel v. Hacker, et al.*, Los Angeles County Superior Court Case No.

BC651607 (August 20, 2017); *Flynn v. Sutcliffe, et al.*, Circuit Court for Broward County, Florida Case No. CACE 17009259 (Aug. 15, 2017); *Stutland v. Airbnb, Inc.*, Los Angeles County Superior Court Case No. BC581681 (March 22, 2017) (compelling arbitration and noting that Versions 2 through 6 of the TOS “are substantively the same”); *Selden v. Airbnb, Inc.*, 2016 WL 6476934 (D.C. Cir. Nov. 1, 2016); *Hollywood v. Airbnb, Inc.*, Los Angeles County Superior Court Case No. BC601165 (April 20, 2016).

As the court in *Selden* explained:

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

Selden, 2016 WL 6476934 at *2.

The result can be no different here. Appellant assented to Airbnb’s TOS through the same sign-up process and after being presented with screens that were substantially similar, if not identical, to those presented to the users in *Hollywood*, *Stutland*, *Fogel*, *Mazaheri*, *Plazza*, *Senders*, *McCluskey*, and *Selden*. See, e.g., *Selden*, 2016 WL 6476934, at *5 (describing sign-up process and confirming TOS was adequately disclosed); Ex. 1, Miller Decl. ¶¶ 9–13 (describing Appellant’s sign-up process here). As the court in *Selden* noted, the hyperlinked language located under the sign-up box (“By signing up, I agree to Airbnb’s Terms of Service”) was conspicuous and, therefore, sufficient to put the plaintiff there on notice of the TOS. *Selden*, 2016 WL 6476934, at *2. In other words, by “choosing to sign up for Airbnb, Selden manifested his assent to the Terms of Service.” *Id.* at *2, 5. So, too, did Appellant here. In fact, Airbnb’s business records confirm that Appellant agreed to the TOS on eight separate occasions—each time assenting to the

arbitration provision therein. Ex. 1, Miller Decl., ¶¶ 9–13; Exs. A, B.

3. *The Delegation Clause is “Clear and Unmistakable” and Thus Compels Arbitration of All Gateway Issues Including Scope*

Because assent is established, the only question remaining is whether the delegation clause in the TOS is enforceable. It is well established that parties to an arbitration agreement can delegate gateway issues of arbitrability, such as validity, enforceability, and scope to the arbitrator. *First Options of Chicago*, 514 U.S. at 943; *Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63, 71-74 (2010) (upholding enforceability of an “agreement to arbitrate threshold issues” regarding the arbitrability of the dispute); *Sandquist v. Lebo Automotive*, 1 Cal. 5th 233, 243 (2016) (“‘who decides’ [issues of arbitrability] is a matter of party agreement”); *Dream Theater, Inc. v. Dream Theater*, 124 Cal. App. 4th 547, 551 (2004) (noting that who decides arbitrability depends on the parties’ contract, and compelling arbitration of gateway issues). As the Supreme Court just recently and unanimously held, when a contract delegates threshold questions of arbitrability to the arbitrator, a court must honor the parties’ contractual decision and refer the matter to arbitration without exception, and without making its own determinations about arbitrability. *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. --, 2019 WL 122164, at *4-5 (Jan. 8, 2019) (“When the parties’ contract delegates the arbitrability question to an arbitrator, a court may not override the contract. In those circumstances, a court possesses no power to decide the arbitrability issue. That is true even if the court thinks that the argument that the arbitration agreement applies to a particular dispute is wholly groundless.”).

Delegation clauses are enforceable if they are “clear and unmistakable.” *Rent-A-Center, W., Inc.*, 561 U.S. at 79–80; *Momot v. Mastro*, 652 F.3d 982, 988 (9th Cir. 2010); *Portland Gen. Elec. Co. v. Liberty Mut. Ins. Co.*, 862 F.3d 981, 985 (9th Cir. 2017), *as amended* (Aug. 28, 2017) (parties may delegate the adjudication of gateway issues to the arbitrator if they “clearly and

unmistakably” agree to do so); *Dream Theater*, 124 Cal App. 4th at 552 (when parties “clearly and unmistakably” delegate issues of arbitrability to the arbitrator, the arbitrator, not the court, decides gateway issues of arbitrability). Courts agree that express delegation language in the arbitration agreement satisfies the “clear and unmistakable” standard. *Rent-A-Center, W., Inc.*, 561 U.S. at 79–80; *Mohamed v. Uber Techs., Inc.*, 848 F.3d 1201, 1208–09 (9th Cir. 2016) (*en banc*) (evidence of a “clear and unmistakable” delegation includes “. . . an express agreement to do so”).

The delegation language in the arbitration provision here is “clear and unmistakable.” It states that “any dispute . . . arising out of or relating to these Terms or the breach, termination, or enforcement, interpretation, or validity thereof, or to the use of the Services or the use of the Site . . . will be settled by binding arbitration.” TOS, Section 19.4. Accordingly, the parties have expressly delegated all disputes concerning the validity, enforceability, or interpretation of the arbitration provision to the arbitrator, and the Court’s inquiry must end.¹⁵

Indeed, courts have repeatedly interpreted language more ambiguous than Airbnb’s TOS as meeting the “clear and unmistakable” threshold constituting valid delegation. In *Mohamed v. Uber Techs., Inc.*, for example, the court did not hesitate to find that the phrase “the enforceability, revocability or validity” was sufficiently “clear and unmistakable” to delegate all issues pertaining to arbitrability to the arbitrator. 836 F.3d at 1106–08. Likewise, in *Momot*, the Ninth Circuit affirmed the arbitrability of gateway issues where the contract language was similar to that at issue here, and stated: “If a dispute arises out of or relates to this Agreement, the relationships that result from this Agreement, the breach of this Agreement *or the validity or application of any of the*

¹⁵ Additionally, the arbitration provision incorporates the American Arbitration Association (“AAA”) Consumer Arbitration Rules, which give the arbitrator the authority to rule on his or her own jurisdiction. TOS, p. 23; Ex. 4, Rule 9 of the AAA; *see also* AAA Commercial Arbitration Rule 7 available at www.adr.org, under “Rules” tab (“The arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope, or validity of the arbitration agreement or to the arbitrability of any claim or counterclaim.”).

provisions of this Section 4 [the arbitration provision] . . . the dispute shall be resolved exclusively by binding arbitration.” *Momot*, 652 F.3d at 988 (emphasis added).

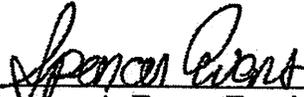
The language of the TOS is substantively indistinguishable from the sufficiently “clear and unmistakable” delegation clauses consistently enforced by the Ninth Circuit. As such, the parties have authorized the arbitrator to rule on his or her own jurisdiction—by interpreting the contract to determine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

4. The Litigation Must Be Stayed Pending Arbitration

Section 3 of the FAA requires courts to stay litigation upon referring a dispute to arbitration. 9 U.S.C. § 3. Here, a stay is appropriate because Appellant agreed to arbitrate all claims as well as any gateway issues of enforceability, scope, and validity. *MediVas, LLC v. Marubeni Corp.*, 741 F.3d 4, 9 (9th Cir. 2014) (adopting rebuttable presumption that actions are stayed pending arbitration if not expressly dismissed); *Grear v. Comcast Corp.*, No. C 14-05333 JSW, 2015 WL 926576, at *2 (N.D. Cal. Mar. 3, 2015) (staying litigation under FAA § 3 upon referring dispute to arbitration); Md. Code Ann., Cts. And Jud. Proc. § 3-209(a) (“A court shall stay any action or proceeding involving an issue subject to arbitration if...(2) An order for arbitration has been made.”).

D. CONCLUSION

The arbitration provision is clear, and so are federal, California, and Maryland law: the amended complaint cannot proceed in this Court because Appellant assented to the arbitration provision and Appellant’s claims fall squarely within its scope. If this Court permits Appellant’s proposed amendment, it should issue an order compelling Appellant to arbitrate her claims pursuant to Airbnb’s Terms of Service, and stay the litigation pursuant to section 3 of the FAA.



Spencer A. Evans, Esquire
NILES BARTON & WILMER, LLP
111 S. Calvert Street, Suite 1400
Baltimore, Maryland 21202
E-mail: saevans@nilesbarton.com
Telephone No.: 410-783-6423
Facsimile No.: 410-783-6424
Attorney for Airbnb, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on 2nd day of May, 2019 a copy of the foregoing Motion to Dismiss along with a copy of this Certificate of Service was electronically mailed and mailed via First Class Mail, postage pre-paid to:

Jeannette Belliveau
203 S. Ann Street
Baltimore, Maryland 21231
Pro - Se



Spencer A. Evans, Esquire

ATTACHMENT A-1

Updated Terms of Service

We've recently updated our: (1) Terms of Service, (2) Payments Terms of Service, and (3) Privacy Policy (collectively, "**Terms**"). If you signed up for an account prior to April 16, 2018, we'll ask you to agree to the new Terms of Service and Payments Terms of Service when you use Airbnb on or after June 27, 2018; until June 27, 2018 the prior Terms of Service and Payments Terms of Service will continue to apply to you. The updated Privacy Policy will automatically come into effect for all existing users on May 25, 2018. Your continued use of the Airbnb Platform from that day on will be subject to the new Privacy Policy. Please read these Terms carefully. If you signed up for an account on or after April 16, 2018, the updated Terms apply to you. Learn more about what's changing

Terms of Service

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

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

Last Updated: April 16, 2018

Thank you for using Airbnb!

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

When these Terms mention "**Airbnb**," "**we**," "**us**," or "**our**," it refers to the Airbnb company you are contracting with. Your contracting entity will generally be determined based on your Country of Residence. Your "**Country of Residence**" is the jurisdiction associated with your Airbnb Account as determined by either your express selection or by Airbnb's assessment of your residence using various data attributes associated with your Airbnb Account.

- If your Country of Residence is the United States, you are contracting with Airbnb, Inc., 888 Brannan Street, 4th Floor, San Francisco, CA 94103, United States.
- If your Country of Residence is outside of the United States, the People's Republic of China (which for purposes of these Terms does not include Hong Kong, Macau and Taiwan) (hereinafter "**China**") and Japan, you are contracting with Airbnb Ireland UC ("**Airbnb Ireland**"), The Watermarque Building, South Lotts Road, Ringsend, Dublin 4, Ireland.
- If your Country of Residence is China, you are contracting with Airbnb Internet (Beijing) Co., Ltd. ("**Airbnb China**") except where you book a Host Service (as defined below) or when you create a Listing located outside of China, in which case you are contracting with Airbnb Ireland for that transaction.
- If your Country of Residence is Japan, you are contracting with Airbnb Global Services Limited ("**Airbnb GSL**"), 25-28 North Wall Quay, Dublin 1, D01 H104, Ireland, except where you book a Host Service (as defined below) or when you create a Listing located outside of Japan, in which case you are contracting with Airbnb Ireland for that transaction. Additionally, if your contracting entity is Airbnb GSL, you will nevertheless contract with Airbnb Ireland for all bookings confirmed prior to June 13, 2018 at 3:00 pm UTC.

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

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

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

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

Table of Contents

1. Scope of Airbnb Services
2. Eligibility, Using the Airbnb Platform, Member Verification
3. Modification of these Terms
4. Account Registration
5. Content
6. Service Fees
7. Terms specific for Hosts
8. Terms specific for Guests
9. Booking Modifications, Cancellations and Refunds, Resolution Center
10. Ratings and Reviews
11. Damage to Accommodations, Disputes between Members
12. Rounding off, Currency conversion
13. Taxes
14. Prohibited Activities
15. Term and Termination, Suspension and other Measures
16. Disclaimers
17. Liability
18. Indemnification
19. Dispute Resolution
20. Feedback
21. Applicable Law and Jurisdiction
22. General Provisions

1. Scope of Airbnb Services

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

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

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

or use other Host Services, accept a booking request from a Guest, or communicate and interact with other Members, whether online or in person. Verified Images (as defined below) are intended only to indicate a photographic representation of a Listing at the time the photograph was taken, and are therefore not an endorsement by Airbnb of any Host or Listing.

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

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

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

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

2. Eligibility, Using the Airbnb Platform, Member Verification

2.1 You must be at least 18 years old and able to enter into legally binding contracts to access and use the Airbnb Platform or register an Airbnb Account. By accessing or using the Airbnb Platform you represent and warrant that you are 18 or older and have the legal capacity and authority to enter into a contract.

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

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

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

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

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

3. Modification of these Terms

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

4. Account Registration

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

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

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

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

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

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

5. Content

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

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

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

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

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

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

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

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

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

6. Service Fees

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

6.2 Any applicable Service Fees (including any applicable Taxes) will be displayed to a Host or Guest prior to publishing or booking a Listing. Airbnb reserves the right to change the Service Fees at any time, and will provide Members adequate notice of any fee changes before they become effective.

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

7. Terms specific for Hosts

7.1 Terms applicable to all Listings

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

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

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

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

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

7.1.6 The placement and ranking of Listings in search results on the Airbnb Platform may vary and depend on a variety of factors, such as Guest search parameters and preferences, Host requirements, price and calendar availability, number and quality of Images, customer service and cancellation history, Reviews and Ratings, type of Host Service, and/or ease of booking.

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

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

7.2 Listing Accommodations

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

7.2.2 If you choose to require a security deposit for your Accommodation, you must specify this in your Listing ("**Security Deposit**"). Hosts are not allowed to ask for a Security Deposit after a booking has been confirmed or outside of the Airbnb Platform. Airbnb will use commercially reasonable efforts to address Hosts' requests and claims related to Security Deposits, but Airbnb is not responsible for administering or accepting any claims by Hosts related to Security Deposits.

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

7.3 Listing Experiences, Events and other Host Services

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

7.4 Co-Hosts

7.4.1 Airbnb may enable Hosts to authorize other Members ("**Co-Hosts**") to administer the Host's Listing(s), and to bind the Host and take certain actions in relation to the Listing(s) as permitted by the Host, such as accepting booking requests,

messaging and welcoming Guests, and updating the Listing Fee and calendar availability (collectively, “**Co-Host Services**”). Any agreement formed between Host and Co-Host may not conflict with these Terms, the Payments Terms, or any other Policies applicable to your Host Service(s). Co-Hosts may only act in an individual capacity and not on behalf of a company or other organization, unless expressly authorized by Airbnb. Airbnb reserves the right, in our sole discretion, to limit the number of Co-Hosts a Host may invite for each Listing and to limit the number of Listings a Co-Host may manage.

7.4.2 Hosts and Co-Hosts may agree on a fee (“**Co-Host Services Fee**”) in consideration for the Co-Host Services provided by the Co-Host. When such an agreement is made, the Host agrees to pay the Co-Host Services Fee for any confirmed booking of their Listing, which will be deducted directly from the Listing Fee after deduction of any applicable Host Fee. In addition, Hosts may instruct a Co-Host to provide certain one-time services in relation to their Listing. Hosts can pay Co-Hosts for one-time services and any other expenses using the Resolution Center. Airbnb Payments will process all Co-Host Services Fees and Resolution Center payments.

7.4.3 Hosts and Co-Hosts agree that each activity, booking, or other transaction reported on the Airbnb Platform, including any Co-Host Services provided by the Co-Host and any amounts due from a Host to the Co-Host for the provision of such services, will be deemed accurate, correct and binding, unless challenged, by notifying the other person and Airbnb (by emailing host-exp@airbnb.com), within 21 days of posting of the disputed activity, booking or other transaction on the Airbnb Platform.

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

7.4.5 Unless agreed otherwise by Host and Co-Host, Host and Co-Host may terminate the Co-Host agreement at any time. In addition, both Host and Co-Host acknowledge that their Co-hosting relationship will terminate in the event that Airbnb (i) terminates the Co-Host service or (ii) terminates either party's participation in the Co-Host service. When the Co-Host agreement is terminated, the Host will remain responsible for all of the Co-Host's actions prior to the termination, including the responsibility to fulfill any pending or future bookings initiated prior to the termination. When a Member is removed as a Co-Host, that Member will no longer have access to any Host or Guest information related to the applicable Host's Listing(s). In addition, Host agrees to pay Co-Host for all Co-Host Services completed prior to Co-Host's termination within 14 days of Co-Host's termination via the Resolution Center. A Co-Host will not be entitled to any fees for any Co-Host Services that have not been completed prior to the Co-Host's termination.

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

8. Terms specific for Guests

8.1 Terms applicable to all bookings

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

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

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

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

8.2 Booking Accommodations

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

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

8.3 Booking Experiences, Events and other Host Services

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

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

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

8.4 Airbnb Travel Credits

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

9. Booking Modifications, Cancellations and Refunds, Resolution Center

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

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

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

9.4 For Experiences, Events and other Host Services, if inclement weather creates an unsafe or uncomfortable scenario for Guests, Hosts may modify or cancel a Host Service. If there is a substantial change in the itinerary or the Host Service needs to be cancelled, Airbnb will work with the Host and/or Guests to provide Guests an alternative date for the Host Service, an appropriate refund or a rebooking.

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

9.6 If a Guest suffers a Travel Issue pursuant to the Guest Refund Policy, Airbnb may determine, in its sole discretion, to refund the Guest part or all of the Total Fees in accordance with the Guest Refund Policy.

9.7 If, as a Host, your Guest cancels a confirmed booking or Airbnb decides that it is necessary to cancel a confirmed booking, and Airbnb issues a refund to the Guest in accordance with the Guest Refund Policy, Extenuating Circumstances Policy, or other applicable cancellation policy, you agree that in the event you have already been paid, Airbnb Payments will be entitled to recover the amount of any such refund from you, including by subtracting such refund amount out from any future Payouts due to you.

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

10. Ratings and Reviews

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

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

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

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

11. Damage to Accommodations, Disputes between Members

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

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

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

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

12. Rounding off

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

13. Taxes

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

13.2 Tax regulations may require us to collect appropriate Tax information from Hosts, or to withhold Taxes from payouts to Hosts, or both. If a Host fails to provide us with documentation that we determine to be sufficient to alleviate our obligation (if any) to withhold Taxes from payouts to you, we reserve the right to freeze all payouts, withhold such amounts as required by law, or to do both, until resolution.

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

13.4 In certain jurisdictions, Airbnb may decide in its sole discretion to facilitate collection and remittance of Occupancy Taxes from or on behalf of Guests or Hosts, in accordance these Terms ("**Collection and Remittance**") if such jurisdiction asserts Airbnb or Hosts have an Occupancy Tax collection and remittance obligation. In any jurisdiction in which we decide to facilitate direct Collection and Remittance, you hereby instruct and authorize Airbnb (via Airbnb Payments) to collect Occupancy Taxes from Guests on the Host's behalf at the time Listing Fees are collected, and to remit such Occupancy Taxes to the Tax Authority. The amount of Occupancy Taxes, if any, collected and remitted by Airbnb will be visible to and separately stated to both Guests and Hosts on their respective transaction documents. Where Airbnb is facilitating Collection and Remittance, Hosts are not permitted to collect any Occupancy Taxes being collected by Airbnb relating to their Accommodations in that jurisdiction.

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

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

14. Prohibited Activities

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

- breach or circumvent any applicable laws or regulations, agreements with third-parties, third-party rights, or our Terms, Policies or Standards;
- use the Airbnb Platform or Collective Content for any commercial or other purposes that are not expressly permitted by these Terms or in a manner that falsely implies Airbnb endorsement, partnership or otherwise misleads others as to your

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

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

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

15. Term and Termination, Suspension and other Measures

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

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

15.3 Unless your Country of Residence is the United States, without limiting our rights specified below, Airbnb may terminate this Agreement for convenience at any time by giving you thirty (30) days' notice via email to your registered email address.

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

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

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

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

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

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

15.8 Unless you reside in Germany, if you or we terminate this Agreement, the clauses of these Terms that reasonably should survive termination of the Agreement will remain in effect.

16. Disclaimers

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

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

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

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

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

17. Liability

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

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

18. Indemnification

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

19. Dispute Resolution and Arbitration Agreement

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

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

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

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

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

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

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

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

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

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

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

19.11 No Class Actions or Representative Proceedings. You and Airbnb acknowledge and agree that we are each waiving the right to participate as a plaintiff or class member in any purported class action lawsuit, class-wide arbitration, private attorney-general action, or any other representative proceeding as to all Disputes. Further, unless you and Airbnb both otherwise agree in writing, the arbitrator may not consolidate more than one party's claims and may not otherwise preside over any form of any class or representative proceeding. If this paragraph is held

unenforceable with respect to any Dispute, then the entirety of the Arbitration Agreement will be deemed void with respect to such Dispute.

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

19.13 Changes. Notwithstanding the provisions of Section 3 ("Modification of these Terms"), if Airbnb changes this Section 19 ("Dispute Resolution and Arbitration Agreement") after the date you last accepted these Terms (or accepted any subsequent changes to these Terms), you may reject any such change by sending us written notice (including by email) within thirty (30) days of the date such change became effective, as indicated in the "Last Updated" date above or in the date of Airbnb's email to you notifying you of such change. By rejecting any change, you are agreeing that you will arbitrate any Dispute between you and Airbnb in accordance with the provisions of the "Dispute Resolution and Arbitration Agreement" section as of the date you last accepted these Terms (or accepted any subsequent changes to these Terms).

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

20. Feedback

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

21. Applicable Law and Jurisdiction

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

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

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

22. General Provisions

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

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

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

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

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

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

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

22.8 If your Country of Residence is in the EU you can access the European Commission's online dispute resolution platform here: <http://ec.europa.eu/consumers/odr>. Please note that Airbnb Ireland is not committed nor obliged to use an alternative dispute resolution entity to resolve disputes with consumers.

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

ATTACHMENT B

IN THE CIRCUIT COURT FOR BALTIMORE CITY

JEANNETTE BELLIVEAU,

*

Plaintiff,

*

vs.

*

Case No. 24-C-19-001836

AIRBNB INC.,

*

Defendant.

*

RECEIVED
2019 MAY -6 AM 11:45
CIRCUIT COURT
BALTIMORE CITY
CIVIL DIVISION

APPELLANT’S RESPONSE IN OPPOSITION TO APPELLEE’S MOTION TO DISMISS AND MOTION TO COMPEL ARBITRATION

JEANNETTE BELLIVEAU, Appellant, representing herself, respectfully opposes the Appellee’s Motion to Dismiss and Motion to Compel Arbitration. Given the time constraints imposed by the trial date presently scheduled for May 10, 2019, Appellant presents the following brief response in support of her opposition to the Appellee’s motions, on which the Appellant is prepared to expand via supplemental and/or amended response if so permitted or requested by this Court:

1. The Appellee’s motion to dismiss and motion to compel arbitration, in an attempt to absolve the Appellee of all liability in this case for its wanton actions, rely on the Terms of Service (TOS) of AirBNB’s contract. As the TOS constitute a one-sided and unjust waiver of rights that shocks the conscience of the impartial observer, the contract Appellee relies on in its motions is void and unenforceable in violation of public policy.

2. In its Opposition, the Appellee relies on an unenforceable contract, as the Appellant hopes to demonstrate to the Court. Maryland and common law do not permit unconscionable contracts, as seen in this instance specifically as follows: (a) the unequal bargaining power between AirBNB and its hosts, who have not an iota of negotiating leverage;

(b) the Appellee's attempts via its Terms of Service to shift all risks of engaging in its short-term rental platform to hosts; and (c) the Appellee's absolving itself of liability for negligence. Further, Maryland and common law disallow exculpatory clauses in certain transactions, including any involving innkeepers as occur here, that are perceived to affect the public interest.

3. Finally, in a compelling paradox, the Terms of Service so heavily referenced in the Appellee's Response (pp. 2-25), rather than supporting an automatic decision in favor of the Appellee, on closer inspection achieve exactly the opposite. These Terms of Service go so far overboard in favoring the Appellee as to land squarely in realm of unfair, unconscionable and unenforceable. In fact, the European Union has forced the Appellee to provide a fairer contract in the EU, whereby hosts from Finland to the Mediterranean can in fact hold the Appellee responsible for negligence. If it pleases the Court, Maryland short-term rental hosts would appreciate having the same rights to fairness and due process as hosts in Europe.

WHEREFORE, the Appellant respectfully requests that the Appellee's motion to dismiss be DENIED; and

WHEREFORE, the Appellant respectfully requests that the Appellee's motion to compel arbitration be DENIED.

RESPECTFULLY SUBMITTED,

JMBelliveau

JEANNETTE BELLIVEAU
203 South Ann St.
Baltimore, MD 21231
410-342-5131
amateursguide@gmail.com

I hereby certify under the penalty of perjury that the facts contained in the foregoing document are true and accurate to the best of my knowledge, information and belief.

J M Belliveau

JEANNETTE BELLIVEAU

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on Monday, May 6, 2019, a copy of the foregoing document was hand delivered to:

Spencer Evans, Esq.
Niles, Barton & Wilmer
111 S. Calvert St.
Suite 1400
Baltimore, MD 21202

Counsel for Defendant

J M Belliveau

JEANNETTE BELLIVEAU

ATTACHMENT C

JEANNETTE BELLIVEAU
Plaintiff/Appellee

v.

AIRBNB, INC.
Defendant/Appellant

* **IN THE**
* **CIRCUIT COURT**
* **FOR BALTIMORE CITY**
* **CASE NO.: 24-C-19-001836**

* * * * *

ORDER

This case having come before the court on May 10, 2019 it is this 13th day of May, 2019, for the reasons stated on the record,

ORDERED:

1. Plaintiff-Appellant's Request for Leave to Amend Complaint and for Conversion of the Matter to a Record Appeal is DENIED;
2. Defendant-Appellee's Motion to Dismiss Appellant's De Novo Appeal and Motion to Compel Arbitration is DENIED;
3. Judgement shall be entered in favor of Defendant-Appellee upon Plaintiff-Appellant's Complaint;
4. Costs to be paid by the Plaintiff-Appellant.

W. Michel Pierson
Judge's Signature Appears
On Original Document

Judge W. Michel Pierson

TRUE COPY
TEST

Marilyn Bentley

MARILYN BENTLEY CLERK



ATTACHMENT D

[Go Back Now](#)

Case Information

Court System: **Circuit Court for Baltimore City - Civil System**
Case Number: **24C19001836**
Title: **Jeannette Belliveau vs Airbnb Inc**
Case Type: **District Court DeNovo Appeal** Filing Date: **03/22/2019**
Case Status: **Closed/Inactive**
Case Disposition: **Judgment/Verdict** Disposition Date: **05/13/2019**
District Case No: **28178-2018**

Plaintiff/Petitioner Information

(Each Plaintiff/Petitioner is displayed below)

Party Type: **Plaintiff** Party No.: **1**
Name: **Belliveau, Jeannette**
Address: **203 S Ann St**
City: **Baltimore** State: **MD** Zip Code: **21231**

Attorney(s) for the Plaintiff/Petitioner

Name: **Rodowsky, Esq, William L**
Appearance Date: **06/11/2019**
Removal Date: **06/11/2019**
Practice Name: **Smith Gildea & Schmidt LLC**
Address: **600 Washington Avenue**
Suite 200
City: **Towson** State: **MD** Zip Code: **21204**
Name: **Rodowsky, Esq, William L**
Appearance Date: **06/11/2019**
Practice Name: **Seifert & Rodowsky, P.A.**
Address: **427 Eastern Boulevard**
Suite C
City: **Baltimore** State: **MD** Zip Code: **21221**

Defendant/Respondent Information

(Each Defendant/Respondent is displayed below)

Party Type: **Defendant** Party No.: **1**
Business or Organization Name: **Airbnb Inc**
Address: **S/O Corporation Service Co**
City: **Wilmington** State: **DE** Zip Code: **19808**

Aliases Defendant/Respondent

Name: **Airbnb Payments Inc**
Attorney(s) for the Defendant/Respondent

Name: **Evans, Esq, Spencer A**
Appearance Date: **03/22/2019**
Practice Name: **Niles, Barton & Wilmer, LLP**
Address: **111 S. Calvert Street**
Suite 1400
City: **Baltimore** State: **MD** Zip Code: **21202**

Court Scheduling Information

Event Type: **Civil Trial - Fast Track** Notice Date:
Event Date: **05/01/2019** Event Time: **09:00 AM**
Result: **Postponed** Result Date: **04/02/2019**

Event Type: **Civil Trial - Fast Track** Notice Date: **04/29/2019**
Event Date: **05/10/2019** Event Time: **09:00 AM**
Result: **Held/Concluded** Result Date: **05/15/2019**

Document Tracking

(Each Document listed. Documents are listed in Document No./Sequence No. order)

Doc No./Seq No.: **1/0**

File Date: **03/22/2019** Entered Date: **03/25/2019** Decision:

Document Name: **DeNovo Appeal from District Court**

Doc No./Seq No.: **2/0**

File Date: **03/22/2019** Entered Date: **03/25/2019** Decision:

Document Name: **Notice of DeNovo Appeal Sent**

Doc
No./Seq **3/0**
No.:

File Date: **03/26/2019** Entered Date: **03/26/2019** Decision:

Document
Name: **Expedited Track Scheduling Order Sent**

Event: CTFT Block Date: 05/01/19 Facility: 403FPARTIES : Evans, Spencer 111 S. Calvert Street Suite 1400, Baltimore, MD, 21202Belliveau, Jeannette 203 S Ann St , Baltimore, MD, 21231

Doc
No./Seq **4/0**
No.:

File Date: **04/02/2019** Entered Date: **04/02/2019** Decision:

Document
Name: **Hearing/Trial Notice Sent**

Event: CTFT Block Date: 05/10/19 Facility: 234PARTIES : Evans, Spencer 111 S. Calvert Street Suite 1400, Baltimore, MD, 21202Belliveau, Jeannette 203 S Ann St , Baltimore, MD, 21231

Doc No./Seq No.: **5/0**

File Date: **04/03/2019** Entered Date: **04/03/2019** Decision: **Approved**

Document Name: **Civil Postponement Approved**

Doc No./Seq No.: **6/0**

File Date: **04/17/2018** Entered Date: **04/18/2019** Decision: **Denied**

Party Type: **Plaintiff** Party No.: **1**

Document Name: **Request for Leave to Amend Complaint and for Conversion of Matter to Record Appeal, with Exhibits**

Doc No./Seq No.: **6/1**

File Date: **04/19/2019** Entered Date: **04/23/2019** Decision:

Party Type: **Plaintiff** Party No.: **1**

Document Name: **Revised Copy of pleading with typos fixed**

Doc No./Seq No.: **6/2**

File Date: **05/02/2019** Entered Date: **05/03/2019** Decision:

Party Type: **Defendant** Party No.: **1**

Document Name: **Opposition to Appellant's Amended Request for Leave to Amend Complaint and for Conversion of Matter to Record Appeal, with Exhibits**

Doc No./Seq No.: **6/3**

File Date: **05/06/2019** Entered Date: **05/07/2019** Decision:

Party Type: **Plaintiff** Party No.: **1**

Document Name: **Appellant's Reply to Appellee's Opposition to Amended Request to Amend**

Doc No./Seq No.: **6/4**

File Date: **05/13/2019** Entered Date: **05/14/2019** Decision:

Document Name: **Order of Court
See #9/2.**

Doc
No./Seq **7/0**
No.:

File Date: **04/29/2019** Entered Date: **04/29/2019** Decision:

Document
Name: **Batch Hearing Notice Sent**

Event: CTFT Block Date: 05/10/19 Facility: 403FPARTIES : Evans, Spencer 111 S. Calvert Street Suite 1400, Baltimore, MD, 21202Belliveau, Jeannette 203 S Ann St , Baltimore, MD,

Doc No./Seq No.: **8/0**
File Date: **05/02/2019** Entered Date: **05/03/2019** Decision: **Denied**
Party Type: **Defendant** Party No.: **1**
Document Name: **Motion to Dismiss Appellant's De Novo Appeal, with Exhibits (for full pleading and exhibits see #6/2)**

Doc No./Seq No.: **8/1**
File Date: **05/06/2019** Entered Date: **05/07/2019** Decision:
Document Name: **Response in Opposition to Appellee's Motion to Dismiss**

Doc No./Seq No.: **8/2**
File Date: **05/13/2019** Entered Date: **05/14/2019** Decision:
Document Name: **Order of Court**
See #9/2.

Doc No./Seq No.: **9/0**
File Date: **05/02/2019** Entered Date: **05/03/2019** Decision: **Denied**
Party Type: **Defendant** Party No.: **1**
Document Name: **Motion to Compel Arbitration, with Exhibits (for full pleading and exhibits see #6/2)**

Doc No./Seq No.: **9/1**
File Date: **05/06/2019** Entered Date: **05/07/2019** Decision:
Document Name: **Response in Opposition to Appellee's Motion to Compel Arbitration**

Doc
No./Seq **9/2**
No.:
File Date: **05/13/2019** Entered Date: **05/14/2019** Decision:
Document
Name: **Order of Court**
It is this 13th day of May, 2019, for the reasons stated on the record, ORDERED: 1. Plaintiff-Appellant's Request for Leave to Amend Complaint and for Conversion of the Matter to a Record Appeal is DENIED; 2. Defendant-Appellee's Motion to Dismiss Appellant's De Novo Appeal and Motion to Compel Arbitration is DENIED; 3. Judgement shall be entered in favor of the Defendant-Appellee upon Plaintiff-Appellant's Complaint; 4. Costs to be paid by the Plaintiff-Appellant. Judge Pierson

Doc No./Seq No.: **9/3**
File Date: **05/17/2019** Entered Date: **05/17/2019** Decision:
Document Name: **Copies Mailed**

Doc
No./Seq **10/0**
No.:
File Date: **05/10/2019** Entered Date: **05/10/2019** Decision:
Document
Name: **Open Court Proceeding**
5/10/19 Case submitted to the court for determination without the aid of a jury. Pierson, J 5/10/19 Plaintiff's motion for leave to amend complaint and conversion of matter to record appeal is heard and denied. Pierson, J 5/10/19 Plaintiff's motion to compel arbitration is heard and denied. Pierson, J 5/10/19 Defendant's motion to dismiss is heard and granted. Plaintiff to pay costs. Order to be filed. File in chambers. Pierson, J

Doc No./Seq No.: **11/0**
File Date: **06/11/2019** Entered Date: **06/12/2019** Decision:
Party Type: **Plaintiff** Party No.: **1**
Document Name: **Attorney Appearance Filed**

Doc No./Seq No.: **12/0**
File Date: **06/12/2019** Entered Date: **06/12/2019** Decision:
Party Type: **Plaintiff** Party No.: **1**
Document Name: **Attorney Appearance Removed**
William L Rodowsky

This is an electronic case record. Full case information cannot be made available either because of legal restrictions on access to case records found in Maryland Rules, or because of the practical difficulties inherent in reducing a case record into an electronic format.