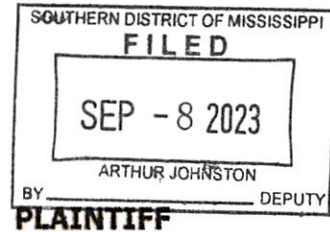


**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF MISSISSIPPI**



**SHAWN MACKEY**

**PLAINTIFF**

**vs.**

**CIVIL ACTION NO. 23-23-CV-582-CWR-FKB**

**AIRBNB, INC. and PAMELA FOHLER**

**DEFENDANTS**

**COMPLAINT FOR EXTORTION, FEDERAL RICO VIOLATIONS, VIOLATION OF  
RIGHTS OF PRIVACY, EMOTIONAL and ECONOMIC DAMAGES and PUNITIVE  
DAMAGES**

Plaintiff Shawn Mackey ("Plaintiff"), by and through his undersigned counsel, brings the following Complaint against Airbnb, Inc. ("Airbnb" or "Defendants") and Pamela Fohler ("Fohler" or "Defendants").

**PRELIMINARY STATEMENT**

1. Plaintiff is a frequent utilizer of various Airbnb hosting services.
2. As alleged below, Airbnb and Fohler conspired to extort sums of money out of the Plaintiff in violation of Federal RICO, federal and state extortion statutes, invasion of privacy, and intentional infliction of emotional distress.
3. Defendants engaged in this conduct in bad faith, knowing that their actions were contrary to applicable law, reasonable commercial standards of fair dealing, and the reasonable expectations of consumers of Airbnb services and products. Furthermore, the Defendants' actions constituted intentional acts to invade the privacy of the Plaintiff, to inflict upon him emotional distress, and to subject him to public ridicule and specifically damage his marriage.<sup>1</sup>

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<sup>1</sup> In the State of Mississippi, where the Plaintiff lives, marriage is a property right, which will have particular relevance with respect to the RICO violations hereafter discussed.

4. In furtherance of their scheme to extort monies from the Plaintiff, Defendants formed an association-in-fact Enterprise, for that purpose, and engaged in a Pattern of Racketeering Activity which consisted of the commission of two or more Predicate Acts over a period of (10) ten years. The Enterprise, the Pattern of Racketeering Activity, and the Predicate Acts are more fully explained in the body of this Complaint.

5. More specifically, Defendants formed an association-in-fact enterprise to threaten users of Airbnb services to pay enhanced penalties and fees, and if the threats are refused, to engage in extortion using private information, including photographs collected during an Airbnb user's stay at a sanctioned home.

6. Based on Defendants' conduct as described herein, Plaintiffs assert federal statutory claims against each for violation of the Racketeer Influenced Corrupt Organizations Act (RICO); the federal and state anti-extortion statutes, violation of Plaintiff's rights of privacy, claims for the intentional infliction of emotional distress, common law claims against both for breach of contract/breach of the Implied covenant of good faith and fair dealing and punitive damages.

7. Plaintiffs seek declaratory relief; damages for injury to Plaintiff's property; damage to Plaintiff's marriage; damage to Plaintiff's reputation; intentional infliction of emotional distress; statutory damages; treble damages; punitive damages; injunctive relief and other appropriate relief for Defendants' unfair and unlawful conduct, as described herein.

### **THE PARTIES**

8. Plaintiff Shawn Mackey is an adult resident citizen of Madison, Mississippi.

9. Defendant Airbnb, Inc. is a corporation headquartered in San Francisco, California, located 888 Brannan Street, San Francisco, CA 94103, which pioneered the online bed and breakfast industry worldwide. Airbnb does business throughout the United States, including the states of Mississippi and Tennessee.

10. Defendant Pamela Fohler is an adult resident citizen of 3780 S. Berlinwood Cove, Bartlett, Tennessee 38133. Fohler owns a home in Memphis Tennessee, and from time to time utilizes the services of Airbnb to rent her home out to guests as a bed and breakfast. She is considered by Airbnb to be one of its "Superhosts".<sup>2</sup>

11. On information and belief, many of Fohler's (and Airbnb's) guests are residents of the neighboring state of Mississippi.

12. At all relevant times both Airbnb and Fohler worked in concert with each other, and in doing so, formed an association-in-fact entity for the purpose of engaging in a bed and breakfast enterprise, and also formed an association-in-fact entity for the purpose of engaging in a system for imposing fines under threats of extortion.

### **JURISDICTION AND VENUE**

13. The Court has federal question jurisdiction over Plaintiff's RICO claim pursuant to 28 U.S.C. § 1331, and 18 U.S.C. § 1964(c), Plaintiff's extortion claim pursuant to 18 U.S.C. § 1951, and has supplemental jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367. \_\_\_\_\_

<sup>2</sup> A "Superhost" is a host who has a special relationship to Airbnb, and Airbnb endorses them as a host that is outstanding and one that goes above and beyond in their hosting duties. They are considered the best of the best. Such designation constitutes a superlative endorsement by Airbnb of the host.

14. In addition, this Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332 in that the Plaintiff and the Defendants are all citizens of different states, and the amount in controversy exceeds \$75,000.00.

15. Venue is proper in the United States District Court, Southern District of Mississippi pursuant to 28 U.S.C. § 1391(b), and 18 U.S.C. § 1965(b) and (d) because Plaintiff lives in this district, the acts of extortion were committed in this district, and Defendants regularly conduct business in this district.

### **UNDERLYING FACTUAL ALLEGATIONS**

16. In July of 2022 Plaintiff, who lives in Madison, MS made plans to attend a football game in Memphis, TN. The date for the football game was for the weekend of September 9-11, 2022. He had originally planned for four people to stay with him, but he wanted to have a place where he could invite additional old friends.

17. Plaintiff had been told of an Airbnb home that would serve as a favorable location known as "Little Bit More Country". The address for "Little Bit More Country" was 3780 South Berlinwood Cove, Memphis, TN.

18. Plaintiff contacted Defendant Airbnb through its website. Through this website he was put in touch with the owner of the house, Pamela Fohler. At the time that Defendant made the online reservations, he did so from his home in Mississippi. The fact that the plaintiff was a citizen of the state of Mississippi was made known to both Fohler and Airbnb.<sup>3</sup>

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<sup>3</sup> The transcribed online conversations among all parties reflects that everyone was aware that the plaintiff was a resident of Mississippi.

19. Defendant Fohler was, and still is, a "Superhost" for Airbnb.<sup>4</sup>

20. On July 19, 2022, The Plaintiff made reservations to rent Fohler's home for the weekend of September 9-11, 2023. The reservations were made for four people, and at the same time, Plaintiff made clear to Fohler that additional guests would be having dinner at the home that night but would not be staying.<sup>5</sup>

21. Fohler acknowledged that additional guests would be invited to dinner but voiced no objection. In fact, Fohler explained how easy it would be to simply add them to the guest list once the Plaintiff was certain who would be coming.

22. The advertised booking stated that the home could accommodate up to twelve guests.

#### **THE SETUP**

23. On September 7, 2022, Fohler confirmed the reservation and gave the Plaintiff instructions for check-in. Even though the reservation was for four guests, Fohler, again, expressly acknowledged that additional guests were welcome and stated, "you [Plaintiff] may update guest counts at any time."<sup>6</sup>

24. Also, in the communication dated September 7, 2022, Fohler left instructions for where and how the guest's cars should be parked. Nowhere in the instructions was any limit placed on the number of cars that could be accommodated.

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<sup>4</sup> The fact that Fohler has been designated as a "Superhost" and continues to enjoy that status to this day, even after her actions of extortion were communicated to Airbnb, reflects that the scheme was part of a common plan, and/or that the acts of extortion are condoned by Airbnb.

<sup>5</sup> See Exhibit 1.

<sup>6</sup> See Exhibit 2. Exhibit 2 is a collective exhibit from the Airbnb portal containing the communications among the Plaintiff, Fohler, and Airbnb from July 19, 2022 to October 4, 2022.

25. At this time, Defendant Fohler went out of her way to inform the Plaintiff as follows:

**\*Please note, Airbnb requires us to inform you of the following: There are additional charges/penalties/fines for violating any house rule(s). Please be aware by creating a reservation or booking or checking in, you agree to this without any stipulations. You are confirming you've read the House Rules and understand them in full.<sup>7</sup>**

26. At 4:02 PM on the afternoon of September 9, 2022, the Plaintiff checked in. Thereafter, at 6:08 pm Plaintiff, true to his work, updated the guest list as follows:

The reservation said we could have up to 12 guests, some of those include:

Stacy

Carol

Ursula

Kim

Tony

Marlon

Twentis

Daryl

Darius

And maybe a few more.

Only 4-5 will be staying overnight.

27. Very soon thereafter (at 6:18 that night) Fohler informed the Plaintiff, for the first time, that only 8 guests would be permitted at the residence. In addition, Fohler stated, for the first time, that there would be an additional cost for each guest whether they spent the night or not. She also reinforced her strict "no parties rule."<sup>8</sup>

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<sup>7</sup> See Exhibit 2. The emphasis on the fines and penalties language serves as the "setup" for the extortion efforts that were to follow.

<sup>8</sup> See Exhibit 2.

28. A few moments later, at 6:27 PM, Fohler imposed an additional new "rule", that only 4 cars would now be permitted at the residence by the Plaintiff.<sup>9</sup>

29. At 7:13 PM, Fohler demanded that the Plaintiff either add the extra guests now or have them leave immediately. She also made unfounded accusations that she had received complaints of yelling and profanity in the parking area.

30. Several minutes later, at 7:31 PM, Fohler accused the Plaintiff of *violating* the "no party" rule, of having unauthorized guests, and disturbing the neighbors by yelling and cursing in the parking lot. At this point, Fohler demanded that the Plaintiff and his guests immediately leave the property.<sup>10</sup>

31. In fact, none of this was true. Instead of the additional guests initially listed, only *one* additional guest had actually shown up for a total of *five* guests at the home. No party had taken place. No one had been yelling or cursing in the parking lot. These were simply pretexts for the host and Airbnb to collect more money from the Plaintiff, and others similarly situated, in the form of fees and fines.

32. Upon receipt of this communication informing him that his stay was so abruptly terminated, and having nowhere else to go, the Plaintiff called to speak to the host directly (She had previously provided the Plaintiff with their telephone number). Upon calling the number he had been given, Plaintiff spoke to Fohler's husband, Jamie. Upon speaking with Jamie, everything calmed down and Plaintiff assured Jamie that no

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<sup>9</sup> See Exhibit 2.

<sup>10</sup> See Exhibit 2.

party had taken place, and that only 5 people were present. Likewise, Jamie assured the Plaintiff that he could continue his stay without further consequence or interruption.

33. The following morning, Saturday, September 10, 2022, at 8:56 AM, Defendant Pamela Fohler, through the Airbnb portal, stated:

I hope you have enjoyed your stay! Here are your check-out instructions.

The checkout date is Sep 11, 2022 by 10:00 AM.

Please strip the bed you slept in and leave the linens and all used towels on the bathroom floor.

If you use any plates, pots, pans and utensils, please load them in the dishwasher and start the heavy cycle. You can find the dishwasher pod underneath the sink. You may want to check that you have collected all your belongings.

Don't forget to turn off the lights, lock the door, and we wish you safe travels on your journey!<sup>11</sup>

34. Absolutely no mention is made about any additional charges for additional guests, additional cars, parties, or fines or fees for any violation of any rule whatsoever.

35. That night, after being assured that everything was fine and that checkout was to be the following morning on the 11<sup>th</sup>, the Plaintiff and his guests ate out at another location. When the Plaintiff returned to the property to spend the last night there, he was denied entry because the locks had been changed. The Plaintiff then, once again, contacted Fohler to regain access to the property.

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<sup>11</sup> See Exhibit 2.



36. The following morning, the Plaintiff and his guests checked out of the property in accordance with his agreement with the host. At the time he checked out of the property, Plaintiff, who had broken no rules and had spoken to the host, thought all issues had been resolved as simply a misunderstanding.

#### **THE REVIEW**

37. Immediately following his stay at the Fohler's Airbnb home, the Plaintiff posted a review expressing his concerns associated with his stay. The plaintiff also requested a refund of \$502.46. It was denied.

38. After the posted review, Fohler began harassing the Plaintiff about his review and was obviously concerned with her Airbnb Superhost status.

39. Airbnb removed the Plaintiff's original review of his dissatisfactory experience.

#### **THE SHAKEDOWN BEGINS**

40. On September 14, 2022, Airbnb commenced the shakedown. "Charles" from Airbnb contacted the Plaintiff by way of the Airbnb portal and informed the Plaintiff that Airbnb had become aware of a dispute between the Plaintiff and Fohler, and that Airbnb would be conducting a "review" of the incident. Charles, who claimed to be neutral, went further to inform the Plaintiff that during the pendency of the review, the Plaintiff's Airbnb account would be suspended. No mention was made as to any suspension or similar acts being taken against Fohler during the time of the review.

41. The following day, September 15, 2022, "Charles" informed the Plaintiff that his account had been paused for 30 days and threatened to terminate his account if he failed to follow the Airbnb Community Standards.

42. Plaintiff inquired as to whether any similar action was taken by Airbnb against Fohler.<sup>12</sup> No indication was given that any such punitive action was ever initiated against Fohler.<sup>13</sup>

### THE EXTORTION ATTEMPT

43. Two days later, on September 17, 2022, Airbnb's co-conspirator, Fohler, contacted the plaintiff, directly by way of interstate text messaging, and sent the threat, which constitutes a portion of the extortion attempt:

Hello Shawn, hope you are well. Sorry it took so long to get the photos you requested together to show your stay at our home. But I had faith, *was driven by integrity*, so I committed to get these posted for you *and Airbnb*. *Photo at 3:16 AM is especially notable. Should I forward the photos and videos to Teresa [the Plaintiff's wife] or will you? The videos will come shortly. I think they are too big for text so I will post to YouTube. Have a wonderful weekend.* (emphasis added).<sup>14</sup>

44. Appended to the text of the message was a photograph depicting the plaintiff in the company of another female (not his wife) taken by one of the cameras at Fohler's Airbnb home.<sup>15</sup>

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<sup>12</sup> See Exhibit 2.

<sup>13</sup> Quite to the contrary, Fohler continues to enjoy "Superhost" status to this day. See Exhibit 3.

<sup>14</sup> See the text message attached hereto as Exhibit 4, which was sent to the Plaintiff from the phone of Fohler on the 17<sup>th</sup> of September and then subsequently forwarded to Airbnb on the 22<sup>nd</sup> of September when Plaintiff sought help from Airbnb from the extortion attempts by Fohler. Fohler's sarcasm in the text message is evidence of her evil intent.

<sup>15</sup> See Exhibit 4.

### **THE SHAKEDOWN CONTINUES**

45. Two days later, on September 19, 2022, "Steph" from Airbnb (apparently someone other than "Charles" (who had assured he would be handling Plaintiff's case, "from now on") contacted the Plaintiff through the Airbnb portal, and informed the Plaintiff that he now owed an additional \$960.00 to Airbnb for the following:

4 added guests x \$20 x 2 nights =\$160.00  
Violating rule #6 \$250.00  
Violating rule #8 (additional fine included in \*terms) \$250.00  
Fine for moderation of your review \$300.00<sup>16</sup>  
Total: \$950.00<sup>17</sup>

46. This demand for \$950.00 made by Airbnb by and on behalf of itself for a portion of the funds (\$300.00), and on behalf of Fohler for the remaining enhanced sums (\$650.00), was made by way of interstate internet transmission, and in conjunction with the overt extortion attempt made by Fohler below, constitute wire fraud.

### **THE THREATS CARRIED THROUGH TO COMPLETION**

47. The Plaintiff refused to accede to the threats of extortion made by both Airbnb and Fohler. As a result, and in retaliation for his failure to comply with the monetary demands made by both Defendants, Fohler set up a phony email account, apparently pretending to be the Plaintiff with a deviant sexual internal reference – "shawn69@outlook.com". Then, on September 20, 2022, Fohler sent the photograph to

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<sup>16</sup> This \$300.00 fee constitutes Airbnb's share of the extortion funds.

<sup>17</sup> See Exhibit 2.

the Plaintiff's wife, at her place of employment, through email with the pretext subject, "I like your purse."

### **AIRBNB'S PARTICIPATION IN THE EXTORTION**

48. Two days later, on September 22, 2023, Plaintiff contacted Airbnb and ***conveyed the threatened extortion attempt by Fohler to Airbnb in hopes of its help.***<sup>18</sup>

49. Plaintiff included in his request for help from Airbnb the following:

a) a copy of the text messages between the Plaintiff and Fohler, including her blatant threats to inform his wife of the photos and videos, and her threats to post the videos to YouTube.

b) an explicit explanation to Airbnb which stated:

Pamela's [Defendant Fohler's] text was threatening and ***an attempt to extort***. She assumed this would prevent me from pursuing my personal refund, filing a complaint about the discrimination that occurred to Airbnb, ***and ensuring that I would pay the additional money she requested. I've been told that this behavior is criminal and therefore illegal. A violation of state and federal law, and Airbnb policy. Pamela also sought out my wife's work email and emailed the photo to her place of employment. She acted on her threats and extortion attempt but I did not give in to her demands or respond as she had hoped to her text message.*** In addition to being unprofessional and may be illegal, it certainly violates Airbnb privacy policies. ***Please refer to a copy of the email displaying a photo.*** (emphasis added)<sup>19</sup>

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<sup>18</sup> On September 22, 2022, the Plaintiff forwarded a copy of the extortionary text messages as well as a copy of the extortionary photograph to Airbnb through the Airbnb portal, and explained that the co-conspirator, Fohler had engaged in an "attempt to extort money from me by emailing a picture to my wife."

<sup>19</sup> See Exhibit 2.

50. Instead of reacting as any decent person or even decent corporation would at such illegal and abhorrent and evil conduct, Airbnb sided with its Superhost, its co-defendant, Fohler!

51. Airbnb's first response after being informed of the illegal conduct of Fohler, was its communication in the portal of September 24, 2022.<sup>20</sup> In this communication, Airbnb never even recognizes its co-conspirator's acts of extortion. Instead, it merely refers to this illegal conduct as a "very sensitive situation" and as an "inconvenience". The only remedy taken against its co-conspirator was to, "put a note on the account".

52. Instead, Airbnb repeatedly made demands for additional payments to its co-conspirator, Fohler and to itself, and included additional threats to take further punitive action against the Plaintiff.

53. The actual knowledge of Airbnb of the extortion attempts of its Superhost, and its ratification of that extortion, clearly demonstrates its active participation in the common scheme to extort monies from the Plaintiff.

54. All of the Airbnb portal communications, as well as the text messages and photos, were all transmitted by interstate wire communications (internet) and in conjunction with the attempt to commit a crime (extortion) constitute wire fraud.

#### **THE KICKBACK**

55. As part of the Scheme, Airbnb receives a portion of any fine it levies. Thus, it is in Airbnb's best financial interest to find violations and side with its co-conspirator

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<sup>20</sup> See Exhibit 2.

Superhost, and assess fines against the renters. In this case, Airbnb demanded an additional \$300.00 from the Plaintiff for what it termed, "fine for moderation of your review."

56. The Plaintiff's marriage has suffered as a result.

**FIRST CLAIM FOR RELIEF**  
**VIOLATION OF THE RACKETEER INFLUENCED AND CORRUPT**  
**ORGANIZATIONS ACT ("RICO")**  
**18 U.S.C. § 1961-1968**

57. Defendants' wrongful and fraudulent acts violated the Federal Racketeer Influenced and Corrupt Organizations ("RICO") Act, Title 18, U.S.C. §§ 1961-1968 in that they committed two or more predicate acts within (10) ten years of each other, which constitutes a pattern of racketeering activity through which the Defendants, as culpable persons either invested in, maintained an interest in, or participated in an entity which qualified as an enterprise which affects interstate commerce.

58. At all relevant times, the Plaintiff was a "Person" within the meaning of RICO, 18 U.S.C. § 1961(3) and 1964(c).

**The Enterprise Under 18 U.S.C. § 1962(c)**

59. The enterprise, for the purpose of the allegations concerning the violations of 18 U.S.C. § 1962(c) consisted of an association-in-fact of Defendants Airbnb, Inc. and Fohler for the purpose of conducting or participating in the conduct of an enterprise's affairs through a pattern of racketeering activity.

60. The Plaintiff has suffered injury to his property as a direct result of the Defendants' racketeering activity.<sup>21</sup>

### **Culpable Persons**

61. All of the Defendants named herein are "Culpable Persons" as those terms are defined in the RICO statutes.

62. All of the culpable persons conspired for the common purpose of engaging in a course of conduct designed to extort monies from the Plaintiff, including a commission to Airbnb (termed as a "fine for moderation") on the funds extorted, and/or damage his marriage and intentionally inflict sever mental and emotional anguish.

63. The Enterprise and the culpable persons: 1) shared a common purpose of extortion; 2) functioned over a period of time as a continuing unit and continue to function as such to this day; and 3) had and maintained an ascertainable structure separate and distinct from the pattern of racketeering activity. The pattern of racketeering activity that the Enterprise was engaged in was extortion through the use of cameras and the internet, and the concomitant use of "fines" for alleged rule violations.

### **Prohibited Activities (Predicate Acts)**

64. The specific Predicate Acts (criminal violations) committed by the Defendants were their acts in interfering with commerce by threats of extortion (18 USC sec. 1951), (Miss Code Ann. sec. 97-3-82), (2014 Tenn. Code Title 39 sec. 39-14-112) and (Cal. Penal Code sec. 518). The Defendants' use of the internet or email or text

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<sup>21</sup> In Mississippi, since marriage is a property right, this damage to the Plaintiff's marriage constitutes a damage to Plaintiff's property.

messaging used to commit these acts, was in violation of 18 U.S.C. § 1343. Likewise, each time that funds were transferred between or among the Defendants themselves that were the product of the racketeering activity, constituted a violation of 18 U.S.C. § 1343.

65. The Defendants utilized the internet to convey their demands for money as well as the threats of extortion and photographs. These acts are clear evidence of two or more predicate offenses in that they violated wire fraud statutes (18 U.S.C. § 1343), and also used the internet and email, and transferred sums by wire among themselves in further violation of the wire fraud statutes (18 U.S.C. § 1343). These multiple acts clearly demonstrate a pattern of racketeering activity.

66. The dates of the commission of these criminal acts and the specific actions which constitute violations of those sections were set forth in detail in the previous enumerated paragraphs, which include:

a) Actions taken by both Airbnb and Fohler to advertise that the home was rated for 12 guests when in fact, the number was unilaterally reduced after the fact.

b) actions taken to demand enhanced payments from the Plaintiff by Airbnb on September 19, 2022, by "Steph" to the Plaintiff. (*Exhibit 2*);

c) actions taken by Fohler on September 17, 2022 (purportedly driven by her unique sense of "integrity") to text message the Plaintiff with photos taken of him with another woman, coupled with snide comments about the especially notable time (3:16 in the morning) and her veiled threats to send them to his wife and/or post them on the internet. (*Exhibit 2*).



d) actions taken by Fohler on September 20, 2022 in formulating a false email address and then using that false email address to send a copy of the extortionary photograph to the Plaintiff's wife. (Exhibit 2).

e) actions taken, or perhaps not taken, by Airbnb from September 22, 2022 through October 4, 2022 after it had been provided with indisputable proof of Fohler's illegal extortionary conduct, and instead of recognizing the illegal conduct for what it was, it ratified and joined in Fohler's extortion of the Plaintiff and continued to demand payments of money from the Plaintiff. (Exhibit 2).

67. It is believed that with the aid of discovery numerous other criminal violations in the form of wire fraud and mail fraud both with respect to the named Plaintiff as well as others similarly treated will come to light.

68. In addition, the Defendants' conduct also constituted multiple violations of 18 U.S.C. § 1951 (relating to interference with commerce, robbery and extortion); Miss Code Ann. sec. 97-3-82 (relating to acts of extortion committed in Mississippi); 2014 Tenn. Code Title 39 sec. 39-14-112 (relating to acts of extortion committed in Tennessee); and Cal. Penal Code sec. 518 (relating to acts of extortion committed in California).

69. The Defendants' acts were related to each other by virtue of common participants, a common victim (the Plaintiff), a common method of commission, and the common purpose and result – i.e., extortion.

**Pattern of Racketeering Activity**

70. The above listed multiple predicate acts were committed within (10) ten years of each other and were committed since the passage of RICO. In addition, they were committed with the common purpose of extorting money from the Plaintiff.

**Violation of 18 U.S.C. § 1962(c)**

71. Defendants' acts are in violation of 18 U.S.C. § 1962(c) in that they were engaging in conducting or participating in the conduct of an enterprise's affairs through a pattern of racketeering activity.

**Violation of 18 U.S.C. § 1962(d)**

72. Defendants' acts are in violation of 18 U.S.C. § 1962(d) in that they conspired with each other and with others to violate subsection (c) of Title 18 U.S.C. § 1962.

**Private Right of Action**

73. Plaintiff has been and continues to be injured in his business or property by virtue of the above listed violations of 18 U.S.C. § 1962, and as such possesses and hereby prosecutes a private right of action under the RICO Act.

**INTENTIONAL ACTS OF EXTORTION UNDER COMMON LAW**

74. The actions of the Defendants as specified above constitute intentional tortious acts of extortion under common law and as such are actionable.

**INVASION OF PRIVACY**

75. Mississippi recognizes an individual's right to privacy. The Mississippi Supreme Court has expressly held that plaintiffs can recover for both emotional and

economic damages and has endorsed the Restatement (Second) of Torts approach. *Candebat v. Flanagan*, 487 So. 2d 207 (Miss. 1986); *Deaton v. Delta Democrat Pub. Co.* 326 So. 2d 471 (Miss. 1976); *Martin v. Dorton*, 50 So. 2d 391 (Miss. 1951); *Harbin v. Jennings*, 734 so. 2d (Miss. Ct. App. 1999).

76. The Plaintiff has suffered economic damages and damages to his marriage, and emotional damages as a result to the Defendants' invasion of his privacy rights.

#### **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

77. The intentional actions taken by the Defendants were undertaken for the specific purpose of inflicting extreme emotional distress upon the Plaintiff. They succeeded.

78. For these intentional acts of infliction of emotional distress, plaintiff is entitled to damages.

#### **WILLFUL BLINDNESS AND/OR RECKLESS DISREGARD FOR THE TRUTH**

79. Alternatively, Airbnb acted with willful blindness or reckless disregard for the truth of the extortion attempts made by its Superhost, Fohler, and as such is equally responsible for the extortion and intentional infliction of emotional distress committed by Fohler.

#### **BREACH OF CONTRACT**

80. Once the Plaintiff entered into the agreement to rent the Airbnb/Fohler property on July 19<sup>th</sup>, 2022, all three parties were from that point forward in privity of contract.

81. Defendants' acts, both in concert with each other and individually, constitute breaches of the contract entered into among the parties.

**BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**

82. Both Airbnb and Fohler owed the Plaintiff a duty of good faith and fair dealing, by virtue of their contractual relationship with the Plaintiff.

83. Defendants' acts, both in concert with each other and individually, also constitute breaches of the implied covenant of good faith and fair dealing.

**PLUNITIVE DAMAGES**

84. Both Airbnb and Fohler willfully engaged in the foregoing conduct in bad faith, for the purpose of: (1) unfairly and unconscionably maximizing revenue from its customers; (2) generating commissions, interest, fees, fines and compensation for both Airbnb and Fohler; (3) gaining unwarranted contractual and legal advantages; (4) depriving Plaintiff of his contractual and legal rights; and (5) to intentionally embarrass and subject the Plaintiff to public ridicule and to damage the property rights held by the Plaintiff in his marriage.

85. The foregoing breaches were willful and not the result of mistake or inadvertence.

86. As a direct result of Defendants' acts of extortion, breaches of contract, breaches of the covenant of good faith and fair dealing, and intentional invasion of the Plaintiff's rights of privacy, the Plaintiff has been injured, and has suffered actual damages, public humiliation, embarrassment, mental anguish and monetary losses.

87. In addition to actual damages, Plaintiff is entitled to recover punitive damages and other appropriate relief for the egregious conduct of the Defendants.

**INJUNCTIVE RELIEF**

88. In addition to damages, actual, treble and/or punitive, Plaintiff also seeks injunctive relief to prevent similar action taken against similar customers of Airbnb.

**PRAYER FOR RELIEF**

89. WHEREFORE, Plaintiff prays for relief as follows:

- a) Declaring that Defendants' actions violate the RICO Act;
- b) Declaring that Defendants' actions violate the federal and state anti-extortion laws.
- c) Declaring that Defendants' actions impermissibly violated the Plaintiff's rights of privacy.
- d) Declaring that Defendants' actions constituted intentional acts to inflict emotional damages upon the Plaintiff.
- e) Declaring that Defendants breached their contract with Plaintiff and the their duty of good faith and fair dealing to Plaintiff.
- f) Declaring that Defendants acted willfully in deliberate or reckless disregard of applicable law and the rights of Plaintiff.
- g) Awarding actual damages, treble damages, statutory damages, punitive damages, penalties, and interest;
- h) Awarding reasonable attorneys' fees and costs; and

- i) Granting other and further relief, in law or equity, as this Court may deem appropriate and just.

**DEMAND FOR JURY TRIAL**

90. Plaintiff Demands a trial by jury.

SUBMITTED THIS THE 8<sup>th</sup> DAY OF Sept., 2023.

**SHAWN MACKEY**

BY: 

**C. W. WALKER III, MSB NO. 6870**  
*Attorney for Plaintiff*

**OF COUNSEL:  
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