

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2021-CP-10-_____CITY OF CHARLESTON, SOUTH)
CAROLINA; CITY OF NORTH)
CHARLESTON, SOUTH CAROLINA;)
CHARLESTON COUNTY, SOUTH)
CAROLINA; CITY OF ISLE OF PALMS,)
SOUTH CAROLINA; CITY OF FOLLY)
BEACH, SOUTH CAROLINA, CITY OF)
COLUMBIA, SOUTH CAROLINA; CITY OF)
MYRTLE BEACH, SOUTH CAROLINA; CITY)
OF NORTH MYRTLE BEACH, SOUTH)
CAROLINA, and TOWN OF HILTON HEAD)
ISLAND, SOUTH CAROLINA,)

Plaintiffs,)

vs.)

AIRBNB, INC.; AIRBNB, INC. d/b/a)
AIRBNB.COM; AIRBNB PAYMENTS, INC.;)
HOMEAWAY.COM, INC.; HOMEAWAY.COM,)
INC. d/b/a HOMEAWAY PAYMENTS;)
HOMEAWAY.COM, INC. d/b/a VRBO and)
VRBO.COM; HOMEAWAY.COM, INC. d/b/a)
VACATION RENTALS and)
VACATIONRENTALS.COM; TRIPADVISOR,)
LLC; TRIPADVISOR, LLC d/b/a)
TRIPADVISOR.COM; FLIPKEY, INC.;)
FLIPKEY, INC. d/b/a FLIPKEY.COM;)
FLIPKEY, INC. d/b/a FLIPKEY PAYMENTS;)
REDAWNING.COM, INC.; VACASA SOUTH)
CAROLINA LLC; FURNITURE SERVICES)
INC. d/b/a ACRS d/b/a APARTMENT AND)
CORPORATION RELOCATION SERVICES;)
CONDO-WORLD RESORT PROPERTIES,)
INC. d/b/a NORTH MYRTLE BEACH)
CONDOS d/b/a MYRTLE BEACH RESORTS;)
DUVET LLC d/b/a STAY DUVET; WALK)
AWAY STAYS, LLC d/b/a WALK AWAY)
STAYS; and HUDSON JONES)
INVESTMENTS, LLC d/b/a WHOLESALE)
HOLIDAY RENTALS,)

Defendants.)

SUMMONS

(Jury Trial Demanded)

TO: THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Plaintiffs' Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the Complaint upon the subscriber, Jesse A. Kirchner, at his office located at 15 Middle Atlantic Wharf, Charleston, South Carolina, 29401, within thirty (30) days after service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, or otherwise appear and defend, the Plaintiffs will apply to the Court for the relief demanded in the Complaint and judgment by default will be rendered against you.

Respectfully Submitted,

THURMOND KIRCHNER & TIMBES, P.A.

/s/ Jesse A. Kirchner
JESSE A. KIRCHNER
SC Bar No.: 70479
15 Middle Atlantic Wharf
Charleston, SC 29401
T: 843-937-8000
Email: jesse@tktlawyers.com

-AND-

/s/ W. Ronald Bonds
W. RONALD BONDS
SC Bar No.: 763
P.O. Box 732
Isle of Palms, SC 29451
T: 843-478-3612
Email: ronniebonds@yahoo.com

-AND-

/s/ Michael Y. Saunders
MICHAEL Y. SAUNDERS
PRO HAC VICE PENDING
607 Rowlock Lane
Houston, TX 77079
T: 281-589-8938
Email: mys@mysaunderslaw.com

April 9, 2021
Charleston, South Carolina.

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2021-CP-10-_____CITY OF CHARLESTON, SOUTH)
CAROLINA; CITY OF NORTH)
CHARLESTON, SOUTH CAROLINA;)
CHARLESTON COUNTY, SOUTH)
CAROLINA; CITY OF ISLE OF PALMS,)
SOUTH CAROLINA; CITY OF FOLLY)
BEACH, SOUTH CAROLINA, CITY OF)
COLUMBIA, SOUTH CAROLINA; CITY OF)
MYRTLE BEACH, SOUTH CAROLINA; CITY)
OF NORTH MYRTLE BEACH, SOUTH)
CAROLINA, and TOWN OF HILTON HEAD)
ISLAND, SOUTH CAROLINA,)

Plaintiffs,)

vs.)

AIRBNB, INC.; AIRBNB, INC. d/b/a)
AIRBNB.COM; AIRBNB PAYMENTS, INC.;)
HOMEAWAY.COM, INC.; HOMEAWAY.COM,)
INC. d/b/a HOMEAWAY PAYMENTS;)
HOMEAWAY.COM, INC. d/b/a VRBO and)
VRBO.COM; HOMEAWAY.COM, INC. d/b/a)
VACATION RENTALS and)
VACATIONRENTALS.COM; TRIPADVISOR,)
LLC; TRIPADVISOR, LLC d/b/a)
TRIPADVISOR.COM; FLIPKEY, INC.;)
FLIPKEY, INC. d/b/a FLIPKEY.COM;)
FLIPKEY, INC. d/b/a FLIPKEY PAYMENTS;)
REDAWNING.COM, INC.; VACASA SOUTH)
CAROLINA LLC; FURNITURE SERVICES)
INC. d/b/a ACRS d/b/a APARTMENT AND)
CORPORATION RELOCATION SERVICES;)
CONDO-WORLD RESORT PROPERTIES,)
INC. d/b/a NORTH MYRTLE BEACH)
CONDOS d/b/a MYRTLE BEACH RESORTS;)
DUVET LLC d/b/a STAY DUVET; WALK)
AWAY STAYS, LLC d/b/a WALK AWAY)
STAYS; and HUDSON JONES)
INVESTMENTS, LLC d/b/a WHOLESALE)
HOLIDAY RENTALS,)

Defendants.)

COMPLAINT

(Jury Trial Demanded)

COME NOW THE PLAINTIFFS, the City of Charleston, South Carolina; the City of North Charleston, South Carolina; Charleston County, South Carolina; the City of Isle of Palms, South Carolina; the City of Folly Beach, South Carolina; the City of Columbia, South Carolina; the City of Myrtle Beach, South Carolina; the City of North Myrtle Beach, South Carolina; and the Town of Hilton Head Island, South Carolina by and through their undersigned attorneys, complaining of the Defendants named herein, and would respectfully allege and show unto this Honorable Court as follows:

I. INTRODUCTION

1. This action is brought by Plaintiffs against and complaining of Defendants, online travel companies and/or short-term rental companies, to remedy Defendants' violations of Plaintiffs' Local Ordinances requiring collection and payment of fees or taxes derived from the rental of accommodations to transients¹, and also requiring Defendants to obtain a business license and pay an annual license fee or tax to Plaintiffs.

2. Plaintiffs' Local Ordinances require Defendants to collect from consumers and timely remit to Plaintiffs fees or taxes based on a percentage of the gross proceeds derived from the rental of any accommodation furnished to transients for consideration within the Plaintiffs' jurisdictions.

3. Plaintiffs seek to recover from Defendants through this action all Local, Municipal, Tourist Development, and Beach Preservation Accommodation(s) Fees and Taxes (hereafter collectively referred to as "A-Taxes") which Defendants have failed to collect and to remit timely to Plaintiffs since each Defendant first engaged in the business

¹ "Transients" are defined as persons whose stays are for no more than ninety (90) continuous days. S.C. Code §12-36-920 (A) (2018).

of renting, furnishing and/or providing short-term or vacation rental accommodations to transients for consideration in each of the Plaintiff's jurisdictions.

4. Plaintiffs' Local Ordinances also require each Defendant to obtain a business license and pay an annual license fee or tax calculated on all of the gross income or receipts derived from Defendants' business activities in or associated with Plaintiffs' jurisdictions.

5. Defendants are and have long been engaged in the business of furnishing and providing to transient consumers rooms, lodgings and/or sleeping accommodations (hereafter "accommodations") located within Plaintiffs' jurisdictional limits for short-term rentals, as well as furnishing and providing services enabling and related to such rentals, in return for consideration and profit. This action is brought by Plaintiffs to recover damages from Defendants for failure to obtain business licenses and to pay the annual business license fees or taxes due and owed to Plaintiffs since each Defendant began to sell, rent, furnish and/or provide accommodations and/or services in, or associated with, each of Plaintiffs' jurisdictions. Plaintiffs also seek a declaratory judgment and injunctive relief ordering Defendants to obtain the business licenses and pay the annual business license fees or taxes required by Plaintiffs' Ordinances.

II. PARTIES

A. Plaintiffs

6. Plaintiffs are the City of Charleston, the City of North Charleston, Charleston County, the City of Isle of Palms, the City of Folly Beach, the City of Columbia, the City of Myrtle Beach, the City of North Myrtle Beach, and the Town of Hilton Head Island, all

governmental entities established under the laws and constitution of the State of South Carolina.

B. Defendants

7. Defendants are commonly known as online travel companies or short-term rental companies or related entities which engage in the business of marketing and selling, renting, furnishing, and/or providing accommodations (including, but not limited to homes, rooms in homes, apartments, and/or condominiums) for short-term stays to transient consumers for consideration on, over, and through the internet within the State of South Carolina, including the jurisdictions of Plaintiffs.

8. Defendant AIRBNB, Inc. and AIRBNB, Inc. d/b/a AIRBNB.COM is a Delaware corporation with its principal place of business in San Francisco, California, and although doing business in Plaintiffs' jurisdictions, is not registered or licensed to do business in those jurisdictions. Airbnb, Inc. may be served by and through the South Carolina Secretary of State, as its statutory agent for service of process and/or Corporation Service Company, 251 Little Falls Drive, Wilmington, Delaware.

9. Defendant AIRBNB Payments, Inc. is a Delaware corporation with its principal place of business in San Francisco, California, and although doing business in Plaintiffs' jurisdictions, is not licensed to do business in those jurisdictions. Airbnb Payments, Inc. has appointed Corporation Service Company located at 508 Meeting Street, West Columbia, South Carolina as its registered agent for service of process in South Carolina.

10. Defendant HomeAway.com, Inc. is a Delaware corporation with its principal place of business in Austin, Texas, and is currently registered and licensed to do business

in Plaintiffs' jurisdictions. HomeAway.com, Inc. has appointed National Registered Agents located at 2 Office Park Court, Suite 103, Columbia, South Carolina as its registered agent for service of process in South Carolina.

11. Defendant HomeAway.com, Inc. d/b/a HomeAway Payments is a Delaware corporation with its principal place of business in Austin, Texas, and is currently registered and licensed to do business in Plaintiffs' jurisdictions. HomeAway.com, Inc. d/b/a HomeAway Payments has appointed National Registered Agents located at 2 Office Park Court, Suite 103, Columbia, South Carolina as its registered agent for service of process in South Carolina.

12. Defendant HomeAway.com, Inc. d/b/a VRBO and VRBO.com is a Delaware corporation with its principal place of business in Austin, Texas, and is currently registered and licensed to do business in Plaintiffs' jurisdictions. HomeAway.com, Inc. d/b/a VRBO.com has appointed National Registered Agents located at 2 Office Park Court, Suite 103, Columbia, South Carolina as its registered agent for service of process in South Carolina.

13. Defendant HomeAway.com, Inc. d/b/a Vacation Rentals and VacationRentals.com is a Delaware corporation with its principal place of business in Austin, Texas, and is currently registered and licensed to do business in Plaintiffs' jurisdictions. HomeAway.com, Inc. d/b/a VacationRentals.com has appointed National Registered Agents located at 2 Office Park Court, Suite 103, Columbia, South Carolina as its registered agent for service of process in South Carolina.

14. Defendant TripAdvisor, LLC is a Delaware corporation with its principal place of business in Needham, Massachusetts, and although doing business in Plaintiffs'

jurisdictions, is not registered or licensed to do business in Plaintiffs' jurisdictions. TripAdvisor, LLC may be served at The Corporation Trust Company located at The Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware.

15. Defendant TripAdvisor, LLC d/b/a TripAdvisor.com is a Delaware corporation with its principal place of business in Needham, Massachusetts, and although doing business in Plaintiffs' jurisdictions, is not registered or licensed to do business in Plaintiffs' jurisdictions. TripAdvisor, LLC d/b/a TripAdvisor.com may be served at The Corporation Trust Company located at The Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware.

16. Defendant FlipKey, Inc. is a Delaware corporation with its principal place of business in Boston, Massachusetts, and although doing business in Plaintiffs' jurisdictions, is not registered or licensed to do business in Plaintiffs' jurisdictions. FlipKey, Inc. may be served at The Corporation Trust Company located at The Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware.

17. Defendant FlipKey, Inc. d/b/a FlipKey.com is a Delaware corporation with its principal place of business in Boston, Massachusetts, and although doing business in Plaintiffs' jurisdictions, is not registered or licensed to do business in Plaintiffs' jurisdictions. FlipKey, Inc. d/b/a FlipKey.com may be served at The Corporation Trust Company located at The Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware.

18. Defendant FlipKey, Inc. d/b/a FlipKey Payments is a Delaware corporation with its principal place of business in Boston, Massachusetts, and although doing business in Plaintiffs' jurisdictions, is not registered or licensed to do business in Plaintiffs' jurisdictions.

jurisdictions. FlipKey, Inc. d/b/a FlipKey Payments may be served at The Corporation Trust Company located at The Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware.

19. Defendant RedAwning.com, Inc. is a California corporation with its principal place of business in Emeryville, California, and although doing business in Plaintiffs' jurisdictions, is not registered or licensed to do business in Plaintiffs' jurisdictions. RedAwning.com, Inc. may be served through Thad Pope, 5900 Hollis Street, Suite S, Emeryville, California.

20. Defendant Vacasa South Carolina LLC is a South Carolina corporation with its principal place of business in South Carolina, and although doing business in Plaintiffs' jurisdictions, is not registered or licensed to do business in Plaintiffs' jurisdictions. Vacasa South Carolina LLC has appointed CT Corporation System located at 2 Office Park Court, Suite 103, Columbia, South Carolina as its registered agent for service of process in South Carolina.

21. Defendant Furniture Services, Inc. d/b/a ACRS d/b/a Apartment and Corporation Relocation Services is a South Carolina corporation with its principal place of business in South Carolina. Furniture Services, Inc. has appointed Crawford E. Sanders, III located at 120 Corporate Lane, Columbia, South Carolina as its registered agent for service of process in South Carolina.

22. Defendant Condo-World Resort Properties, Inc. d/b/a North Myrtle Beach Condos d/b/a Myrtle Beach Resorts is a South Carolina corporation with its principal place of business in South Carolina. Condo-World Resort Properties has appointed Roy Lynn

Clyburn, Jr. located at 300 17th Avenue South, North Myrtle Beach, South Carolina as its registered agent for service of process in South Carolina.

23. Defendant Duvet LLC d/b/a Stay Duvet is a South Carolina corporation with its principal place of business in South Carolina. Duvet, LLC has appointed Michael Taylor Gates located at 19 Ascot Alley, Charleston, South Carolina as its registered agent for service of process in South Carolina.

24. Defendant Walk Away Stays, LLC d/b/a Walk Away Stays is a South Carolina corporation with its principal place of business in South Carolina. Walk Away Stays has appointed Jason S. Stevens, 215 East Bay Street, Charleston, South Carolina as its registered agent for service of process in South Carolina.

25. Defendant Hudson Jones Investments, LLC d/b/a Wholesale Holiday Rentals is a South Carolina corporation with its principal place of business in South Carolina. Hudson Jones Investments has appointed Jeffrey Hudson located at 1702 25th Avenue North, North Myrtle Beach, South Carolina as its registered agent for service of process in South Carolina.

III. JURISDICTION AND VENUE

26. All Defendants regularly transact business within and profit by reason of business within the State of South Carolina and within each of Plaintiffs' jurisdictions in the State of South Carolina, and the claims asserted herein arise from the business in which Defendants are engaged within and relative to this State and within the Plaintiffs' cities, counties, and jurisdictions named in this action. Defendants are therefore subject to the personal jurisdiction of this Court.

27. The Court also has jurisdiction of this action pursuant to S.C. Code Ann. 36-2-803 because the Plaintiffs are located within South Carolina, and Defendants have contracted and agreed to sell, rent, provide, and furnish short-term rental accommodations and have performed such contracts. Defendants have also contracted to provide services in connection with the sale, rental, provision, and furnishing of short-term rental accommodations in South Carolina and have performed such services. Moreover, Defendants have transacted substantial business in Plaintiffs' jurisdictions which has caused harm and damage to Plaintiffs in South Carolina.

28. The Court also has jurisdiction of this action because this is, in part, an action for declaratory relief brought pursuant to S.C. Code Ann. 15-53-10, *et seq.*, the South Carolina Declaratory Judgment Act, to determine whether Defendants are engaged in business within Plaintiffs' jurisdictional limits by selling, renting, furnishing and for providing the service of renting and/or furnishing or providing short-term rental accommodations to transients for consideration, and as such, are required to collect and remit Local Accommodation(s) Fees or Taxes to Plaintiffs pursuant to Plaintiffs' Ordinances and to obtain business licenses from Plaintiffs and pay annual business license fees to Plaintiffs pursuant to Plaintiffs' Ordinances.

29. Venue is proper in this Court pursuant to S.C. Code Ann. §§15-7-10 through 15-7-120 since (a) Defendants, or at least one or more of them, regularly conduct business within Charleston County in the State of South Carolina and such business gives rise to the causes of action set forth herein; (b) Defendants, or at least one or more of them, are foreign corporations, foreign limited liability companies, or foreign limited partnerships, which do not possess certification of authority pursuant to S.C. Code Ann.

§§33-15-101 *et seq.*; and (c) one or more of the Plaintiffs were and are municipal corporations, counties, or other governing bodies within Charleston County in the State of South Carolina at the time this cause of action arose, and the most substantial part of the acts and omissions giving rise to this cause of action occurred with Defendants' rental of and/or furnishing or providing short-term rental accommodations for occupancy located in the City of Charleston, South Carolina; the City of North Charleston, South Carolina; Charleston County, South Carolina; the City of Isle of Palms, South Carolina; the City of Folly Beach, South Carolina; the City of Columbia, South Carolina; the City of Myrtle Beach, South Carolina; the City of North Myrtle Beach, South Carolina; and the Town of Hilton Head Island, South Carolina. S.C. Code Ann. §§15-7-30 (E) and (G).

IV. BACKGROUND

A. Plaintiffs' Accommodation(s) Fee or Tax Ordinances

30. By and through Ordinances enacted pursuant to the State's "Local Accommodations Act", S.C. Code Ann. §§6-1-500 through 6-1-660 (2018), Plaintiffs have each levied a fee or tax calculated as a percentage of the gross proceeds derived from the rental of any accommodation furnished to transients for consideration within the Plaintiffs' respective jurisdictions.

31. Plaintiffs' Ordinances are hereby incorporated by reference as if fully set forth herein:

- a. City of Charleston 2% local accommodation fee, Ordinance Nos. 1996-18 and 1996-56;
- b. City of North Charleston 2% local accommodation fee, Ordinance Sec. 10.5-138, *et seq.*;
- c. Charleston County 2% local accommodation fee, Ordinance Sec. 13-61, *et seq.*;

- d. City of Isle of Palms 1% local accommodations fee, City Code Sec. 7-7-1, *et seq.* City of Isle of Palms 1% beach preservation fee, Ordinance No. 2014-08.;
- e. City of Folly Beach 1% local accommodations fee, Ordinance Sec. 113.01, *et seq.* City of Folly Beach 1% beach preservation fee, Ordinance Sec. 151.39, *et seq.*;
- f. City of Columbia 3% Tourist Development Fee, Ordinance Sec. 20-31, *et seq.*;
- g. City of Myrtle Beach 3% local accommodations tax after June 30, 2019, Ordinance Sec. 2-270, *et seq.* (was 0.5% prior to July 1, 2019). City of Myrtle Beach 1% hospitality tax, Ordinance Sec. 2-260, *et seq.*;
- h. City of North Myrtle Beach 3% local accommodations tax after June 30, 2019, Ordinance Sec. 7-206, *et seq.* (was 1.5% prior to July 1, 2019); and
- i. Town of Hilton Head Island 1% local accommodations tax, Municipal Code Sec. 4-10-10, *et seq.* Town of Hilton Head Island 2% beach preservation fee, Municipal Code 4-9-10, *et seq.*

32. Plaintiffs' Ordinances provide that the A-Tax is the liability of the transient consumer and is required to be paid by the consumer at the time of delivery of the services to which the A-Tax applies. The Ordinances further provide that the A-Tax shall be collected by the provider of the services. Logically, the consumer cannot and will not pay a fee or tax that he or she is not charged by the service provider required to charge and collect the fee or tax.

B. Application of The Supreme Court's Opinion in *Travelscape, LLC v. South Carolina Dept. of Revenue* To This Case

33. This action and the remedies and relief sought by Plaintiffs herein are supported by the South Carolina Supreme Court's decision and opinion handed down in 2011 in *Travelscape, LLC v. South Carolina Dept. of Revenue*, 391 S.C. 89, 705 S.E. 2d 28 (S.C. Jan. 18, 2011). There, based on the State of South Carolina's Tax On

Accommodations For Transients Statute, S.C. Code §12-36-920 (Supp. 2009), which mirrors the language and requirements of the Plaintiffs' A-Tax Ordinances at issue here, the Supreme Court held that Travelscape, LLC, an online travel company, was in the business of furnishing hotel room accommodations and was required to remit taxes on those accommodations to the State on the gross proceeds Travelscape, LLC received from furnishing hotel rooms and related services to transient consumers for consideration in South Carolina.

34. The State Tax On Accommodations For Transients Statute, S.C. Code 12-36-920 (A) (Supp. 2009), establishes “what” is subject to the tax, just as the Plaintiffs' A-Tax Ordinances do, by imposing a percentage sales tax on “the gross proceeds derived from the rental or charges for any rooms furnished to transients by any... place in which rooms, lodgings, or sleeping accommodations are furnished to transients for consideration.” Furthermore, Section 12-36-920 (E) of the Statute establishes “who” is subject to the tax, again just as Plaintiffs' A-Tax Ordinances do, by requiring “every person engaged... in the business of furnishing accommodations to transients for consideration.” to remit the tax to the South Carolina Dept. of Revenue. The Supreme Court defined the word “business” in the Statute as “activities with the object of gain, profit, benefit or advantage, either direct or indirect” (emphasis added), and held that Travelscape, LLC was responsible for collecting and remitting the taxes in issue because the online travel company provided hotel reservations to transients for consideration, whether directly or indirectly.

35. In reaching its decision to hold Travelscape, LLC responsible to collect the tax from the consumer and to remit the tax to the South Carolina Dept. of Revenue, the

Court held that while Travelscape, LLC does not physically provide accommodations, “it is in the business of doing so” and is subject to the Accommodations Tax because it is “engaged in the business of furnishing accommodations to transients for consideration.” *Id.* at 102, 35.

36. The Supreme Court’s decision and opinion in the *Travelscape, LLC* case cannot be distinguished from the present case involving Plaintiffs’ A-Tax Ordinances which mirror the State’s Tax On Accommodation For Transients Statute, and as in *Travelscape*, involve Defendants which are online travel companies and short term rental companies engaged in the business of furnishing rooms, lodgings, and sleeping accommodations to transients for consideration within each Plaintiff’s jurisdiction. Therefore, as in the *Travelscape* case, Defendants here are required to pay Plaintiffs the unpaid and overdue A-Taxes owed pursuant to Plaintiffs’ A-Tax Ordinances, in addition to interest and penalties on the amounts owed.

C. Overview of the Basis and Nature of This Action For Recovery of A-Taxes Owed

37. Defendants are, and have been for years, engaged in the business of furnishing rooms, lodgings, and sleeping accommodations (including but not limited to private and/or vacation homes, rooms in those homes, condominiums, and apartments) (hereafter collectively referred to as “accommodations”) for short-term rental within Plaintiffs’ jurisdictions to transient consumers for consideration, gain and profit. Defendants operate and/or offer services on and through online websites and Platforms on those websites enabling the owners of the accommodations or their property managers (hereafter “Hosts”) to advertise and list their accommodations for short-term rental by transient consumers (hereafter “Guests”) who select, reserve, book, rent, and

pay for the rental of those accommodations – all of which activities are entered, inputted, done, and transacted on, through, and without leaving the Defendants' websites. In return and as consideration for these services, Defendants charge fees to and collect the fees from Hosts and Guests.

38. For all of the years that Defendants have engaged in the business described above, Plaintiffs A-Tax Ordinances have been in full force and effect, and have required accommodation rental and service providers including Defendants to collect and remit to Plaintiffs the A-Taxes levied by these Ordinances on the gross proceeds derived from the rental of all such accommodations, namely the rental fees and all charges related to the rental, including but not limited to service fees for example. However, with the exception of the HomeAway Group of Defendants' decision just recently communicated to Plaintiffs that the "HomeAway Platform" would begin to collect and remit A-Taxes to Plaintiffs for short-term rental transactions on and through their websites effective September 1, 2019,² Defendants have failed and refused to collect or remit the A-Taxes due and owing to Plaintiffs pursuant to their A-Tax Ordinances.

39. Through this action and this Court, Plaintiffs seek legal relief from and remedies for the Defendants' violations of Plaintiffs' A-Tax Ordinances, including Defendants' failure and refusal to collect and remit A-Taxes required by the Ordinances on any and all gross proceeds derived from short-term rentals on, over, or through Defendants' websites and Platforms involving accommodations furnished to transients

² Despite this recent decision and communication, the HomeAway Group of Defendants has still failed and refused to pay or promise to pay to any of the Plaintiffs any A-Taxes accruing or due before September 1, 2019. Moreover, it is presently unknown if the full and correct account of A-Taxes will be or have been paid by these Defendants for all transactions and periods after September 1, 2019. This action will, in part, seek to determine and recover any and all unpaid A-Taxes by HomeAway Defendants both before and after September 1, 2019.

within Plaintiffs' jurisdictions for consideration, and which accommodations were not operated as the property owner's place of abode with the property owner remaining in the accommodations during the rental period.

40. Accordingly, Plaintiffs seek to recover as damages from Defendants the unpaid and overdue A-Taxes which each Defendant has failed or refused to collect and remit to each Plaintiff, in addition to the penalties specified in Plaintiffs' A-Tax Ordinances on the unpaid and overdue A-Taxes. Plaintiffs also seek to obtain additional relief and remedies including declaratory and injunctive relief, as well as an Accounting, all of which will be set out and described in more detail in subsequent sections of this Complaint.

Plaintiffs' Business License Ordinances

A. Plaintiffs' Business License Ordinances

41. By and through Ordinances enacted pursuant to South Carolina enabling acts, S.C. Code Ann. §5-7-30 and §4-9-30(12), Plaintiffs have each required every person engaged in any calling, business, occupation or profession listed in their respective rate classification indices within their jurisdictional limits to pay an annual license fee or tax and obtain a business license.

42. Plaintiffs' Business License Ordinances set forth below are hereby incorporated by reference as if fully restated herein:

- a. City of Charleston Business License Ordinance No. 2018-148;
- b. City of North Charleston Business License Ordinance Sec. 10.5-16, *et seq.*;
- c. Charleston County Business License Ordinance Sec. 13-21, *et seq.*;
- d. City of Isle of Palms Business License Ordinance Sec. 7-1-1, *et seq.*;
- e. City of Folly Beach Business License Ordinance Sec. 110.01, *et seq.*;

- f. City of Columbia Business License Ordinance Sec. 11-31, *et seq.*;
- g. City of Myrtle Beach Business License Ordinance Sec. 11-21, *et seq.*;
- h. City of North Myrtle Beach Business License Ordinance Sec. 7-1, *et seq.*; and
- i. Town of Hilton Head Island Business License Ordinance Sec. 10-1-10, *et seq.*

Hereafter, these Ordinances will be collectively referred to as “Plaintiffs’ Business License Ordinances.”

43. By failing to obtain a business license and pay all annual business license fees owed in the past, Defendants are and have been for years in violation of Plaintiffs Business License Ordinances. These violations are continuing³, for which Plaintiffs seek the full amount of business license fees due since Defendants began to engage in the business of selling, renting, furnishing, and/or providing accommodations and/or services in each and all of Plaintiffs’ jurisdictions.

B. Overview of the Basis and Nature of This Action Requiring Defendants to Obtain Business Licenses and Paying Business License Fees or Taxes

44. Defendants are, and have been for years, engaged in the business of furnishing rooms, lodgings, and sleeping accommodations (including but not limited to private and/or vacation homes, rooms in those homes, condominiums, and apartments) (hereafter collectively referred to as “accommodations”) for short-term rental within Plaintiffs’ jurisdictions to transient consumers for consideration, gain and profit.

³ Effective September 1, 2019, one or more of the HomeAway Group of Defendants began obtaining a business license and paying the annual business license fees to Plaintiffs. However, these Defendants have failed to pay any business license fees or taxes overdue for the many years prior to September, 2019 despite having been engaged in business within Plaintiffs’ jurisdictions for those many years. Plaintiffs seek to recover those overdue fees and taxes in this action, as well as any underpayment of fees or taxes on or after September 1, 2019.

Defendants operate and/or offer services on and through online websites and Platforms on those websites enabling the owners of the accommodations or their property managers (hereafter “Hosts”) to advertise and list their accommodations for short-term rental by transient consumers (hereafter “Guests”) who select, reserve, book, rent, and pay for the rental of those accommodations – all of which activities are entered, inputted, done, and transacted on, through, and without leaving the Defendants’ websites. In return and as consideration for these services, Defendants charge fees to and collect the fees from Hosts and Guests.

45. For all of the years that Defendants have been engaged in the business described above, Plaintiffs’ Business License Ordinances attached as Exhibit A-H have been in full force and effect, and have required persons engaged in a calling or business within, or associated with, their jurisdictional limits to pay an annual business license fee or tax and obtain a business license. However, except for one or more of the HomeAway Group beginning September 1, 2019, Defendants have failed and refused to pay the fees or taxes or to obtain a license.

46. The Supreme Court’s decision and opinion in the *Travelscape, LLC* case cannot be distinguished from this action involving Plaintiffs’ Business License Ordinances. Here, as in *Travelscape*, Defendants are engaged in the business of furnishing accommodations for rental (short-term rental in the present case) to transients for consideration in each Plaintiff’s jurisdiction. Therefore, Defendants here were and are required to obtain business licenses and pay annual business license fees or taxes to Plaintiffs, just as *Travelscape, LLC* was required by the Supreme Court opinion to pay overdue accommodation taxes to the State.

47. Through this action and this Court, Plaintiffs seek legal relief from and remedies for the Defendants' violations of Plaintiffs' Business License Ordinances, including Defendants' failure to obtain business licenses and pay annual business license fees or taxes as required in the past.

48. Accordingly, Plaintiffs seek to recover as damages from Defendants the unpaid and overdue business license fees or taxes which each Defendant has failed to pay to each Plaintiff, in addition to the penalties specified in Plaintiffs' Business License Ordinances on the unpaid and overdue fees or taxes. Plaintiffs also seek to obtain additional relief and remedies including declaratory and injunctive relief, as well as an accounting, all of which will be set out and described in more detail in subsequent sections of this Complaint.

V. COMMON ALLEGATIONS APPLICABLE TO ALL DEFENDANTS

A. Defendants Are In The Business Of Furnishing And Providing Short-Term Rental Accommodations And Services To Initiate And Complete The Rental Transactions

49. Defendants own, operate, manage and/or control online websites and platforms on those websites which market, sell, rent, furnish, and provide accommodations for short-term stays in Plaintiffs' jurisdictions. Hosts list and advertise their properties and transient Guests select, reserve, book, rent, and pay for these accommodations on and through the Defendants' websites.

50. After the Guest selects the accommodation to book and rent, the Guest enters his/her personal information and payment method (credit/debit card or eCheck) on Defendants' website. At the time this reservation request is made and payment method is entered on the website, the Defendants process the Guest's payment and charge and

collect the rental consideration as well as Defendants' fees. Once the rental consideration, service fees, and any other charges related to the rental are accepted and processed by Defendants, the rental transaction is consummated and complete. During the entire transaction, from start to finish, all of the steps of the transaction are performed and completed on, over and through Defendants' websites; the Guest never leaves the website to select, reserve, book, and pay for the accommodation; and both Host and Guest deal only with Defendants on and through their websites and the platforms on those websites which Defendants operate, manage, and control.

51. By and through their online agreements and terms and conditions to which Hosts and Guests are required to agree in order to proceed with a rental transaction, Defendants require Hosts and Guests to authorize Defendants to collect the entire amount of the rental payment as well as Defendants fees and charges on and through Defendants websites at the time the reservation is submitted, after the Guest enters a payment method on the website. All of these steps are required to be completed without the Host and Guest dealing directly with each other, and all dealings and communications occur on and through Defendants' websites. Moreover, none of the Guest's rental payment is provided directly to the Host, but instead Defendants require that such payments be made through Defendants' built-in payment processing services on their websites and platforms. Even though Defendants collect the rental payment at the start of the transaction process when the reservation is made, the rental payment funds are held by Defendants and not transferred to the Host until after the Guest checks in at the accommodation.

52. The Guest's short-term rental reservations are booked and paid for well in advance of the check-in date directly through Defendants' websites. Defendants even offer additional benefits if the Guest books and uses the Defendants' payment processing services to pay for the rental directly through Defendants.

53. Defendants process and transmit the Guests' rental payments, and manage and control the collection and processing of the rental payments as part of the services provided by Defendants to Hosts and Guests.

54. All of the money prepaid to Defendants by the Guests for the short-term rental – including the rental fee for the accommodation, Defendants' fees and charges, and all taxes collected by Defendants (although none of Plaintiffs' local A-Taxes are collected or remitted by Defendants) – are charged, received, accepted, collected, and held by Defendants and/or other entities through Defendants' websites and platforms. These other entities are affiliated with Defendants and/or selected, contracted with, controlled and mandatorily imposed on Guests and Hosts by Defendants. These other entities are electronically integrated and linked to Defendants through Defendants' websites and platforms on those websites. In short, the Guests prepay all of the funds and fees related to the rental directly through Defendants' websites, and Defendants process, hold, transmit and distribute those funds in the manner and at the times imposed by the Defendants in their terms and conditions of use published on their websites. Under these terms and conditions for online booking and payment, the Guest never pays the Host any money directly and does not interact with the Host until arrival at the rental accommodation. The Host does not collect, nor is the Host permitted to collect any rental fees, services fees or taxes from the Guest. By contract, no payment by the Guest is

allowed outside of the Defendants' online payment systems on Defendants' websites, which payment systems and processes are required to be used by both Hosts and Guests.

55. Once the Guest – Defendants' customer – has prepaid for the reservation and rental accommodation on Defendants' website, the rental transaction is complete and the Guest has obtained the right, through the contracts of adhesion imposed by Defendants and through the reservation and payment services provided by Defendants on their website, to enter upon and occupy the accommodation for the period of the short-term rental.

56. Defendants advertise, promote, offer, and perform various services to encourage the listing, booking, and short-term rentals of accommodations in Plaintiffs' jurisdictions, including but not limited to the following:

- a. Reservation and reservation management services;
- b. Messaging and communication services and systems for Hosts and Guests through Defendants' websites;
- c. Enabling, accepting, and collecting rental payment on and through Defendants' websites and platforms;
- d. Collection and transfer of booking and rental payments;
- e. Calculation, collection, and remittance of taxes in some jurisdictions;
- f. Some offer free professional photographs to Hosts;
- g. Some offer a "smart pricing tool" that automatically adjusts prices to match demand;
- h. Provision to Hosts of guaranteed protection in the event of property damage resulting from the rental;
- i. Provision of Host Protection Insurance for property damage and bodily injury;

- j. Reimbursement to Guests in the event of a travel issue such as the Host's failure to provide reasonable access to the accommodation;
- k. Dispute resolution services; and
- l. Operation and management of platforms on Defendants' websites which they offer to enable Guests to pay online on and through Defendants' websites for the rental accommodation reservations.

57. Defendants provide payment processing services and payment platforms on their websites enabling, and requiring, Guests to pay for their reservations and accommodation rentals directly to and through Defendants.

58. Defendants require Hosts and Guests to enter into binding agreements on Defendants' websites requiring use of Defendants' built-in payment processing services conducted on and through Defendants' websites and platforms.

59. For all online bookings, Defendants require that rental payments be made only using Defendants' payment processing services and be made only through Defendants' websites and platforms. Defendants prohibit rental payments made offsite or outside their websites and platforms; and wire transfers, cash payments, or payments made directly from Guests to Hosts are not allowed by Defendants.

60. While Defendants provide the ability, mechanism, and process for Guests to pay for the reservation and short-term rental of accommodations on and through Defendants' websites, Defendants use subsidiary or affiliated entities which Defendants choose, select, and contract with to complete the processing, collection, holding, and distribution of rental payments through Defendants' websites and platforms under Defendants' direction and control.

61. To summarize, Defendants manage, direct, and control the short-term rental payments and collection processes on their built-in mandatory payment processing services through which short-term rental payments are collected and transmitted.

62. Moreover, Defendants bind themselves contractually to step into the shoes of the Host and act as the Host's payment collection agent for the purpose of accepting short-term rental payments for accommodations from the Guests on behalf of the Hosts, thereby extinguishing the Guests' responsibility and liability for rental payments once they are collected by Defendants as agents for the Hosts. Accordingly, Defendants act directly and through their websites and payment platforms, and also as payment collection agents for Hosts, when they accept payment information from Guests and then charge, collect, process, and transmit the rental payments and consideration for the rental.

63. Having furnished and provided short-term rental accommodations and/or collected the payment therefor directly through their websites and platforms, Defendants are, and have been in the past, required and obligated pursuant to Plaintiffs' A-Tax Ordinances and Business License Ordinances to collect and remit A-Taxes in short-term rental transactions and to obtain business licenses and pay annual business license fees or taxes to Plaintiffs based on all of the gross income, proceeds and receipts derived from those transactions.

64. Defendants act as Merchants of Record in their short-term rental transactions as reflected by the Guests' credit card statements, and by Defendants receiving, accepting and processing the rental payments and fees from Guests.

B. Defendants Impose Pervasive Requirements And Conditions On And Control Over Hosts And Guests In Their Rental Transactions

65. By and through Defendants' online contracts with both Hosts and Guests, to which they are required to agree in order to list (Hosts) and book (Guests) a short-term rental accommodation, Defendants have obtained the right to control and do control the details of the rental transaction including the management and operation of the booking and reservations process as well as the financial and payment processes and mechanisms of the rental transaction. Indeed, Defendants control every aspect and step of the rental transaction from the outset through completion, resulting in the Guest obtaining the right to occupy the rental accommodation and the Host receiving payment for the rental of it.

66. Every aspect and step of the short-term rental transaction is dictated and controlled by Defendants through the binding agreements – i.e. contracts of adhesion – which they impose on Hosts and Guests, including but not limited to the following:

- a. Defendants require both Hosts and Guests to register and open accounts on Defendants' websites and to become members subject to the terms and conditions, terms of use, and/or payment terms and conditions of the contracts of adhesion Defendants impose on them on Defendants' websites.
- b. Defendants require acceptance and adherence to their terms and conditions in order for Hosts to list, advertise, rent, and obtain rental payments for their short-term rental accommodations, and for Guests to select, reserve, rent, book, pay for, and obtain the right to occupy such accommodations.
- c. Defendants require credit cards, debit cards, eChecks or similar payment methods to be entered by Guests on the Defendants' website enabling Defendants to collect and control the rental payments;
- d. Defendants control, manage, dictate, and direct the rental payment processing, and how, when and through whom it is done;

- e. For all online booking of reservations on and through Defendants' websites, Defendants require Hosts and Guests to only use the Defendants' payment processing system on their websites and platforms and/or only the payment processor which Defendants select, control, and contract with, and no other, to accept and/or collect payments from Guests.
- f. Defendants require that all rental payments be made on and through their website, and prohibit payments being requested, made, or accepted off-site or outside the Defendants' website; and Defendants also prohibit cash wire transfer, Western Union or similar direct forms of payment by Guests to Hosts.
- g. Defendants control and dictate the transfer of rental payment funds, the fact that such funds are held after collection, who holds the funds, how long they are held, and when the funds are to be distributed or transmitted;
- h. Defendants require Hosts and Guests to agree that Defendants or others of their choosing hold rental payment funds collected from Guests until the Guests' check-in, regardless of the time interval between the prepayment of the rental funds at the time of booking and the time of check-in – whether the delay be one week, one month, or one year or more.
- i. In short, Defendants collect the rental payments on and through their websites, control the payment process and disbursement of rental and service fee payments, and how and when transfers and distribution of funds occur;
- j. Defendants control the methods, manner, and details of communications concerning the accommodation rental, requiring that all communications by Host or Guest be conducted within and through the Defendants' website;
- k. Defendants require Hosts and Guests to agree and authorize the Defendants to charge, collect and remit taxes, including local accommodation and occupancy taxes, in Defendants' sole discretion, and/or if Defendants determine they are legally obligated to do so, and/or if demand is made on Defendants to do so;
- l. Defendants require Hosts and Guests to agree, and obtain authorization from them, that Defendants decide in their sole discretion whether Defendants will or will not collect taxes, or which ones they will or will not collect from Guests, to remit to taxing authorities such as Plaintiffs;
- m. Defendants, through their websites and platforms which they require Hosts and Guests to use, require Hosts to appoint Defendants the payment collection agents for Hosts for the purpose of accepting rental funds from Guests at the time the reservation and rental is booked; and require the

Host to agree that the rental payment by the Guest shall be considered the same as payment to the Host and fulfills all obligations the Guest has to the Host for rental payment.

67. Defendants control and exercise significant leverage over Hosts and Guests and over the basic and essential functions involved in the rental of accommodations to transients: i.e., in the reservation, booking, and rental of those accommodations; in the listing, reservation, booking and rental details of the contracts required of Hosts and Guests containing pervasive restrictions, conditions, and concessions; in the restrictive financial and payment methods and processes imposed on Hosts and Guests by Defendants relating to the Guests' rental payments and the Hosts' receipt of the rental funds; in the collection and payment of taxes; and in maintaining sole control of all direct interaction with and between both Host and Guest.

68. Defendants manage and control all financial components of the rental in the online short-term rental transaction. Defendants require that Guests enter their payment and personal information on the website so that credit or debit cards or eChecks can be charged to prepay for the rental. Through their websites Defendants accept and collect the rental payments from the Guests, process the funds through required and built-in payment processing systems, hold the funds until check-in, and only then transfer and distribute the rental payments to the Hosts.

C. Defendants Are Required By Contracts With Hosts And Guests To Collect And Remit Accommodation Taxes

69. In each rental transaction, the Defendants agree and bind themselves by their online contracts with the Guests that Defendants will collect from the Guests, at the time of booking the accommodation, the applicable Accommodations or Occupancy Tax due for the rental of the accommodation. Specifically, the Defendants and Guests agree:

- a. That the "Total Fees" presented to the Guest during booking of the accommodation include any applicable Taxes; and the Guest agrees to pay the Total Fees for any booking requested in connection with the Guests' account with the Defendants;
- b. That Defendants will collect the applicable fees (the Total Fees) at the time of the booking request; and
- c. That the Guests acknowledge and agree that Defendants through their payment platform act as the Hosts' payment collection agent for the limited purpose of accepting payments from the Guests on behalf of the Hosts.

70. Similarly, the Hosts by contract appoint Defendants as their agents for collection and remittance of Accommodations or Occupancy Taxes in jurisdictions which levy such taxes, and Defendants assume and bind themselves to act as the Hosts' agents in the collection and remittance of Accommodations and Occupancy Taxes from Guests. Specifically, the Defendants and Hosts agree as follows:

- a. Defendants and their platforms will collect the Total Fees (including Accommodation or Occupancy Taxes) at the time the Guests' booking request is accepted by the Hosts;
- b. Registered users of the Defendants' websites and platforms collecting payment for services provided by or through Defendants or their platforms appoint the Defendants or their platforms as the Host's payment collection agents for the purpose of accepting funds from Guests; and
- c. The Hosts' payment for a booking will be the listing or booking fee less applicable Host fees and taxes.

71. Plaintiffs are the direct beneficiaries, or in the alternative if necessary, third-party beneficiaries, of the Defendants' contractual agreements, obligations, and binding representations recited in paragraphs 62, 66, 67, 68, 69, and 70 hereinabove which require Defendants to collect and remit Local A-Taxes to taxing authorities including Plaintiffs.

72. In addition, Defendants have (a) contracted to undertake and (b) voluntarily undertaken to collect and remit local A-Taxes to taxing jurisdictions including Plaintiffs, and (c) have led both Hosts and Guests to believe and rely that Defendants were collecting and remitting and/or would collect and remit such taxes applicable to short-term rentals of accommodations in taxing jurisdictions including Plaintiffs.

73. At least some of the Defendants currently collect accommodations or occupancy taxes from consumers and remit them to state or local governments in numerous states of the United States, plus the District of Columbia, Puerto Rico, and the U.S. Virgin Islands. However, only the HomeAway Group of Defendants collects and remits to Plaintiffs any of Plaintiffs A-Taxes, and they have only been doing so since September 1, 2019.

74. In addition to the contractual agreements described in paragraphs 62, and 66 through 70 hereinabove requiring the collection of Accommodation or Occupancy taxes in every online short-term rental transaction in which Defendants are and have been involved, some or all Defendants have also agreed with Hosts and Guests that Defendants:

- a. May decide in their sole discretion to collect and remit Accommodation or Occupancy Taxes;
- b. Will collect and remit such taxes when they determine they are required to do so by local ordinances;
- c. Will collect and remit such taxes when and if a jurisdiction asserts Defendants have an obligation to collect and remit such taxes; or
- d. Will collect and remit such taxes where they are obligated to collect and remit such taxes for online bookings.

75. Plaintiffs are direct, or in the alternative if necessary, third-party beneficiaries of the contractual agreements described in paragraph 74 hereinabove.

76. In their online contracts with Hosts and Guests in short-term rental transactions, Defendants require Hosts and Guests to instruct and authorize Defendants to charge and collect local Accommodation or Occupancy taxes on the Hosts' behalf at the time listing or booking fees are collected, and to remit such taxes to the applicable taxing authorities. Moreover, Defendants reserve their rights in such contracts to withhold payments of taxes if the tax regulations require them to collect and/or withhold taxes from payouts to Hosts.

77. Plaintiffs are direct, or in the alternative if necessary, third-party beneficiaries of the contractual agreements described in paragraph 76 hereinabove.

D. Defendants Are Obligated To Pay A-Taxes On And Calculate Business License Fees To Include Their Service Fees And Other Fees And Charges

78. For many years, Defendants have charged, collected and profited from service fees and other rental-related fees and charges collected in connection with their furnishing and providing short-term rental accommodations to transient Guests within Plaintiffs' taxing jurisdictions. Such fees and charges, to both Hosts and Guests, constitute part of the consideration and gross proceeds for the rental of rooms, lodgings, and sleeping accommodations to which Plaintiffs' A-Tax Ordinances apply. Along with the A-Taxes and business license fees calculated on the rental price and proceeds, A-Taxes and business license fees calculated on these fees and charges were and are required by Plaintiffs' Ordinances to be reported and timely remitted to Plaintiffs. However, Defendants have failed to remit or pay to Plaintiffs the local A-Taxes and business license fees calculated on such fees and charges. Such A-Taxes and business license fees

calculated on these fees and charges, as well as on the gross rental price and proceeds from the rentals, are unpaid, overdue and owing to Plaintiffs for the entire period of time the rental payments, service fees and other fees and charges have been paid by Guests to Defendants but not remitted to Plaintiffs.

VI. SPECIFIC ALLEGATIONS APPLICABLE TO EACH DEFENDANT

A. Defendants Airbnb, Inc., Airbnb, Inc. d/b/a Airbnb.com, And Airbnb Payments, Inc.

79. Plaintiffs reallege the previous allegations by reference as if fully set forth herein.

80. Defendant Airbnb, Inc., Airbnb, Inc. d/b/a Airbnb.com, and/or Airbnb Payments, Inc. (hereinafter collectively “the Airbnb Defendants”) are and have long been engaged in the business of renting, furnishing and providing short-term rental accommodations in Plaintiffs’ jurisdictions to transients for consideration with the object of gain, profit, benefit and/or advantage, either direct or indirect.

81. The Airbnb Defendants also are and have long been engaged in the business of furnishing and providing online reservations to transients for short-term rentals and stays in accommodations in Plaintiffs’ jurisdictions for consideration with the object of gain, profit, benefit and/or advantage, either direct or indirect.

82. In addition, the Airbnb Defendants are and have long been offering and providing services online involving and related to the reservations in, booking of, and short-term rental of accommodations in Plaintiffs’ jurisdictions to transients for consideration with the object of gain, profit, benefit and/or advantage, either direct or indirect. The Airbnb Defendants charge and collect and/or receive and accept fees from Hosts and Guests, including but not limited to service fees for services they provide to

Hosts and Guests based on a fixed yearly amount or a percentage of the price of the booking or rental, as well as fees for advertising and other services.

83. Defendant Airbnb Payments, Inc. has been engaged in the business and functions described in paragraphs 80 through 82 above as a subsidiary, an affiliate, an agent, a partner, and/or a joint venturer of and with Defendant Airbnb, Inc. while acting and performing functions and services on, over and through the website and platform(s) which Airbnb, Inc. operates, manages, and controls.

84. Furthermore, or in the alternative if necessary, Defendant Airbnb Payments, Inc. acts on, over, and through the Airbnb, Inc. website and platform to provide payment processing services as a subsidiary, affiliate, agent, partner, and/or joint venturer of and with Defendant Airbnb, Inc. These services are offered, operated, managed and controlled by Airbnb, Inc., to collect and hold short-term booking or rental payments from Guests, with such payments only being distributed to Hosts after the Guest's check-in pursuant to requirements and timing imposed by Defendant Airbnb, Inc.

85. Furthermore, or in the alternative if necessary, Defendant Airbnb Payments, Inc. acts as a subsidiary, affiliate, agent, partner, and/or joint venturer of and with Defendant Airbnb, Inc. and on, over, and through the Airbnb, Inc. website, platform and payment processing services offered, operated, managed and controlled by Airbnb, Inc., to collect and hold short-term booking or rental payments from Guests, with such payments only being distributed to Hosts after the Guest's check-in pursuant to requirements and timing imposed by Defendant Airbnb, Inc.

86. The Guest's payment method and information for the short-term rental accommodation is required to be entered onto and is collected and stored by Airbnb, Inc.

on the Airbnb.com website when an accommodation selection is made by the Guest. Once the Host accepts the Guest's request, or if the booking is made with Instant Book, the Guest's payment method is charged for the entire amount of the reservation, booking and rental at that time.

87. The payment methods, including credit cards, are entered into the Guest's Airbnb, Inc. account on the website. Likewise, the payment method selected by the Host is linked to the Host's Airbnb, Inc. account on the Airbnb.com website in order for the Host to receive a payout, but such payout is not transferred to the Host by the Airbnb Defendants until 24 hours after check-in.

88. The Host is not ever given the Guest's credit card or debit card information which the Guest has initially provided to Defendant Airbnb, Inc.

89. Defendant Airbnb, Inc. represents to Hosts and Guests that "we manage a trusted platform to collect and transfer payments."

90. Defendant Airbnb, Inc. processes and transmits the rental consideration and enters into arrangements and agreements with Hosts to take possession of the traveler's funds so that Airbnb, Inc. can transmit the rental payments to the Hosts.

91. The rental and service fee payments are made by the Guest on and through the Airbnb, Inc. website and/or Platform on Airbnb's website.

92. Defendant Airbnb, Inc. represents to the Host and Guest that "we can't provide... benefits if your reservation isn't booked and paid for directly through Airbnb." Moreover, Airbnb, Inc. prohibits off-site payments, payments made outside of the Airbnb website and Platform, payments made directly to the Host by the Guest, cash or wire

transfer payments, and any requests by Hosts to accept or offers by Guests to make payment for listing or booking fees or rental payments.

93. The Airbnb Defendants provide payment processing services to Guests and Hosts who use the Airbnb Platform.

94. Defendant Airbnb, Inc. requires that all rental and service fee payments be processed through its website and through Defendant Airbnb Payments, Inc., its subsidiary, affiliate, agent, partner and/or joint venturer; i.e., it is required that all payments be processed through Airbnb, Inc.'s built-in payment processing system and services.

95. Defendant Airbnb, Inc. requires Hosts and Guests to agree that the Host appoints Defendant Airbnb Payments, Inc. as the Host's "payment collection agent" to accept funds from Guests for accommodation rentals and/or services provided by the Airbnb Defendants.

96. Defendant Airbnb Payments, Inc. represents to Hosts and Guests that it "provides payment services to its members, including payment collection services."

97. Through Airbnb, Inc.'s website and platform on that website, the Airbnb Defendants charge the Guest's credit card or debit card for the rental and service fees, collect those fees, hold the Host's rental fees and funds, and do not disburse the rental fee funds to the Host until 24 hours after check-in.

98. Defendant Airbnb, Inc. controls and directs the reservation, booking, rental payment, and rental payment process, including who charges, collects, and disburses the rental payments, and how and when those events occur.

99. Defendant Airbnb, Inc. requires Hosts and Guests to use its built-in payment processing services and platform without any option or freedom to choose any other payment process method or processor.

100. Through its website and platform, Defendant Airbnb, Inc. selects, requires, manages, directs, and controls Defendant Airbnb Payments, Inc. to carry out the collection and disbursement of rental payments, service and other fees, and taxes paid by the Guest at the time of booking by charging the credit or debit card provided to Airbnb, Inc. on its website.

101. The Airbnb Defendants reserve the right in their online agreements with Hosts and Guests to withhold payments up to the tax-relevant amounts if tax regulations require them to collect or withhold taxes from payouts to Hosts.

102. The Airbnb Defendants agree with Hosts and Guests that Airbnb may decide in its sole discretion to collect and remit state and local taxes, including occupancy or accommodation taxes. The Hosts and Guests are required by Defendant Airbnb, Inc. to instruct and authorize Airbnb to collect state and local taxes, including occupancy or accommodation taxes from Guests on the Host's behalf at the time listing or booking fees are collected, and to remit such state and local taxes, including occupancy or accommodations taxes to the applicable Tax Authority.

103. Defendant Airbnb, Inc. agrees with the Guests prior to booking a short-term rental accommodation:

- a. That all applicable fees, including the listing fee, security deposit, Guest fee and any applicable Taxes (collectively "Total Fees") will be presented to the Guest prior to booking a listing; and the Guest agrees to pay the Total Fees for any booking requested in connection with the Guest's account with Airbnb, Inc.;

- b. That the Airbnb Defendants will collect the Total Fees at the time of the booking request; and
- c. That the Guest acknowledges and agrees that the Airbnb Defendants through their payment platform act as the Host's payment collection agent for the limited purpose of accepting payments from the Guest on behalf of the Host.

104. Similarly, the Hosts by agreement and contract online appoint the Airbnb Defendants as their agents for collection and remittance of Accommodations or Occupancy Taxes in jurisdictions which levy such taxes, and the Airbnb Defendants assume the role as the Hosts' agents in the collection and remittance of Accommodations or Occupancy Taxes from Guests. The Airbnb Defendants and Hosts agree that:

- a. Defendant Airbnb, Inc. and its platforms on the website will collect the Total Fees (including Accommodation or Occupancy Taxes) at the time the Guest's booking request is accepted;
- b. Each registered user of Defendant Airbnb, Inc.'s website and platform through which payment is made for services provided by Airbnb appoints Airbnb, Inc. and/or its platform as the Host's "payment collection agent" for the purpose of accepting funds from Guests purchasing such services; and
- c. The Host's payment for a booking or accommodation rental will be the listing, booking, or rental fee less the applicable Host fees and Taxes.

105. Based upon the above and foregoing, the Airbnb Defendants, one or both of them, are and have been in the past legally responsible and required pursuant to Plaintiffs' Ordinances to charge and collect the full amount of Plaintiffs' A-Taxes on the gross proceeds derived from the rental, including the rental payments or fees as well as all service fees and other charges related to the rental, and to remit those A-Taxes to Plaintiffs in a timely manner. The Airbnb Defendants, one or both of them, are and have been legally responsible and required to collect and remit the Plaintiffs' A-Taxes by virtue of directly or indirectly furnishing and providing rental accommodations and services to

transients for consideration, and/or in their capacity as agents for Hosts when the Airbnb Defendants, one or both of them, provide and furnish such rental accommodations and services to transients for consideration in Plaintiffs' jurisdictions.

106. Plaintiffs are direct and/or third-party beneficiaries of the Airbnb Defendants' agreements and contracts with Hosts and Guests set forth and described in any of the paragraphs 92 through 105, hereinabove.

B. The HomeAway Group of Defendants

107. Plaintiffs reallege the previous allegations by reference as if fully set forth herein.

108. Defendants HomeAway.com, Inc.; HomeAway.com, Inc. d/b/a HomeAway Payments; HomeAway.com, Inc. d/b/a VRBO and/or VRBO.com; and HomeAway.com, Inc. d/b/a Vacation Rentals and/or VacationRentals.com comprise and will hereafter be referred to as "The HomeAway Group."

109. The HomeAway Group, each and/or all of them, is and long has been engaged in the business of renting, furnishing and providing short-term rental accommodations in Plaintiffs' jurisdictions to transients for consideration with the object of gain, profit, benefit and/or advantage, either direct or indirect.

110. In addition, the HomeAway Group, each and/or all of them, is and has long been engaged in the business of furnishing and providing reservations online to transients for short-term rentals of and stays in accommodations in Plaintiffs' jurisdictions for consideration with the object of gain, profit, benefit and/or advantage, either direct or indirect.

111. Moreover, the HomeAway Group, each and/or all of them, is and has long been offering and providing services on their websites online to Hosts and Guests involving and related to the reservations in, booking of, and paying for the short-term rental of accommodations in Plaintiffs' jurisdictions to transients for consideration with the object of gain, profit, benefit and/or advantage, either direct or indirect. The HomeAway Group, each and/or all of them, charges, collects, receives and/or accepts fees from Hosts and Guests, including but not limited to service fees for the services each provide based on a fixed amount or a percentage of the price of the booking or rental, as well as fees for advertising and other services.

112. HomeAway.com, Inc. owns and/or operates websites which do business as HomeAway.com, VRBO.com (shorthand for Vacation Rental By Owner) and VacationRentals.com. HomeAway.com, Inc. also owns, operates and controls Defendant HomeAway Payments on and through its websites, and requires online booking customers to use this entity for payment processing related to short-term rentals on and through the websites. When performing and carrying out these functions and services, Defendant HomeAway Payments has been and is acting as an agent, affiliate, partner and/or joint venture of and with Defendant HomeAway.com, Inc.

113. The HomeAway Group of Defendants, all or some of them, require Hosts and Guests to register and create accounts on these Defendants' websites in order to use the services these Defendants provide, for which these Defendants charge fees.

114. The HomeAway Group of Defendants, all or some of them, advertise, offer, and provide "Reservation Services" on their websites to manage inquiries, quotes, and

rental agreements and to allow for payments to be made for and/or relating to the short-term rental of the accommodations on and through these Defendants' websites.

115. The HomeAway Group of Defendants, all or some of them, also advertise, offer, and provide "Reservation Manager" and/or other tools as services which enable users of the websites to book and pay for the rental of properties on and through their websites online.

116. The HomeAway Group of Defendants, all or some of them, advertise, offer, and provide for payment on their websites for the short-term rental of the accommodation as another service to Hosts and Guests. These Defendants require that Guests using this service enter their payment method, information and billing address when Guests request to "Book" or "Book Now."

117. The HomeAway Group of Defendants inform and represent to Guests that using "24 Hour Confirmation" or "Instant Book" when booking requires the Guests to enter their payment information through the "HomeAway checkout" on their websites.

118. The HomeAway Group of Defendants advertise, represent, offer and provide on their websites that "paying online with credit card or eCheck on HomeAway is the most secure way to book a vacation rental on our site"; and further that when the Guest (customer) finds a property with either the 24 Hour Confirmation or Instant Book booking type, "you will be entering your payment information through the HomeAway checkout..." These Defendants further advertise and represent through their websites that: "When booking or paying through HomeAway's payment system, you are eligible for our Book with Confidence Guarantee."

119. The HomeAway Group of Defendants represent and require on their websites that all booking should be processed through “The HomeAway checkout,” and refer to their “registered payment method” as an “online payment with a credit card or eCheck directly on and through HomeAway.” These Defendants further represent that they employ and provide “HomeAway’s payment system” and Defendant HomeAway Payments as a “secure payment method, as a service.”

120. The HomeAway payment system for short-term rental payments by Guests requires payment directly through HomeAway by credit card, debit card, or eCheck and forbids cash payments, any instant cash wire transfer services, or any payments made outside these Defendants’ websites.

121. Defendant HomeAway.com, Inc. controls the payment process when HomeAway Payments is used on its website and manages the process as a service provided by HomeAway.com, Inc.

122. Defendant HomeAway.com, Inc. controls the payment process for the short-term rental of accommodations on its website and platform. When Hosts choose to use HomeAway Payments for payment processing, Defendant HomeAway.com, Inc. selects and approves the payment processor which is to be used and through electronic integration links the Guest to the processor through the HomeAway website.

123. The Guest’s credit card statement will and does show that Defendant HomeAway.com, Inc. has been paid for the short-term rental of the accommodation and is the merchant of record.

124. The Guest's service fee is paid to the HomeAway Group by credit card through the HomeAway checkout process and is calculated by the HomeAway Group as a percentage of the gross amount of the rental payment.

125. The HomeAway Group of Defendants advertise and offer for sale other "products" Hosts and Guests can purchase "with your rental in addition to the rental fee," including without limitation a refundable damage deposit, trip cancellation insurance, and damage protection insurance. Any fees or funds charged and collected for these "products" are directly related to the rental of the short-term accommodations transacted by the Defendants online, and are part of the gross proceeds and gross income to which Plaintiffs' A-Tax Ordinances and Business License Ordinances apply and for which these Defendants owe A-Taxes and business license fees to Plaintiffs.

C. The TripAdvisor Group of Defendants

126. Plaintiffs reallege the previous allegations by reference as if fully set forth herein.

127. Defendants TripAdvisor, LLC; TripAdvisor, LLC d/b/a TripAdvisor.com; TripAdvisor, LLC d/b/a FlipKey.com; FlipKey, Inc.; FlipKey, Inc. d/b/a FlipKey.com; and FlipKey, Inc. d/b/a FlipKey Payments comprise and will hereafter be referred to as "The TripAdvisor Group."

128. The TripAdvisor Group, each and/or all of them, is and has long been engaged in the business of renting, furnishing and providing short-term rental accommodations in Plaintiffs' jurisdictions to transients for consideration with the object of gain, profit, benefit and/or advantage, either direct or indirect.

129. In addition, the TripAdvisor Group, each and/or all of them, is and has long been engaged in the business of furnishing and providing reservations online to transients for short-term rentals of and stays in accommodations in Plaintiffs' jurisdictions for consideration with the object of gain, profit, benefit and/or advantage, either direct or indirect.

130. Moreover, the TripAdvisor Group, each and/or all of them, is and has long been offering and providing services online on their websites to Hosts and Guests involving and related to the reservations in, booking of, and paying for the short-term rental of accommodations in Plaintiffs' jurisdictions to transients for consideration with the object of gain, profit, benefit and/or advantage, either direct or indirect. The TripAdvisor Group, each and/or all of them, charges, collects, receives and/or accepts fees from Hosts and Guests, including but not limited to service fees for the services each provide based on a fixed amount or a percentage of the price of the booking or rental, as well as fees for advertising and other services.

131. Defendant TripAdvisor, LLC owns and/or operates a website which does business as TripAdvisor.com. Defendant FlipKey, Inc. is a subsidiary of TripAdvisor, LLC and owns and/or operates a website which does business as FlipKey.com. Defendants TripAdvisor, LLC and/or FlipKey, Inc. also operate, offer, control, and manage an entity, FlipKey Payments, which does business on and through the FlipKey, Inc. website FlipKey.com. Defendants TripAdvisor, LLC and FlipKey, Inc. require online booking customers to use FlipKey Payments for payment processing related to short-term rentals on and through the websites. Defendants FlipKey, Inc. and FlipKey Payments are and have long been engaged in the business of furnishing and providing short-term rental

accommodations to transients within Plaintiffs' jurisdictions for consideration as well as providing services to enable and accomplish such rentals, as subsidiaries, affiliates, agents, partners, and/or joint venturers of and with each other as well as with Defendant TripAdvisor, LLC.

132. Furthermore, or in the alternative if necessary, Defendants FlipKey, Inc. and FlipKey Payments act as subsidiaries, affiliates, agents, partners and/or joint venturers of each other as well as with Defendant TripAdvisor, LLC in providing or assisting in the payment processing services offered, operated, managed, and controlled by Defendants TripAdvisor, LLC and FlipKey, Inc. on and through their websites to collect and hold short-term booking and rental payments from Guests, with such payments only being distributed to Hosts by FlipKey, Inc. and/or FlipKey Payments after the Guest's check-in pursuant to requirements and timing imposed by Defendants TripAdvisor, LLC and FlipKey, Inc.

133. Defendant TripAdvisor, LLC owns, operates, and/or controls the "TripAdvisor Rentals Group", which Group includes Defendants TripAdvisor, LLC (hereafter "TripAdvisor") and FlipKey, Inc. (hereafter "FlipKey"). These Defendants own, operate, manage and control websites and platforms on and through which short-term rental transactions are reserved and booked by those Defendants, and on and through which the bookings and rentals are paid for. Defendant FlipKey Payments is an entity managed and controlled by these Defendants as a service to Hosts and Guests for receipt, collection and disbursement of rental payments, service fee payments to Defendants, and other fees and charges for services and products offered by these Defendants online on their websites.

134. For credit card and debit card processing of payment for short-term rentals, the Guest never leaves the TripAdvisor and/or FlipKey website when the Guest inputs his/her payment information, method, and amount. The flow of money from the payment from start to completion of the rental transaction is all done on the TripAdvisor and/or FlipKey website.

135. TripAdvisor and FlipKey require Hosts and Guests to register and create accounts on these Defendants' websites in order to use the services these Defendants provide and to engage in short-term rental transactions on their websites, for which these Defendants charge fees.

136. Once registered, the Hosts list their properties and the Guest selects the property he/she wishes to reserve, book, and rent. When the Guest makes this selection, TripAdvisor and FlipKey require the Guest to enter his/her payment method and personal information on the Defendant's website, which method and information is used and stored on the website, but is at no time shared with the Host. Once the payment is submitted, the Guest's payment method is charged for the entire amount of the rental at the time of booking the reservation and rental. However, the rental payment is not delivered or transmitted to the Host until check-in. Prior to booking, these Defendants require the Guest to authorize the collection and holding of the rental payments and fees by and through Defendants' websites, platforms, and FlipKey Payments.

137. Defendants TripAdvisor and FlipKey process and transmit the rental payment and consideration and enter into arrangements and agreements with Hosts to take possession of the Guests' funds so that these Defendants can transmit the rental payments to the Hosts.

138. Defendants TripAdvisor and FlipKey use a “Payment Platform” on their website to process the booking and rental payments as part of the services provided to Hosts and Guests. The Guest’s credit card statement reflects the name of the TripAdvisor entity which charges and/or processes the payment. Prior to the charge for the payment, these Defendants require the Guest to authorize the Defendants to use, store, and charge their Guest’s payment method and collect the rental payment and the Defendants’ fees.

139. Defendants TripAdvisor and FlipKey provide payment processing services to Guests and Hosts who use their websites and online booking and payment systems. If a Host has enabled online booking with respect to their property listing, it is required and made mandatory by the TripAdvisor and/or FlipKey Defendants that both Host and Guest use solely the Defendants’ payment processing system and platform to make and accept payments for the booking. These Defendants also strictly prohibit cash or wire transfer payments outside the website.

140. TripAdvisor and FlipKey require Hosts who enable online booking to authorize use of Defendants’ built-in payment processing services; and also require Guests to make and pay for online reservations using Defendants’ websites.

141. TripAdvisor and FlipKey provide Hosts and Guests with a payment platform as a service to enable booking and rental payments to be made online through the website either directly to Defendants or indirectly to processors which these Defendants select, approve, contract with, direct, and control. These Defendants’ payment platforms are integrated and linked electronically to these processors; these Defendants direct Guests if and when to use the processors; and the processors are instructed and directed by these Defendants how and when to charge for and collect the rental payment and fees,

hold the payments, and distribute the payments and fees. At some point the processors release the payment back to FlipKey, Inc. for handling and distribution. At all relevant times the processors are acting at the direction and under the control of TripAdvisor and FlipKey through their websites and platforms and as agents, partners, and/or joint venturers of these Defendants.

142. At all relevant times during the short-term rental transactions Defendants TripAdvisor and FlipKey, acting separately or together, manage, control, and direct the reservation, booking, and payment process, including the processes of receiving the payment method and information, storing that information, using and/or transferring that information, deciding in their sole discretion which taxes will be collected and remitted; and then through their websites and platforms charging, collecting, holding, disbursing, and remitting the rental payments, service fees and other fees and taxes paid. All the while through these steps, these Defendants determine how, when, and by and to whom these events, activities, payments and transfers of funds occur.

143. Defendants TripAdvisor and FlipKey manage and control the booking, reservation, and rental payment process when the Host chooses online booking and payment through Defendants' payment platform and payment process services.

144. Defendants TripAdvisor and FlipKey reserve the right in their online agreements with Hosts and Guests to charge and withhold taxes as part of the Total Fees collected from Guests, and to remit those taxes to the appropriate tax authorities.

145. Defendants TripAdvisor and FlipKey advertise, offer, and charge for other products and services in addition to the rental payment and the Defendants' services fees,

which additional products and services are directly related to the short-term rental of accommodations transacted by these Defendants on and through their websites.

146. Defendants TripAdvisor and FlipKey require the Hosts in the short-term rental transactions to appoint the TripAdvisor Group as the Hosts' agents for the purpose of accepting, collecting and remitting the rental payments. Specifically, TripAdvisor and FlipKey represent to and require Hosts and Guests to agree and authorize in advance as follows:

"... We act as the Owner's [Host's] payment collection agent for the limited purpose of accepting payments from you [the Guest] on behalf of the Owner [Host]. Upon receipt of Your Payment to Us on behalf of the Owner [Host], your payment obligation to the Owner [Host] is extinguished and We are responsible for arranging remittance of the payment (less the booking fee and any other applicable fees or taxes) to the Owner [Host]. If We do not arrange remittance of any such amounts... the Owner will have recourse only against Us."

147. TripAdvisor and FlipKey further represent and require Hosts and Guests to agree in advance as follows:

"You agree to pay to Us, on behalf of the Owner [Host], the amount of any confirmed booking... by one of the methods supported by the Payment Platform (e.g., by PayPal, credit card, or debit card). You hereby authorize the collection of such amounts by charging the payment method provided... either directly by Us or indirectly via one of our third-party online payment providers."

..."You authorize Us to store your payment information and charge your payment method..."

148. Defendant FlipKey requires in its online payment terms that the Guest agree to pay FlipKey, acting on behalf of the Host, for any booking at the time of booking, and that the Total Fee (rental payment, service and booking fee, other fees, and taxes) will be collected at that time. The Defendants, TripAdvisor and FlipKey, collect the rental

payments as agents of the Hosts and in doing so take possession of the Guest's funds so that they can later transmit the rental payment to the property owners, the Hosts.

149. Defendants TripAdvisor and FlipKey reserve the right in their online agreements with Hosts and Guests to charge and withhold taxes as part of the Total Fees collected from Guests, and to remit those taxes to the appropriate tax authorities.

150. Defendants TripAdvisor and FlipKey advertise, offer, and charge for other products and services in addition to the rental payment and the Defendants' services fees, which additional products and services are directly related to the short-term rental of accommodations transacted by these Defendants on and through their websites, and are part of the gross proceeds to which Plaintiffs' A-Tax and Business License Ordinances apply and for which these Defendants owe A-Taxes and business license fees to Plaintiffs.

D. Defendant RedAwning.com, Inc.

151. Plaintiffs reallege the previous allegations by reference as if fully set forth herein.

152. Defendant RedAwning.com, Inc. owns and/or operates the website RedAwning.com. This Defendant is and has long been in the business of renting, furnishing and providing short-term rental accommodations in Plaintiffs' jurisdictions to transients for consideration with the object of gain, profit, benefit and/or advantage, either direct or indirect.

153. In addition, Defendant RedAwning.com, Inc. is and has long been engaged in the business of furnishing and providing reservations online to transients for short term

rentals of and stays in accommodations in Plaintiffs' jurisdictions for consideration with the object of gain, profit, benefit and/or advantage, either direct or indirect.

154. Moreover, Defendant RedAwning.com, Inc. is and has long been offering and providing services to Hosts and Guests involving and related to the reservations in, booking of, short-term rental of, and paying for the short-term rental of accommodations in Plaintiffs' jurisdictions to transients for consideration with the object of gain, profit, benefit and/or advantage, either direct or indirect. This Defendant charges, collects, receives and accepts fees from Hosts and/or Guests, including but not limited to service fees for the services it provides, as well as fees and charges for other products and services it provides.

155. Defendant RedAwning.com, Inc. operates its website so that Hosts can list their properties for short-term rental, and so that Guests can select, reserve, book, and rent those properties.

156. Defendant RedAwning.com, Inc. charges, processes and collects the rental fee payment, as well as the fee for its services and other fees and charges. The rental fee payment is charged, collected and processed by this Defendant as part of the services this Defendant provides.

157. Based on information and belief, if the stay in the short-term rental accommodation is booked within 65 days of check-in, Defendant RedAwning.com, Inc. charges, processes, and collects 100% of the rental fee at the time of booking. Otherwise, this Defendant charges 50% of the rental fee to hold the Guest's reservation, and the balance is charged to and collected from the Guest 65 days prior to check-in.

158. Defendant RedAwning.com, Inc. requires a payment method (e.g. credit or debit card) to be entered by the Guest on the website prior to booking the accommodation and uses this method to charge and collect the rental payment directly, as well as all other fees and charges.

E. Defendant Vacasa South Carolina LLC

159. Plaintiffs reallege the previous allegations by reference as if fully set forth herein.

160. Defendant Vacasa South Carolina LLC (hereafter "Vacasa S.C.") is a licensed subsidiary of Vacasa LLC serving and doing business in South Carolina. This Defendant operates a website which is and has long been in the business of renting, furnishing and providing short-term rental accommodations in Plaintiffs' jurisdictions to transients for consideration with the object of gain, profit, benefit and/or advantage, either direct or indirect.

161. In addition, Defendant Vacasa S.C. is and has long been engaged in the business of furnishing and providing reservations online to transients for short-term rentals and stays in accommodations in Plaintiffs' jurisdictions for consideration with the object of gain, profit, benefit and/or advantage, either direct or indirect.

162. Moreover, Defendant Vacasa S.C. is and has long been offering and providing services to Hosts and Guests involving and/or related to the reservation in, booking of, short-term rental of, and paying for the short-term rental of accommodations in Plaintiffs' jurisdictions to transients for consideration with the object of gain, profit, benefit and/or advantage, either direct or indirect. This Defendant charges, collects, receives and accepts fees from Hosts and/or Guests, including but not limited to service

fees for the services it provides, as well as fees and charges for other products and/or services it provides.

163. Defendant Vacasa S.C. operates its website so that Hosts can register for an account and list their properties for short-term rental, and so that Guests can register for an account and select, reserve, book, and rent those properties.

164. Defendant Vacasa S.C. requires the Guest to enter his/her payment method (e.g., credit card) on Defendant's website, and charges, processes, and collects the rental payment, as well as the other fees and charges as part of the services this Defendant provides.

165. Defendant Vacasa S.C. requires the Guest to authorize the Defendant to charge the Guest's credit card for the rental payment and other fees or charges chosen by the Guest or determined by Defendant to be owed for damage to the property, violation of pet or other policies, additional cleaning required, and any fines incurred for violations of law. These fees, as well as the rental payment and Defendant's service fees, are part of the gross proceeds this Defendant collects and has collected. Therefore, this Defendant is responsible for and owes A-Taxes and business license fees pursuant to Plaintiffs' A-Tax and Business License Ordinances on these fees and charges since these fees and charges are derived from and/or related to the short-term rental governed by Plaintiffs' A-Tax and Business License Ordinances.

F. Defendant Furniture Services, Inc. d/b/a ACRS d/b/a Apartment and Corporation Relocation Services

166. Plaintiffs reallege the previous allegations by reference as if fully set forth herein.

167. This Defendant owns and/or operates the websites arcrentals.net and locatehousing.com. This Defendant is and has in the past been in the business of renting, furnishing, and providing rental accommodations in some or all of Plaintiffs' jurisdictions to transients, guests and/or customers for consideration with the object of gain, profit, benefit and/or advantage, either or direct or indirect.

168. Moreover, this Defendant is and has in the past been offering and providing services involving and related to the reservations in, booking of, rental of, and paying for the rental of accommodations in Plaintiffs' jurisdictions to transients, guests and/or customers for consideration with the object of gain, profit, benefit, and/or advantage, either direct or indirect. This Defendant charges, collects, receives, and accepts fees or payments from its customers, including but not limited to service fees for the services it provides.

169. This Defendant charges, processes and collects the rental fee payment, as well as the fee for its services and other fees and charges. The rental payment is charged, collected, and processed by this Defendant as part of the services this Defendant provides.

170. This Defendant owes Plaintiffs A-Taxes and business license fees which have not been paid to date.

G. Defendant Condo-World Resort Properties, Inc. d/b/a North Myrtle Beach Condos d/b/a Myrtle Beach Resorts

171. Plaintiffs reallege the previous allegations by reference as if fully set forth herein.

172. This Defendant owns and/or operates the website condo-world.com. This Defendant is and has in the past been in the business of renting, furnishing, and providing

short-term rental accommodations in some or all of Plaintiffs' jurisdictions to transients, guests and/or customers for consideration with the object of gain, profit, benefit and/or advantage, either or direct or indirect.

173. Moreover, this Defendant is and has in the past been offering and providing services involving and related to the reservations in, booking of, short-term rental of, and paying for the rental of accommodations in Plaintiffs' jurisdictions to transients, guests and/or customers for consideration with the object of gain, profit, benefit, and/or advantage, either direct or indirect. This Defendant charges, collects, receives, and accepts fees or payments from its customers, including but not limited to service fees for the services it provides.

174. This Defendant charges, processes and collects the rental fee payment, as well as the fee for its services and other fees and charges. The rental payment is charged, collected, and processed by this Defendant as part of the services this Defendant provides.

175. This Defendant owes Plaintiffs A-Taxes and business license fees which have not been paid to date.

H. Defendant Duvet LLC d/b/a Stay Duvet

176. Plaintiffs reallege the previous allegations by reference as if fully set forth herein.

177. This Defendant owns and/or operates the website stayduvet.com. This Defendant is and has in the past been in the business of renting, furnishing, and providing short-term rental accommodations in some or all of Plaintiffs' jurisdictions to transients,

guests and/or customers for consideration with the object of gain, profit, benefit and/or advantage, either or direct or indirect.

178. Moreover, this Defendant is and has in the past been offering and providing services involving and related to the reservations in, booking of, short-term rental of, and paying for the rental of accommodations in Plaintiffs' jurisdictions to transients, guests and/or customers for consideration with the object of gain, profit, benefit, and/or advantage, either direct or indirect. This Defendant charges, collects, receives, and accepts fees or payments from its customers, including but not limited to service fees for the services it provides.

179. This Defendant charges, processes and collects the rental fee payment, as well as the fee for its services and other fees and charges. The rental payment is charged, collected, and processed by this Defendant as part of the services this Defendant provides.

180. This Defendant owes Plaintiffs A-Taxes and business license fees which have not been paid to date.

I. Defendant Walk Away Stays, LLC d/b/a Walk Away Stays

181. Plaintiffs reallege the previous allegations by reference as if fully set forth herein.

182. This Defendant owns and/or operates the website walkawaystays.com. This Defendant is and has in the past been in the business of renting, furnishing, and providing short-term rental accommodations in some or all of Plaintiffs' jurisdictions to transients, guests and/or customers for consideration with the object of gain, profit, benefit and/or advantage, either or direct or indirect.

183. Moreover, this Defendant is and has in the past been offering and providing services involving and related to the reservations in, booking of, short-term rental of, and paying for the rental of accommodations in Plaintiffs' jurisdictions to transients, guests and/or customers for consideration with the object of gain, profit, benefit, and/or advantage, either direct or indirect. This Defendant charges, collects, receives, and accepts fees or payments from its customers, including but not limited to service fees for the services it provides.

184. This Defendant charges, processes and collects the rental fee payment, as well as the fee for its services and other fees and charges. The rental payment is charged, collected, and processed by this Defendant as part of the services this Defendant provides.

185. This Defendant owes Plaintiffs A-Taxes and business license fees which have not been paid to date.

J. Defendant Hudson Jones Investments, LLC d/b/a Wholesale Holiday Rentals

186. Plaintiffs reallege the previous allegations by reference as if fully set forth herein.

187. This Defendant owns and/or operates the website wholesaleholidayrentals.com. This Defendant is and has in the past been in the business of renting, furnishing, and providing short-term rental accommodations in some or all of Plaintiffs' jurisdictions, in addition to jurisdictions and locations in other states, to transients, guests and/or customers for consideration with the object of gain, profit, benefit and/or advantage, either or direct or indirect.

188. Moreover, this Defendant is and has in the past been offering and providing services involving and related to the reservations in, booking of, short-term rental of, and paying for the rental of accommodations in Plaintiffs' jurisdictions, in addition to jurisdictions and locations in other states, to transients, guests and/or customers for consideration with the object of gain, profit, benefit, and/or advantage, either direct or indirect. This Defendant charges, collects, receives, and accepts fees or payments from its customers, including but not limited to service fees for the services it provides.

189. This Defendant charges, processes and collects the rental fee payment, as well as the fee for its services and other fees and charges. The rental payment is charged, collected, and processed by this Defendant as part of the services this Defendant provides.

190. This Defendant owes Plaintiffs A-Taxes and business license fees which have not been paid to date.

VII. CAUSES OF ACTION

COUNT I

VIOLATIONS OF LOCAL ACCOMMODATIONS TAX ORDINANCES

191. Plaintiffs reallege the previous allegations by reference as if fully set forth herein.

192. Pursuant to *S.C. Code Ann. §§6-1-500 et seq.*, Plaintiffs are granted the authority to collect the Local, Municipal, Tourist Development, and Beach Preservation Accommodation(s) Taxes and Fees (Plaintiffs' A-Taxes) and to pursue collection of the fees and taxes owed under the Plaintiffs A-Tax Ordinances.

193. Each Defendant is required by Plaintiffs' A-Tax Ordinances to file monthly reports with each Plaintiff itemizing the gross proceeds derived from short-term rentals to transients in each Plaintiff's jurisdiction. Defendants have failed to file or submit the monthly reports required by Plaintiffs' A-Tax Ordinances.

194. Each Defendant is required to collect and remit the taxes and fees, Plaintiffs' A-Taxes, imposed by each Plaintiff's A-Tax Ordinances. However, Defendants have failed to collect and remit to Plaintiffs the tax and fee amounts due and owing to the Plaintiffs pursuant to Plaintiffs' A-Tax Ordinances.

195. The failure to collect and remit these taxes and fees to the Plaintiffs is deemed a debt owed by Defendants to Plaintiffs and is hereby sought to be recovered.

196. As a direct and proximate cause of Defendants' willful conduct and failures to collect and remit Plaintiffs' A-Taxes due and owing, Plaintiffs have suffered and will continue to suffer damages in an amount to be determined through discovery and which will be proven at trial.

COUNT II

CONTRACTUAL AND VOLUNTARY UNDERTAKING TO COLLECT AND REMIT TAXES AND FEES

197. Plaintiffs reallege the previous allegations by reference as if fully set forth herein.

198. Defendants have entered into contracts with property owners (Hosts) and transient consumers (Guests) using their websites for short-term accommodation bookings and rentals. These contracts grant the Defendants the right and obligate the Defendants to collect the taxes and fees (A-Taxes) owed to the Plaintiffs under their A-Tax Ordinances.

199. Moreover, Defendants have volunteered to collect fees and taxes (A-Taxes) and are subject to all the provisions and duties of Plaintiffs' A-Tax Ordinances including the obligation to collect and remit A-Taxes to Plaintiffs.

200. By entering into these contractual agreements with Hosts and Guests and volunteering to collect taxes and fees, the Defendants are direct, first party and/or third-party tax collectors; and Plaintiffs are direct, first party and/or third-party beneficiaries of these contractual obligations and voluntary agreements by Defendants.

201. Defendants have failed and refused to collect and remit the taxes and fees (A-Taxes) owed to the Plaintiffs; and such failures and refusals to collect and remit the A-Taxes owed to Plaintiffs under their A-Tax Ordinances constitutes a debt owed by Defendants and is hereby sought to be recovered by Plaintiffs.

202. As a direct and proximate result of Defendants' willful conduct and failures to collect and remit Plaintiffs' A-Taxes due and owing, Plaintiffs have suffered and will continue to suffer damages in an amount to be determined through discovery and which will be proven at trial.

COUNT III

DEFENDANTS OWE PENALTIES FOR UNPAID TAXES AND FEES

203. Plaintiffs reallege the previous allegations by reference as if fully set forth herein.

204. Plaintiffs' A-Tax Ordinances provide for penalties in the event that those parties who are obligated to collect and remit A-Taxes fail to remit those A-Taxes in a timely manner as specified in the Ordinances. The amounts or percentages of penalties owed on unpaid A-Taxes are set forth in the Plaintiffs' respective Ordinances which are

attached hereto as Exhibits A through I and incorporated herein by reference as if fully set forth herein.

205. By virtue of Defendants' failures and refusals to pay timely the A-Taxes required of them to pay under Plaintiffs' A-Tax Ordinances, Defendants are obligated to pay Plaintiffs penalties as specified in each of Plaintiffs' Ordinances, which penalties are hereby sought to be recovered by Plaintiffs in amounts to be determined by discovery and proven at trial.

COUNT IV

DEFENDANTS' VIOLATIONS OF SOUTH CAROLINA'S UNFAIR TRADE PRACTICES ACT – A-TAX ORDINANCES

206. Plaintiffs reallege the previous allegations by reference as if fully set forth herein.

207. The South Carolina Unfair Trade Practices Act, *S.C. Code Article 1 §39-5-10 et seq.* (hereafter "SCUTPA") prohibits and declares unlawful unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce. *Id.* §39-5-20(a). SCUTPA provides that any person who suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of an unfair or deceptive method, act or practice declared unlawful by Section 39-5-20 may bring an action individually to recover actual damages. *Id.* §39-5-140. Moreover, if it is found by the court that the use or employment of the unfair or deceptive method, act or practice was a willful or knowing violation of Section 39-5-20, the court shall award three times the actual damages sustained and may provide such other relief as it deems necessary or proper. *Id.* In addition, if the court finds a violation of Article 1 of SCUTPA, the court shall award reasonable attorneys fees and costs.

208. Plaintiffs are governmental entities established under the laws and constitution of the State of South Carolina, and therefore Plaintiffs are legal entities and “persons” protected by and qualified to bring this action pursuant to the provisions of SCUTPA recited in paragraph 207 hereinabove.

209. Defendants herein have violated the provisions of SCUTPA recited hereinabove for many years. Defendants have used and employed unfair and deceptive methods, acts and practices in connection with their businesses involving the rental, furnishing, and provision of short-term rental accommodations to transients for consideration in Plaintiffs’ jurisdictions. Defendants have willfully and knowingly used and employed unfair and deceptive schemes, methods, acts and practices to avoid the collection and remittance of A-Taxes on the rental payments and their fees required of them pursuant to Plaintiffs’ A-Tax Ordinances. This deliberate avoidance of responsibility has resulted in substantial actual damages to each and all Plaintiffs through lost tax revenues. Defendants have also willfully and knowingly used and employed unfair and deceptive methods, acts and practices which have misled and created confusion and misunderstanding regarding who is and is not responsible for collecting and remitting, and who is and is not collecting and remitting, Plaintiffs’ A-Taxes. This has resulted in and caused substantial actual damages and lost tax revenues to each and all of the Plaintiffs which Plaintiffs seek to recover in this action.

210. Defendants have willfully or knowingly used and employed deceptive methods, acts and practices to mislead Hosts, Guests, and the general public into believing and/or assuming that Defendants will collect and remit, and are collecting and remitting, accommodations and occupancy taxes, including Plaintiffs’ A-Taxes due and

owed on short-term rentals of accommodations. Indeed, Defendants represent that they do collect and remit state and local taxes⁴, further misleading the Defendants' customers and creating confusion, misunderstanding and false reliance regarding who should and does actually collect and remit Plaintiffs' A-Taxes. These deceptive methods, acts and practices have resulted in and caused substantial actual damages and lost tax revenues to each and all of the Plaintiffs which Plaintiffs seek to recover in this action.

211. Defendants have also engaged in unfair and deceptive methods, acts and practices by representing to and obtaining authorization from Hosts and Guests enabling Defendants to charge and collect A-Taxes from Guests and to collect and remit those taxes on behalf of, and even as agents or payment collection agents of, Hosts in short-term rental transactions involving accommodations in Plaintiffs' jurisdictions; and then by using the "Fees" or "Total Fees" displayed by Defendants to Hosts and Guests during the short-term rental transaction to indicate or suggest that those Fees or Total Fees include accommodations and/or occupancy taxes collected by Defendants, when in fact Plaintiffs' A-Taxes have not been collected or remitted to Plaintiffs by Defendants. Such willful and knowing deceptive methods, acts and practices by Defendants create misleading and false beliefs, impressions, and reliance on the part of the Hosts and Guests that Defendants are collecting and remitting Plaintiffs' A-Taxes when in fact they are not. As a result, significant amounts of Plaintiffs' A-Taxes are not collected, remitted or paid resulting in substantial actual damages and lost tax revenues to each and all of Plaintiffs which Plaintiffs seek to recover in this action.

⁴ On information and belief, Plaintiffs allege that one or more Defendants collect state accommodations and/or occupancy taxes on short-term rentals through their websites and platforms in as many as 48 states in the U.S., including the State of South Carolina's Sales Tax on Accommodations, which includes some local shares of those taxes but not any part of Plaintiffs' A-Taxes.

212. The deceptive and unfair nature of Defendants' methods, acts and practices discussed hereinabove is compounded and made even more deceptive, unfair and damaging by the Defendants' knowing and willful methods, acts and practices of advertising, promoting, representing, and/or promising to Hosts and Guests that their identities, the identities and address of the short-term rental property, and the details of the short-term rental transaction will be kept confidential. These promises of secrecy promote and imply that taxing authorities such as Plaintiffs' will not be informed or made privy to the important details of short-term rental transactions in Plaintiffs' jurisdictions, the identities of the persons or property involved, the sources and locations of unpaid A-Taxes on those rental transactions, or the gross proceeds of rental payments and service fees on which A-Taxes have not been paid. Such deceptive and unfair methods, acts and practices by Defendants have resulted in and caused Plaintiffs to suffer actual damages and lost tax revenues which Plaintiffs seek to recover in this action.

213. By using and engaging in the unfair, deceptive and misleading methods, acts and practices, discussed in this section hereinabove, Defendants have knowingly and willfully engaged in commercial transactions in Plaintiffs' jurisdictions, and in the State of South Carolina generally, in a deceptive, unfair and unlawful manner as prohibited by SCUTPA, and have violated Sections 39-5-10(a) and (b), 39-5-20, and 39-5-140 of SCUTPA. Accordingly, Plaintiffs are entitled to recover and hereby seek to recover the actual damages resulting from and/or caused by these Defendants' deceptive and unfair methods, acts and practices, in addition to three times the actual damages Plaintiffs have sustained and Plaintiffs' reasonable attorneys' fees, costs and expenses incurred herein, all of which remedies are provided in Section 39-5-140 of SCUTPA.

214. Plaintiffs have been and will continue to be damaged by the culpable Defendants' unfair and deceptive methods, acts and practices discussed hereinabove. Moreover, Plaintiffs' citizens and taxpayers will suffer and be unduly burdened by these Defendants' deceptive methods, acts and practices which have caused actual and ascertainable damages in the form of loss of tax revenues to be used by the Plaintiffs to benefit their citizens and businesses. These Defendants' unlawful business and commercial practices have had and will continue to have an adverse impact on the public interest. It is likely, if not certain, that these deceptive methods, acts and practices by the culpable Defendants will continue and be repeated unless the Defendants are deterred from using, employing or committing such methods, acts and practices. The remedies provided by the SCUTPA are sought by Plaintiffs to deter and prevent Defendants from continuing to use, employ and commit these unfair, misleading, and deceptive methods, acts and practices.

COUNT V

DECLARATORY JUDGMENT – VIOLATION OF A-TAX ORDINANCES

215. Plaintiffs incorporate each of the previous allegations by reference as if fully set forth herein.

216. In addition to the other relief and remedies sought by Plaintiffs and set forth herein, Plaintiffs seek a declaratory judgment against each and/or all of the Defendants finding and declaring as follows:

- a. That Defendants have provided and furnished and are continuing to provide and furnish services and accommodations for consideration in connection with the short-term rental of accommodations to transients within each of Plaintiffs' jurisdictions; and therefore Defendants are required by each Plaintiffs' A-Tax Ordinance to charge and collect the A-Tax (or fee) from the consumer (Guest) at the time of booking each short-term rental and to remit

the A-Tax (or fee) to the Plaintiff within whose jurisdiction the rental accommodation is located;

- b. That Defendants have been and are continuing in the business of furnishing and providing short-term rental accommodations to transients for consideration in each Plaintiff's jurisdiction; and Defendants have been and are therefore obligated and required to charge, collect and remit A-Taxes to Plaintiffs pursuant to their A-Tax Ordinances on all gross proceeds, including rental payments and service fees or other fees or charges, derived from and related to the short-term rental of accommodations to transients for consideration within each Plaintiff's jurisdiction;
- c. That Defendants have been and are continuing to act as agents (or payment collection agents) for property owners (Hosts) in Defendants' online short-term rental transactions and are therefore required to charge and collect from consumers (Guests) and remit to Plaintiffs the A-Taxes levied by Plaintiffs' A-Tax Ordinances on short-term rentals of accommodations to transients within each Plaintiff's jurisdiction;
- d. That Defendants have violated and are continuing to violate Plaintiffs' A-Tax Ordinances by failing to collect and remit the A-Taxes required by those Ordinances based on the gross proceeds derived from the short-term rentals to transients for consideration involving accommodations within each Plaintiff's jurisdiction;
- e. That Defendants have violated and are continuing to violate Plaintiffs' A-Tax Ordinances by failing to file or submit monthly reports to each Plaintiff itemizing the gross proceeds derived from short-term rentals to transients for consideration in each Plaintiff's jurisdiction;
- f. That Defendants have voluntarily agreed and contracted with Hosts and Guests to undertake to collect and remit Plaintiffs' A-Taxes; and Plaintiffs are direct and/or third-party beneficiaries of such contractual and voluntary agreements by Defendants;
- g. That Defendants have breached their contractual and voluntary agreements which Defendants have undertaken and agreed to with Hosts and Guests; and Plaintiffs therefore should and will recover from Defendants as direct and/or third-party beneficiaries their A-Taxes which Defendants failed to collect and remit to Plaintiffs;
- h. That Plaintiffs recover from Defendants the penalties provided and specified in Plaintiffs' A-Tax Ordinances because of Defendants' failure to remit or timely remit the A-Taxes required to be collected and remitted by Defendants;

- i. That Defendants have used and engaged in unfair and deceptive methods, acts and practices in the conduct of their commercial short-term rental transactions involving accommodations within Plaintiffs' jurisdictions; and Defendants are in violation of the SCUTPA, S.C. Code §39-5-10 *et seq.*, including §§39-5-20 and 39-5-140.
- j. Pursuant to SCUTPA, S.C. Code §39-5-140, Plaintiffs are each entitled to recover, and shall recover actual damages resulting from Defendants' violation(s) of SCUTPA, in addition to reasonable attorneys fees and costs.
- k. That Defendants' use and employment of unfair or deceptive methods, acts or practices were willful and knowing violations of Section 39-5-20 of SCUTPA, and therefore each Plaintiff shall be awarded three times the actual damages sustained by that Plaintiff.
- l. That because of Defendants' failure to file the reports and information required by Plaintiffs' Ordinances concerning the short-term rental of accommodations transacted on their websites and involving transient consumers renting and occupying sleeping accommodations for consideration within Plaintiffs' jurisdictions, and because Defendants withheld from Plaintiffs all information from Plaintiffs relating to such short-term rental transactions, including the fact of or any details concerning the short-term rentals, the identities of Hosts and/or Guests involved, or the addresses or locations of the short-term rentals, Plaintiffs are each and all entitled to recover as damages all unpaid A-Taxes from the inception of each Defendant's online business involving short-term rentals of accommodations, in addition to penalties for failure to timely report and pay such A-Taxes, as provided in Plaintiffs' Ordinances.

217. Further, Plaintiffs seek a declaratory judgment from the Court asking it to declare the obligations of the Defendants with respect to the Plaintiffs relating to their A-Tax obligations under the Plaintiffs' Ordinances and the State of South Carolina code and statutory sections cited herein.

COUNT VI

DEMAND FOR LEGAL ACCOUNTING

218. Plaintiffs reallege the previous allegations by reference as if fully set forth herein.

219. Pursuant to Plaintiffs' A-Tax Ordinances, Defendants have been and are under a legal obligation to collect and remit A-Taxes to Plaintiffs based on the gross proceeds derived from the short-term rental of accommodations to transients for consideration within Plaintiffs' taxing jurisdictions.

220. Defendants have failed to collect and remit to Plaintiffs the full amount of A-Taxes due and owing to Plaintiffs.

221. Plaintiffs' Ordinances also require Defendants to submit monthly reports to each Plaintiff setting forth the amounts of gross proceeds charged, collected or received for the short-term rental transactions in each jurisdiction during the prior month and the amount of A-Taxes due to Plaintiffs for that month. Defendants were and are required to maintain records for the purpose of an audit. Except for the HomeAway Group of Defendants beginning in September 2019, the Defendants have wholly failed to submit the required monthly reports or any other information or details to the Plaintiffs concerning the short-term rentals transacted on and through their websites.

222. As a result, Plaintiffs are unable to ascertain the financial details of the short-term rental transactions involving properties and accommodations within their respective jurisdictions, and the amounts of A-Taxes and fees owed to them by Defendants.

223. Therefore, Plaintiffs request that this Court order a full accounting by each Defendant regarding the properties and accommodations rented, reserved, booked, furnished and/or provided in each of Plaintiffs' jurisdictions, specifying in detail the consideration and gross proceeds (gross rental payment or fee and all of Defendants' fees and charges paid to or through Defendants by Hosts and Guests) paid or received

for such rentals, as well as the amount of any taxes and fees charged, collected and remitted to any taxing entity. This accounting should cover the entire period of time each Defendant has been in the business of reserving, booking, renting, furnishing, and/or providing accommodations for short-term rental to transients in each of Plaintiffs' jurisdictions.

224. Defendants have kept Plaintiffs in the dark over the many years Defendants have engaged in the business of short-term rental transactions by failing to report the facts of such transactions, the details of such transactions, the parties or addresses involved in the transactions, and the amount of rental payments, service fees, and other charges derived from such transactions. Defendants have deprived Plaintiffs of basic and essential information required from those responsible for paying A-Taxes in Plaintiffs' jurisdictions; have failed to file and provide the tax information required by law, and have failed to offer or provide Plaintiffs with a reasonable means to discover the Defendants' willful failure and refusal for many years to collect and remit the A-Taxes owed on the short-term rental transactions in which Defendants were instrumental and without whom these transactions would not have occurred.

COUNT VII

INJUNCTIVE RELIEF

225. Plaintiffs reallege the previous allegations by reference as if fully set forth herein.

226. Plaintiffs request that the Court enjoin Defendants from any further violation in the future of Plaintiffs' A-Tax Ordinances and the unfair and deceptive methods, acts and practices complained of herein which are prohibited by the South Carolina UTPA.

227. Plaintiffs request that Defendants be ordered to:

- a. Collect the A-Taxes required by Plaintiffs' Ordinances from the transient consumers to whom they rent, furnish, and provide the short-term accommodations in Plaintiffs' jurisdictions;
- b. Report, identify, categorize, and quantify to Plaintiffs the gross proceeds collected and the A-Taxes due and being paid;
- c. Identify the property owners (Hosts), transient consumers (Guests), property addresses, and the booking dates and rental check-in and check-out dates for each short-term transaction; and
- d. Remit the A-Taxes due to Plaintiffs.

COUNT VIII

VIOLATIONS OF PLAINTIFFS' BUSINESS LICENSE ORDINANCES

228. Plaintiffs reallege the previous allegations by reference as if fully set forth herein.

229. Pursuant to S.C. *Code Ann.* §§5-7-30 and 4-9-30, Plaintiffs are enabled and granted the authority to enact regulations, resolutions and ordinances to levy a business license tax on gross income. Plaintiffs have each enacted a Business License Ordinance pursuant to the authority of these enabling statutes, which Ordinances have been in full force and effect for the entire time the Defendants have been engaged in business in each Plaintiff's jurisdiction.

230. Each Defendant is required by each Plaintiff's Ordinance to obtain a business license and pay annual business license fees or taxes on the gross income derived from the short-term rental of accommodations on or through Defendants, their websites and platforms.

231. Defendants have failed and refused to obtain business licenses or pay the annual business license fees or taxes required of them by Plaintiffs' Ordinances.

232. The Defendants' failure to pay the annual business license fees or taxes in the past is deemed a debt owed by Defendants to Plaintiffs and is hereby sought to be recovered by Plaintiffs. The Defendants' failure to pay the business license fees or taxes to Plaintiffs is continuing and will likely continue in the future without this Court's order to pay the continuing debt owed by Defendants to Plaintiffs.

233. As a direct and proximate cause of Defendants' willful conduct and failure to pay the annual business license fees or taxes due and owing, Plaintiffs have suffered and will continue to suffer damages in an amount to be determined through discovery and which will be proven at trial.

COUNT IX

DEFENDANTS OWE PENALTIES FOR UNPAID BUSINESS LICENSE FEES

234. Plaintiffs reallege the previous allegations by reference as if fully set forth herein.

235. Plaintiffs' Business License Ordinances provide for late penalties for failure to pay the business license fees or taxes imposed in a timely manner as specified in Plaintiffs' Ordinances. The amount or percentages of penalties owed on unpaid license fees or taxes are set forth in Plaintiffs' respective Ordinances which are attached hereto as Exhibit A through I and incorporated herein by reference as if fully set forth herein.

236. By virtue of Defendants' failures and refusals to pay timely, or at all, the business license fees or taxes required of them to pay pursuant to Plaintiffs' Business License Ordinances, Defendants are obligated to pay penalties to Plaintiffs as specified in each of Plaintiff's Ordinances, which penalties are hereby sought to be recovered by Plaintiffs in amounts to be determined by discovery and proven at trial.

COUNT X**DEFENDANTS' VIOLATIONS OF SOUTH CAROLINA'S UNFAIR TRADE PRACTICES ACT – BUSINESS LICENSE ORDINANCES**

237. Plaintiffs reallege the previous allegations by reference as if fully set forth herein.

238. The South Carolina Unfair Trade Practices Act, *S.C. Code Article 1, §39-5-10 et seq.* (hereafter “SCUTPA”) prohibits and declares unlawful unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce. *Id.* §39-5-20(a). SCUTPA provides that any person who suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of an unfair or deceptive method, act or practice declared unlawful by Section 39-5-20 may bring an action individually to recover actual damages. *Id.* §39-5-140. Moreover, if it is found by the court that the use or employment of the unfair or deceptive method, act or practice was a willful or knowing violation of Section 39-5-20, the court shall award three times the actual damages sustained and may provide such other relief as it deems necessary or proper. *Id.* In addition, if the court finds a violation of Article 1 of SCUTPA, the court shall award reasonable attorneys fees and costs.

239. Plaintiffs are governmental entities established under the laws and constitution of the State of South Carolina, and therefore Plaintiffs are legal entities and “persons” protected by and qualified to bring this action pursuant to the provisions of SCUTPA recited in paragraph 238 hereinabove.

240. Defendants herein have violated the provisions of SCUTPA recited hereinabove for many years. Defendants have willfully and knowingly used and employed unfair and deceptive schemes, methods, acts and practices to avoid obtaining business

licenses and paying annual business license fees to Plaintiffs based on the gross income derived from short-term rental payments and their fees and charges paid by consumers (transient guests) and property owners (Hosts). This deliberate avoidance of responsibility has resulted in substantial actual damages to each and all of Plaintiffs through lost fees and taxes required under Plaintiffs' Ordinances. Defendants have also willfully and knowingly used and employed unfair and deceptive methods, acts and practices which have misled and created confusion and misunderstanding regarding who is and is not required to obtain a business license and pay annual business license fees or taxes. This has resulted in and caused substantial actual damages and lost tax or fee revenues to each and all of the Plaintiffs, which Plaintiffs seek to recover from Defendants in this action.

241. Defendants have willfully or knowingly used and employed deceptive methods, acts and practices to mislead Hosts, Guests, and the general public into believing and/or assuming that Defendants will collect and remit, and are collecting and remitting, fees and taxes including Plaintiffs' fees and taxes. Indeed, Defendants represent that they do collect and remit state and local taxes, further misleading Defendants' customers and creating confusion, misunderstanding and false reliance regarding who should and does actually remit Plaintiffs' business license fees or taxes. These deceptive methods, acts and practices have resulted in and caused substantial actual damages and lost tax revenues to each and all of the Plaintiffs, which Plaintiffs seek to recover in this action.

242. Defendants have also engaged in unfair and deceptive methods, acts and practices by representing to and obtaining authorization from Hosts and Guests enabling

Defendants to charge and collect taxes and fees from Guests and to collect and remit those taxes and fees on behalf of Hosts in short-term rental transactions involving accommodations in Plaintiffs' jurisdictions; and then by using the "Fees" or "Total Fees" displayed by Defendants to Hosts and Guests during the short-term rental transaction to indicate or suggest that those Fees or Total Fees include Plaintiffs' fees or taxes when in fact Plaintiffs' fees or taxes have not been collected or remitted to Plaintiffs by Defendants. Such willful and knowing deceptive methods, acts and practices by Defendants create misleading and false beliefs, impressions and reliance on the part of Hosts and Guests that Defendants are collecting and remitting Plaintiffs' taxes and fees when in fact they are not. As a result, significant amounts of Plaintiffs' taxes and fees are not remitted or paid resulting in substantial actual damages and lost tax revenues to each and all of the Plaintiffs, which Plaintiffs seek to recover in this action.

243. The deceptive and unfair nature of Defendants' methods, acts and practices discussed hereinabove is compounded and made even more deceptive, unfair and damaging by the Defendants' knowing and willful methods, acts and practices of advertising, promoting, representing, and/or promising to Hosts and Guests that their identities, the identities and addresses of the short-term rental property, and the details of the short-term rental transaction will be kept confidential. These promises of secrecy promote and imply that taxing authorities such as Plaintiffs' will not be informed or made privy to the important details of short-term rental transactions in Plaintiffs' jurisdictions, the identities of the persons or property involved, the sources and locations of unpaid taxes or fees on those rental transactions, or the gross amounts of rental payments and service fees (i.e., gross receipts and/or gross income) on which taxes or fees have not

been paid. Such deceptive and unfair methods, acts and practices by Defendants have resulted in and caused Plaintiffs to suffer actual damages and lost tax revenues which Plaintiffs seek to recover in this action.

244. By using and engaging in the unfair, deceptive and misleading methods, acts and practices, discussed in this section hereinabove, Defendants have knowingly and willfully engaged in commercial transactions in Plaintiffs' jurisdictions, and in the State of South Carolina generally, in a deceptive, unfair and unlawful manner as prohibited by SCUTPA, and have violated Sections 39-5-10(a) and (b), 39-5-20, and 39-5-140 of SCUTPA. Accordingly, Plaintiffs are entitled to recover and hereby seek to recover the actual damages resulting from and/or caused by these Defendants' deceptive and unfair methods, acts and practices, in addition to three times the actual damages Plaintiffs have sustained, and Plaintiffs' reasonable attorneys' fees, costs and expenses incurred herein, all of which remedies are provided in Section 39-5-140 of SCUTPA.

245. Plaintiffs have been and will continue to be damaged by the culpable Defendants' unfair and deceptive methods, acts and practices discussed hereinabove. Moreover, Plaintiffs' citizens and taxpayers will suffer and be unduly burdened by these Defendants' deceptive methods, acts and practices which have caused actual and ascertainable damages in the form of loss of tax revenues to be used by the Plaintiffs to benefit their citizens and businesses. These Defendants' unlawful business and commercial practices have had and will continue to have an adverse impact on the public interest. It is likely, if not certain, that these deceptive methods, acts and practices by the culpable Defendants will continue and be repeated unless the Defendants are deterred from using, employing or committing such methods, acts and practices. The remedies

provided by the SCUTPA are sought by Plaintiffs to deter and prevent Defendants from continuing to use, employ and commit these unfair, misleading, and deceptive methods, acts and practices.

COUNT XI

DECLARATORY JUDGMENT – VIOLATION OF BUSINESS LICENSE ORDINANCES

246. Plaintiffs incorporate each of the previous allegations by reference as if fully set forth herein.

247. In addition to the other relief and remedies sought by Plaintiffs and set forth herein, Plaintiffs seek a declaratory judgment against each and/or all of the Defendants finding and declaring as follows:

- a. That Defendants have been engaged in business in each Plaintiffs' jurisdiction since each Defendant began furnishing and providing short-term rental accommodations and services to transients in each Plaintiffs' jurisdiction in return for consideration, and therefore Defendants are and have been required by each Plaintiff's Business License Ordinance to obtain a business license from and pay annual business license fees to each Plaintiff;
- b. That Defendants have violated and are continuing to violate Plaintiffs' Business License Ordinances by failing to obtain business licenses in each Plaintiff's jurisdiction and by failing to pay annual business license fees or taxes to each Plaintiff;
- c. That Plaintiffs recover from each Defendant the unpaid business license fees or taxes for each year each Defendant has engaged in the business of furnishing or providing accommodations or services to transients for consideration in each Plaintiff's jurisdiction;
- d. That Plaintiffs recover from Defendants the penalties provided and specified in each Plaintiff's Business License Ordinance because of Defendants' failures to pay or timely pay the business license fees or taxes required by Plaintiffs' Ordinances;
- e. That Defendants have used and engaged in unfair and deceptive methods, acts and practices as alleged by Plaintiffs; and Defendants have violated SCUTPA, S.C. Code §39-5-10 *et seq.*, including §§39-5-20 and 39-5-140.

- f. Pursuant to SCUTPA, *S.C. Code §39-5-140*, Plaintiffs are each entitled to recover, and shall recover actual damages resulting from Defendants' violation(s) of SCUTPA, in addition to reasonable attorneys fees and costs.
- g. That Defendants' use and employment of unfair or deceptive methods, acts or practices were willful and knowing violations of Section 39-5-20 of SCUTPA, and therefore each Plaintiff shall be awarded three times the actual damages sustained by that Plaintiff.
- h. That because of Defendants' failure to file the reports and information required by Plaintiffs' Ordinances concerning the short-term rental of accommodations transacted on their websites and involving transient consumers renting and occupying sleeping accommodations for consideration within Plaintiffs' jurisdictions, and because Defendants withheld from Plaintiffs all information relating to such short-term rental transactions, including the fact of or any details concerning the short-term rentals, the identities of Hosts and/or Guests involved, or the addresses or locations of the short-term rentals, Plaintiffs are each and all entitled to recover as damages all unpaid business license fees or taxes from the inception of each Defendant's online business involving short-term rentals of accommodations in each Plaintiff's jurisdiction, in addition to penalties for failure to timely report and pay such business license fees or taxes, as provided in Plaintiffs' Ordinances.

248. Further, Plaintiffs seek a declaratory judgment from the Court asking it to declare the obligations of the Defendants with respect to the Plaintiffs relating to their business license fee or tax obligations under the Plaintiffs' Ordinances and the State of South Carolina code and statutory sections cited herein.

COUNT XII

DEMAND FOR LEGAL ACCOUNTING

249. Plaintiffs reallege the previous allegations by reference as if fully set forth herein.

250. Pursuant to Plaintiffs' Business License Ordinances, Defendants have been and are under a legal obligation to pay business license fees or taxes to each Plaintiff on the total gross receipts (i.e., gross income) of the businesses in which Defendants are

engaged, including rentals of real estate and/or accommodations in each jurisdiction without any deductions except gross income taxed in another jurisdiction for business license purposes.

251. Defendants have failed to remit or pay to Plaintiffs the annual business license fees or taxes based on the total gross receipts or gross income of the business in which each Defendant is and has been engaged. These fees or taxes are due and owing to each Plaintiff from each Defendant.

252. As a result, Plaintiffs are unable to ascertain the financial details of the short-term rental transactions involving properties and accommodations within their respective jurisdictions, and the amounts of business license taxes and fees owed to them by Defendants.

253. Therefore, Plaintiffs request that this Court order a full accounting by each Defendant regarding the properties and accommodations rented, reserved, booked, furnished and/or provided in each of Plaintiffs' jurisdictions, specifying in detail the consideration, gross income and total gross receipts (gross rental payment or fee and all of Defendants' fees and charges paid to or through Defendants by Hosts and Guests) paid or received for such rentals, as well as the amount of any taxes and fees charged, collected and remitted to any taxing entity. This accounting should cover the entire period of time each Defendant has been in the business of reserving, booking, renting, furnishing, and/or providing accommodations for short-term rental to transients in each of Plaintiffs' jurisdictions.

254. Defendants have kept Plaintiffs in the dark over the many years Defendants have engaged in the business of short-term rental transactions by failing to report the

facts of such transactions, the details of such transactions, the parties or addresses involved in the transactions, and the amount of rental payments, service fees, and other charges derived from such transactions. Defendants have deprived Plaintiffs of basic and essential information required from those responsible for paying business license fees or taxes in Plaintiffs' jurisdictions; have failed to file and provide any applications for business licenses or other information or details regarding payments received by Defendants for short-term rentals or the tax information required by law, and have failed to offer or provide Plaintiffs with a reasonable means to discover the Defendants' willful failure and refusal for many years to collect and remit the business license fees or taxes owed to Plaintiffs on the short-term rental transactions in which Defendants were instrumental and without whom these transactions would not have occurred. Therefore, Plaintiffs request that this Court order each Defendant to account for all short-term rentals by providing Plaintiffs with the details of each short-term rental transaction in each Plaintiff's jurisdiction from the beginning of each Defendant's business involving short-term rentals of accommodations to transients, including the dates of such transactions, the identities of the Hosts and Guests involved, the gross rental payment and service fees and other charges paid, and whether any tax or fee was paid to any taxing authority by anyone (identifying the tax authority and the type of tax or fee paid) in connection with each rental transaction.

COUNT XIII

INJUNCTIVE RELIEF

255. Plaintiffs reallege the previous allegations by reference as if fully set forth herein.

256. Plaintiffs request that the Court enjoin Defendants from any further violation in the future of Plaintiffs' Business License Ordinances and from committing or using the unfair and deceptive methods, acts and practices complained of in Count III herein which are prohibited by the SCUTPA.

257. Plaintiffs request that Defendants be ordered to:

- a. Remit or pay to Plaintiffs the business license fees or taxes required by Plaintiffs' Ordinances;
- b. Report, identify, categorize, and quantify to Plaintiffs the gross income and total gross receipts from Defendants' short-term rental transactions involving accommodations in each Plaintiff's jurisdiction and the business license fees or taxes due in the past and in the future;
- c. Identify the property owners (Hosts), transient consumers (Guests), property addresses, and the booking dates and rental check-in and check-out dates for each short-term rental transaction in the past and in the future involving accommodations in each Plaintiff's jurisdiction; and
- d. Remit the business license fees or taxes due to Plaintiffs.

PRAYER FOR RELIEF

Wherefore, Plaintiffs request the following relief, and pray that the Court will inquire into the matters set forth herein, issue a judgment in Plaintiffs' favor against Defendants, and enter an order declaring and ordering as follows:

1. That Declaratory Judgment be entered in favor of Plaintiffs and include each and all of the subparts set forth in Count V, paragraph 216 a-l, and Count XI, paragraph 247 a-h, herein, which paragraphs and subparts are incorporated here by reference as if fully set forth.
2. That judgment in favor of Plaintiffs be entered on all claims and causes of action alleged in this Complaint against Defendants;
3. That Defendants be ordered to pay to Plaintiffs all of the unpaid A-Taxes and debts owed by each of the Defendants to Plaintiffs as alleged in this Complaint, in addition to penalties for non-payment or late payment of A-Taxes as provided in Plaintiffs' Ordinances.

4. That Defendants be ordered to pay to Plaintiffs all of the unpaid business license fees or taxes and debts owed by each of the Defendants to Plaintiffs as alleged in this Complaint, in addition to penalties for non-payment or late payment of business license fees or taxes as provided in Plaintiffs' Ordinances;
5. That Defendants be ordered to pay to Plaintiffs all damages caused to Plaintiffs by Defendants, including actual damages, special damages, penalties, and treble damages;
6. That Plaintiffs recover from Defendants prejudgment and post judgment interest on all damages awarded to the maximum extent allowed by law;
7. That Plaintiffs recover court costs and costs of suit incurred herein;
8. That Defendants be ordered to provide a full accounting of all monies owed to Plaintiffs by Defendants as specified in Counts VI and XII herein;
9. That this Court enter a declaratory judgment determining that Defendants' commercial business and trade methods, acts and practices to be unfair, deceptive, willful, knowing and unlawful pursuant to SCUTPA as alleged in Counts IV and X herein;
10. That this Court enter an order granting Plaintiffs injunctive relief requiring Defendants' future compliance with Plaintiffs' A-Tax Ordinances, Business License Ordinances and SCUTPA, and also requiring Defendants' compliance with the additional items requested and set forth in Counts VII and XIII herein and which are incorporated herein by reference as if fully set forth here;
11. That this Court award Plaintiffs reasonable attorneys' fees, costs and expenses of litigation incurred herein by Plaintiffs to be paid by Defendants; and
12. That this Court order such other and further relief for Plaintiffs as this Court may deem appropriate, just and proper.

PLAINTIFFS HEREBY DEMAND A JURY TRIAL ON ALL ISSUES.

[end]

[signature page to follow]

Respectfully Submitted,

THURMOND KIRCHNER & TIMBES, P.A.

s/ Jesse A. Kirchner

JESSE A. KIRCHNER
SC Bar No.: 70479
15 Middle Atlantic Wharf
Charleston, SC 29401
T: 843-937-8000
Email: jesse@tktlawyers.com

-AND-

s/ W. Ronald Bonds

W. RONALD BONDS
SC Bar No.: 763
P.O. Box 732
Isle of Palms, SC 29451
T: 843-478-3612
Email: ronniebonds@yahoo.com

-AND-

s/ Michael Y. Saunders

MICHAEL Y. SAUNDERS
PRO HAC VICE PENDING
607 Rowlock Lane
Houston, TX 77079
T: 281-589-8938
Email: mys@mysaunderslaw.com

April 9, 2021
Charleston, South Carolina.