

IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No. 87079

AIRBNB, INC.,

Petitioner,

v.

**THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF
NEVADA, IN AND FOR THE COUNTY OF CLARK, AND THE
HONORABLE GLORIA STURMAN, DISTRICT JUDGE, DEPT. XXVI;**

Respondents,

and

BRYAN LOVETT,

Real Party in Interest.

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Elizabeth A. Brown
Clerk of Supreme Court

APPENDIX OF THE REAL PARTY IN INTEREST, VOLUME I

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CERTIFICATE OF SERVICE

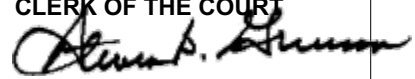
I HEREBY CERTIFY that I am an employee of The Schnitzer Law Firm and on the 9th of October 2023, a true and correct copy of this **APPENDIX OF THE REAL PARTY IN INTEREST, VOLUME I** was filed electronically and e-served on all registered parties to the Supreme Court's electronic filing system to all parties as listed below:

Hon. Gloria Sturman
District Judge, Dept. XXVI
Eighth Judicial District Court
Regional Justice Center
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DISTRICT COURT

CLARK COUNTY, NEVADA

BRYAN LOVETT, et al.,

Plaintiffs,

vs.

ZHENG TRUST c/o FENEX CONSULTING; LI
JUN ZHENG, individually; SHENANDOAH
SOUTHWEST, INC., a Nevada Corporation;
JASPER HAN, individually; AIRBNB, INC., a
Foreign Corporation, et al.

Defendants.

Case No.: A-19-801549-C

Dept No.: 26


**PLAINTIFF BRYAN LOVETT'S
MOTION FOR LEAVE TO FILE A
FIRST AMENDED COMPLAINT**

HEARING REQUESTED

COMES NOW, Plaintiff, BRYAN LOVETT, by and through his attorney of record, Jordan P. Schnitzer, Esq. of THE SCHNITZER LAW FIRM, and hereby submits this Motion for Leave to File a First Amended Complaint.

This Motion is made based on Points and Authorities submitted herewith, together with the papers and pleadings on file herein, exhibits attached hereto and oral arguments this Court may allow.

DATED this 21st day of August 2023

BY: 
JORDAN P. SCHNITZER, ESQ.
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9205 W. Russell Road, Suite 240
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Attorney for Plaintiff, Bryan Lovett



MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiff Bryan Lovett (“Plaintiff”) moves to amend his Complaint for the first time. Two months ago, this Court granted in part a motion to dismiss filed by Defendant AirBNB, Inc. (“AirBNB”). Although the Court kept intact most of Plaintiff’s Complaint, with respect to his allegations against AirBNB, it struck his punitive damages claim and dismissed his theory of negligence *per se*—but with leave to replead. Plaintiff now seeks that leave.

I. OVERVIEW OF THE FIRST AMENDED COMPLAINT.

The FAC repleads Plaintiff’s claims for punitive damages and negligence *per se*. At the hearing on AirBNB’s Motion to Dismiss, the Court struck Plaintiff’s claim for punitive damages “without prejudice for leave to amend.” *See Exhibit 1*, (Apr. 25, 2023, Hr’g Tr. 20:17–20.) The Court reasoned that if “this particular renter was a known problem, that Airbnb should have known that this person went around renting party houses and throwing these wild parties,” then Plaintiff could make out a punitive damages claim. (*Id.* at 21:15–20.) As for negligence *per se*, the Court noted that “there may be some way to argue that the statute -- the party house regulations and codes would apply to a third-party platform,” but it had not yet been pled. (*Id.* at 22:4–7.)

Summary of New Punitive Damages Allegations. The new Complaint alleges that the youths who rented the property (the “Crew”) had been throwing a series of illegal gatherings in AirBNB short-term rentals that they dubbed “PU\$\$Y PART[IES],” and that they picked the property for a 200-person gathering because it was a “FAT ASS VILLA.” (*See Exhibit 2*, Plaintiff’s Proposed First Amended Complaint (FAC) ¶¶ 18, 21, 74.) The FAC alleges that AirBNB knew that the Crew’s messages—which sought large houses for one night only on short notice—were suspicious, and it knew that some property owners (“Hosts”) were flagging the Crew as partiers and rejecting their attempted bookings. (*Id.* at ¶¶ 51–53.)

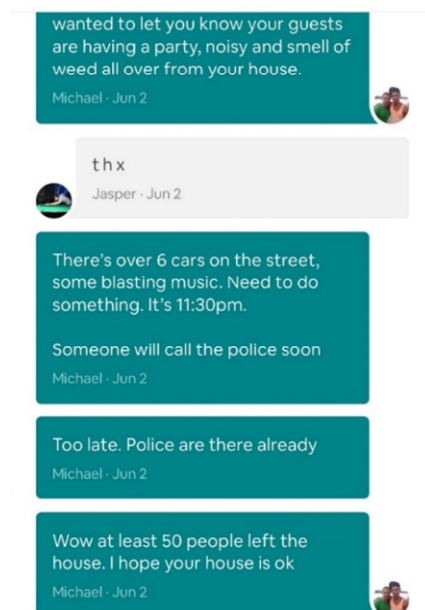
What is more, AirBNB kept statistics showing that underaged teens like Lovett are often injured in shootings at AirBNB house parties. (*Id.* at ¶¶ 111–114) (showing that, based on public information, 65% of AirBNB shootings involve underage victims). These data represent a sliver of the total incidents of violence AirBNB tracks—for instance, in a statement to the Las Vegas Metropolitan Police Department in August 2020, AirBNB acknowledged 15 shootings and three

murders at short-term rentals in Clark County alone within a few months. (See **Exhibit 2** Plaintiff’s Proposed First Amended Complaint (FAC) at ¶ 112.)

As shown by its institution of a permanent global party ban in June 2022 in the face of public outcry over violence, AirBNB has always had the power to ban the parties that inevitably lead to these deaths. (*Id.* at ¶¶ 117–118, 121–23.) Yet it chose not to, given that it derived significant revenue from serving the underage party market: It focused on rapid growth to maintain its status as a Silicon Valley “unicorn,” not on safety or obeying the law. (*Id.* at ¶¶ 97–100, 121.)

To encourage Hosts to rent to parties, AirBNB worked to make it more difficult for Hosts to perform background checks on potential guests—even preventing Hosts from learning the last names and guests until the Host had accepted a contract proposed by AirBNB to rent to the guest. (*Id.* at ¶¶ 107–109.) AirBNB also (perhaps misleadingly) told Hosts that it insured them against both property damage and personal injury, reducing their incentive to avoid or stop dangerous parties. (*Id.* at ¶¶ 61d & g, 66.) In this case, AirBNB also knew that the Host—Jasper Bing (or “Han”)—had been indicted for conspiring to run a marijuana grow operation with more than 800 mature plants. (*Id.* at ¶¶ 30–32, 37–39.) Yet AirBNB marketed the Villa anyway. (*Id.* at ¶ 39.)

At about 11:30 P.M. on June 2, 2018, Michael, a neighbor, contacted AirBNB about a party going on at the Villa, which had the “smell of weed all over.” (*Id.* at ¶¶ 64, 68.) AirBNB sent Michael to Han’s account, and the two exchanged messages through AirBNB’s platform:



(See **Exhibit 2** Plaintiff’s Proposed First Amended Complaint (FAC) at ¶ 64.) But AirBNB, despite knowing of the dangerous conditions it had helped Han create on his property, took no steps to remedy the situation. (*Id.* at ¶ 69.)

Summary of New Negligence *Per Se* Allegations. As alleged in the FAC, AirBNB was in a joint venture with the owner of the Villa—so any negligence of the other Defendants is also attributable to AirBNB. If the FAC states a claim for negligence *per se* against the property owner, then it states one against AirBNB as well.

Going further, however, the FAC also alleges that AirBNB knew that short-term rentals in unincorporated Clark County were illegal under Clark County Ordinance 30.44.010(b)(7)(C), which banned “[t]ransient commercial use of residential development for remuneration.” Yet it made a conscious, profit-driven decision to continue to promote its illegal Las Vegas locations as party destinations anyway. (*Id.* at ¶¶ 41, 97–98.)

AirBNB, as part of its arrangement with Hosts, indicates that it helps Hosts navigate local ordinances and regulations. (*Id.* at ¶ 42.) AirBNB enforces on its platform many local ordinances banning short-term rentals—but it specifically chose not to enforce Clark County’s ordinance because the Las Vegas market is so lucrative. (*Id.* at ¶¶ 43–44, 48.)

In public statements in 2017, AirBNB condemned ordinances in Las Vegas as penalizing homeowners. (*Id.* at ¶ 45.) But rather than respect the law while it was in force, AirBNB knowingly participated in Han’s violation of former Clark County Ordinance 30.44.010(b)(7)(C) by marketing the Villa for short-term use; accepting money for the short-term rental; paying the tax on that sale; divvying up the funds generated by the short-term rental; and purporting to handle neighbors’ complaints about the party. (*Id.* at ¶¶ 144a–d, 165a–d.)

The ordinance was designed to protect Clark County residents like Plaintiffs. In his last conversation with his mother, decedent Rice told her that he was going to a house party—but reassured her that she didn’t need to worry because it was in “a good area.” (*Id.* at ¶ 92.) The ordinance attempted to protect this “good area” reputation by keeping the neighborhood quiet, residential, and suburban—free from illegal and unlicensed bars, hotels, and nightclubs. (*Id.* at ¶¶ 92–93.)

II. LAW.

A. Leave to Amend Must Be Freely Given.

Under Rule 15(a), leave to amend “shall be freely given when justice so requires,” and “this mandate is to be heeded.” *Marschall v. Carson*, 86 Nev. 107, 112 (1970) (quoting *Foman v. Davis*, 371 U.S. 178 (1962)). The “extreme liberality” of Rule 15(a) “requires courts to err on the side of caution” and “permit amendments that appear arguable or even borderline,” because denying leave “amounts to denial of the opportunity to explore any potential merit” the claim might have had. *Nutton v. Sunset Station, Inc.*, 131 Nev. 279, 292 (Ct. App. 2015).

In short, the Court should grant the motion “unless strong reason exists not to do so.” *Nutton v. Sunset Station, Inc.*, 131 Nev. 279, 284 (Ct. App. 2015). The Court considers undue delay, bad faith, dilatory motives, repeated failure to cure deficiencies, undue prejudice to the opposing party, and futility. *Foman*, 371 U.S. at 182. But not all the factors merit equal weight: Prejudice to the opposing party matters more than the others. *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 185 (9th Cir. 1987).

B. Nevada Joint Venture Law.

Nevada Courts impute the negligence of one member of a joint venture to all other co-venturers when the member acts within the scope of the enterprise. *Radaker v. Scott*, 109 Nev. 653, 660 (1993). There is no set formula for determining whether a joint venture exists: Every case must “stand upon its own merits.” *Las Vegas Machine & Eng’g Works v. Roemisch*, 67 Nev. 1, 9 (1950).

1. Sharing of Profits Creates a Joint Venture, But Even Sharing of Revenues is Sufficient for the Jury to Find One.

A plaintiff may allege a *prima facie* case for a joint venture by asserting that the defendants received a “share of the profits.” NRS 87.070(3). If the plaintiff only shows at trial that a party shared in the “gross returns” (revenues) of the business, this does not “of itself” establish a joint venture. NRS 87.070(3). But neither does it *preclude* the jury from finding the existence of a joint venture: “[W]here parties share in the same revenue stream, the shared-profits element required to establish the existence of a joint venture may be established.” 46 Am. Jur. 2d Joint Ventures § 16.

Thus, “[s]ome courts have found that parties who split revenues, rather than profits, satisfy

the requirement” of splitting profits. *Est. of Antonio v. Pedersen*, No. 5:11-cv-41, 2012 U.S. Dist. LEXIS 174987, at *23 (D. Vt. Dec. 11, 2012) (collecting authorities). This Court has found a joint venture when the parties shared only a revenue stream, rather than profits after expenses. *Kilyushik v. Palace*, Case No. A-17-764171-C (8th Jud. Dist.) 2019 Nev. Dist. LEXIS 848, *3 (finding a joint venture even though the parties agreed to share revenue only, no matter what each spent on marketing and advertising).

2. *Joint Ventures Need Not Divide Losses Equally.*

Courts imply an agreement to share losses from an agreement to share profits. 48A C.J.S. Joint Ventures § 14 (Dec. 2019) (collecting authorities). The Supreme Court of Nevada has never required that parties specifically provide for how losses are to be allocated. *See Radaker*, 109 Nev. at 659. If the undertaking is likely to lose only “time and labor,” then any agreement to share profits makes it a joint venture, even if losses are never mentioned. *Bader Farms v. Monsanto Co.*, No. MDL No. 1:18md2820-SNLJ, 2020 U.S. Dist. LEXIS 19478, at *30 (E.D. Mo. Feb. 3, 2020). Nor does Nevada require joint venturers to bear losses equally, or even in proportion to their investment. They may agree to bear losses however they like, even “eliminating the liability of particular partners as to losses.” *Roemisch*, 67 Nev. at 9); *see also Bader Farms*, 2020 U.S. Dist. LEXIS 19478 at *30 (citing authorities).

3. *Courts Find Boilerplate Disclaimers of Joint Venture Invalid.*

Even when the parties have a written agreement, whether Defendants have formed a joint venture is a question of *fact*—not a matter of law. *Posner v. Tassely*, 131 Nev. 1335 (2015). The jury must consider the parties’ actions and the nature of their undertaking when determining whether a joint venture exists. *Swensen v. McDaniel*, 119 F. Supp. 152, 154 (D. Nev. 1953).

What is more, Courts must not allow contractual recitations to be used as “subterfuges” to avoid mandatory legal obligations. *Myers v. Reno Cab Co.*, 492 P.3d 545, 550 (Nev. 2021). It doesn’t matter that Defendants—for their own purposes—do not dare to call their relationship a partnership. *Kaufman-Brown Potato Co. v. Long*, 182 F.2d 594, 599 (9th Cir. 1950) (interpreting analogous California partnership statute).

Courts “are not bound by a disclaimer of joint venture or partnership.” *ECM, Inc. v. Placer Dome U.S.*, No. 96-15966, No. 96-16019, 1997 U.S. App. LEXIS 34851, at *6 (9th Cir. Dec. 10, 1997) (presuming a joint venture under Nevada law, even when the parties expressly disclaimed partnership by contract). If Defendants establish a partnership in fact, their written disclaimer is of “no avail.” *Constans v. Ross*, 106 Cal. App. 2d 381, 387 (1951).¹

C. Punitive Damages.

Punitive damages are recoverable for “oppression, fraud or malice, express or implied.” *Bongiovi v. Sullivan*, 122 Nev. 556, 581 (2006). Plaintiffs may show “implied” malice when Defendants acted with a “conscious disregard” of their rights. *Id.* at 581.

D. Negligence Per Se.

Violation of a local ordinances constitutes negligence *per se* if (1) a violation of a code provision adopted by local ordinance is established, (2) an injured party fits within the class of persons that a particular provision was intended to protect, and (3) the injury suffered is of the type the provision was intended to prevent. *Vega v. E. Courtyard Assocs.*, 117 Nev. 436, 437 (2001) (holding that violation of municipal building code constituted negligence *per se*).

III. ARGUMENT

This Court dismissed Plaintiff’s punitive damages and negligence *per se* claims without prejudice, and with leave to amend. Rule 15(a) requires Courts to “err on the side of caution” and permit amendments, since doing otherwise denies Plaintiff the “opportunity to explore any potential merit” those claims might have. *Nutton v. Sunset Station, Inc.*, 131 Nev. 279, 292 (Ct. App. 2015).

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¹ See also *Alvarez LLC v. Blazar Tech. Sols., LLC*, No. 17-cv-01339-RBJ, 2019 U.S. Dist. LEXIS 117705, at *7–8 (D. Colo. July 16, 2019) (analyzing the issue and rejecting contractual disclaimer); *Cargill Meat Sols. Corp. v. Premium Beef Feeders, LLC*, 168 F. Supp. 3d 1334, 1340 (D. Kan. 2016) (“parties cannot entirely preclude the creation of an agency relationship simply by disclaiming it in writing”); *Gulf Ins. Co. v. Transatlantic Reinsurance Co.*, 886 N.Y.S.2d 133, 152 (App. Div. 1st Dept.) (holding a court is not bound by a disclaimer of agency in determining the parties “true relationship”); *Muccilli v. Huff’s Boys’ Store*, 12 Ariz. App. 584, 588 (1970) (holding that contractual disclaimers of partnership never control the rights of third parties).

Defendants cannot point to any undue delay, bad faith, dilatory motives, repeated failure to cure deficiencies, or undue prejudice here. *Foman*, 371 U.S. 178 (1962). Prejudice to the opposing party is the most important factor, and Defendants cannot show that. Plaintiff is filing his first amendment, and he is doing so just two months after this Court’s Order granting in part AirBNB’s Motion to Dismiss.

As for futility, the better practice is to “defer consideration of challenges to the merits of a proposed amended pleading until after leave to amend is granted and the amended pleading is filed.” *Underwood v. O’Reilly Auto Enter., LLC*, 342 F.R.D. 338, 346 (D. Nev. 2022). The burden is on Defendants to persuade the Court at this stage that their arguments are better presented here than in the context of a motion to dismiss. *Id.*

They cannot meet that burden here. The FAC includes highly detailed facts demonstrating how Plaintiff states his claims. Any arguments Defendants might raise would be better considered in the context of a motion to dismiss.

Here, the FAC states a claim for punitive damages based on what AirBNB knew. Not only did it have access to big-picture data and statistics about child shooting deaths, but it knew specifically that the Crew was likely to throw a party at Han’s Villa. The Crew had used AirBNB’s platform before to throw earlier “PU\$\$Y PART[IES],” and its conduct in soliciting large houses for one-night-only events was a dead giveaway.

AirBNB also knew or should have known that the Host, Jasper Han, had a background in illegal marijuana production. AirBNB took a risk by partnering with Han to rent the property. That Han permitted an illegal weed party attracting underage teens to the Villa can be little surprise.

What is more, Michael, the neighbor, even informed AirBNB about the ongoing party before the police showed up—yet AirBNB allegedly reassured Michael that the situation was being appropriately handled, even though it did nothing except forward the complaint on to Jasper Han. Taken together, the FAC alleges that AirBNB acted with a conscious disregard of Plaintiff’s right to safety.

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The FAC also states a claim for negligence *per se*. The FAC alleges a joint venture between AirBNB and the other Defendants, so under partnership principles, AirBNB is on the hook for the property owner’s violations of former Clark County Ordinance 30.44.010(b)(7)(C).

What is more, the FAC explains how AirBNB—with full knowledge of the ordinance—conspired with Jasper Han to violate it (*See Exhibit 2* Plaintiff’s First Amended Complaint (FAC) ¶¶ 152a–d). It also explains how AirBNB assumed the duties of its Hosts to comply with the ordinances by pretending to help Hosts follow them. And in many privileged jurisdictions, AirBNB *did* enforce local ordinances by banning rentals from its platform—it just *chose* not to comply with Clark County’s ordinance. (*Id.* at ¶¶ 153–54.) It did this because Las Vegas is a lucrative market. AirBNB’s valuation skyrocketed thanks to this type of lawless behavior. But it must now make amends for the damage it caused to life in Clark County’s otherwise tranquil residential suburbs.

IV. CONCLUSION

For all the above reasons, Plaintiff Bryan Lovett requests that this Court grant him leave to file a First Amended Complaint.

DATED this 21st day of August 2023

BY: 
 JORDAN P. SCHNITZER, ESQ.
 Nevada Bar No. 10744
 THE SCHNITZER LAW FIRM
 9205 W. Russell Road, Suite 240
 Las Vegas, Nevada 89148
Attorney for Plaintiff, Bryan Lovett



CERTIFICATE OF SERVICE

In accordance with Rule 9 of the N.E.F.C.R., I, the undersigned hereby certify that on the 21st day of August 2023, I served a true and correct copy of the foregoing **PLAINTIFF BRYAN LOVETT'S MOTION FOR LEAVE TO FILE A FIRST AMENDED COMPLAINT** to the above-entitled Court for electronic service upon the Court's Service List to the following counsel:

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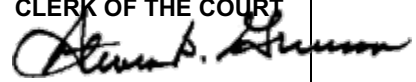
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An employee of
THE SCHNITZER LAW FIRM

Exhibit 1

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RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

ERIC RICE, ET AL.,

Plaintiffs,

vs.

ZHENG TRUST, ET AL.,

Defendants.

CASE#: A-19-801549-C

DEPT. XXVI

BEFORE THE HONORABLE GLORIA STURMAN
DISTRICT COURT JUDGE
TUESDAY, APRIL 25, 2023

RECORDER'S TRANSCRIPT OF PENDING MOTIONS

APPEARANCES

For Plaintiffs

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For Plaintiff Bryan Lovett:

JORDAN SCHNITZER, ESQ.

For Defendant Airbnb Inc:

RORY T. KAY, ESQ.
DAMALI A. TAYLOR, ESQ.

RECORDED BY: KERRY ESPARZA, COURT RECORDER

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Las Vegas, Nevada, Tuesday, April 25, 2023

[Case called at 10:47 a.m.]

THE COURT: A801549.

MR. DION: Good morning, Your Honor. Nicholas Dion, 16071, on behalf of the Rice Plaintiffs. We don't have anything substantive this morning, but I just wanted to make a record.

THE COURT: Okay. Thank you.

MR. SCHNITZER: Good morning, Your Honor. Jordan Schnitzer on behalf of Plaintiff Lovett.

THE COURT: Thank you.

MR. KAY: Good morning, Your Honor. Rory Kay of McDonald Carano, on behalf of Defendant Airbnb, Incorporated. I also Damali Taylor with me from O'Melveny & Myers. Ms. Taylor is lead counsel in this matter.

THE COURT: Okay.

MS. TAYLOR: Good morning, Your Honor.

THE COURT: All right. So Airbnb's motion to dismiss Lovett's claims. So are you going to argue, counsel?

MS. TAYLOR: Mr. Kay is going to argue.

THE COURT: Okay. Mr. Kay.

MR. KAY: Thank you, Your Honor. This is our motion to dismiss. I know you've had a busy calendar, and I see my managing partner in the back of the room, so I don't want to hold his case up either. If you have any questions off the top, I'm happy to answer them

1 about our motion or our reply.

2 THE COURT: Yeah. So let's look at causes of action. Are
3 you looking to have the entire case that you have this entire case against
4 Airbnb dismissed? Are you looking for specific causes of action to be
5 dismissed? Because you do address them. If you could kind of go
6 through all of them. So can we sort of clarify that?

7 MR. KAY: Sure. Yes, Your Honor. We are asking as to
8 Airbnb only, that the Court dismiss all of Mr. Lovett's claims, and I will
9 take them up sort of in the order that they are alleged in the pleading and
10 then also in the order we discussed in the motion.

11 Nobody disputes that in 2018, Mr. Lovett was injured by
12 unknown assailants, in a senseless shooting while on his way to a Las
13 Vegas party. I'm not here to tell you any different. What I am here to tell
14 you, though, is that under long standing Nevada law and really
15 consistent with the law in all neighboring states, Airbnb is not liable
16 under any of these claims for Mr. Lovett's shooting, And under that very
17 specific Nevada law, there's no set of facts that he could plead that
18 would entitle him to relief on any of the claims.

19 You know, as we look to the first two claims, Your Honor, the
20 claim for negligence, and then the claim for -- excuse me, the first and
21 third claim, the negligence claim and the claim for negligent security,
22 you know, under that *PetSmart* case that we cited you, we start with the
23 fundamental premise that there's no duty to control the dangerous
24 conduct of another or to warn others of the dangerous conduct.

25 Now *PetSmart* sort of recognized a very narrow exception if

1 there's a special relationship between the defendant and either the
2 victim or the plaintiff. Mr. Lovett straight off the top in his opposition
3 concedes that there's no special relationship between Airbnb and Mr.
4 Lovett here. He really has to, under the *Sanchez* case in particular, in
5 which the Nevada Supreme Court says there's no special relationship
6 between a defendant and an unidentifiable member of the general
7 public.

8 And so Mr. Levitt sort of shifts gears in the opposition and
9 brings up two new theories. He doesn't plead them in the complaint, but
10 understanding the Court may consider amendment, I will address them
11 because Mr. Lovett does raise them in his opposition. And the theories
12 he raises, the negligent undertaking theory and the joint venture theory
13 either of which fail.

14 I'll start with the negligent undertaking theory first and this is
15 really -- there's two cases, I think, that are important to the Court's
16 consideration here. One is the *PetSmart* case. It's almost, you know,
17 completely on point here in the sense that the Nevada Supreme Court
18 recently recognized that this negligent undertaking theory of liability is a
19 narrow exception to that general rule I just stated that there's no duty to
20 protect against third-party misconduct. You know, in that case, the
21 Nevada Supreme Court said only in very rare circumstances when the
22 defendants specifically and voluntarily assumed a duty to perform the
23 task that it is charged with having performed negligently can the
24 negligent undertaking theory survive.

25 You know, frankly, there is no facts pleaded by Mr. Lovett

1 that would qualify under the PetSmart case for this negligent
2 undertaking theory, the Nevada Supreme Court in *PetSmart* was very
3 clear that there would have to be specific facts pleaded as to the incident
4 in question. So for example, in *PetSmart*, that was the dog adoption
5 case, the plaintiff in that case tried to allege that there was a dog with a
6 known history of aggression. An independent adoption agency had
7 adopted out in that PetSmart had negligently undertook -- or, excuse me,
8 undertook the duty to protect the ultimate adopter of the dog from any
9 sort of aggressive acts. The Nevada Supreme Court said that was not
10 enough for a couple of different reasons. There were no specific facts
11 showing or pled that PetSmart knew about the aggressive tendencies of
12 the dog, much less it took permitted steps to prevent the type of harm
13 that ensued.

14 It also addressed the *Wright* [phonetic] case which is really
15 what Lovett relies on solely for this negligent undertaking theory. Again,
16 interestingly enough, that's the dog bite by case, if you will. In that case,
17 the Nevada Supreme Court said that the defendant landlord had
18 undertook a duty to protect the plaintiff who was bit by the dog because
19 the plaintiff could show specific facts that the landlord knew of the
20 danger posed by the property, imposed rules intending to eliminate that
21 danger. It threatened the power of eviction to protect other tenants or
22 members of the general public.

23 THE COURT: You know what interested me, and it's not --
24 you know, I get your point. It's not technically really pled here is, I think
25 Mr. Schnitzer he very eloquently dubbed this a ghost hotel. And so

1 Nevada has a lot of case law and in fact statute on hospitality because
2 that's the industry here. And we have a very specific statute that
3 governs an owner or keeper of any hotel and motel, motor court,
4 boarding house or lodging house, is not civilly liable for the death or
5 injury of a patron caused by another person who is not an employee
6 under the control unless the wrongful act which caused the injury was
7 foreseeable. There's a preponderance of evidence that they keep or did
8 not exercise due care for the safety of the premises, blah, blah, blah.

9 So we have a specific statute on that which is kind of
10 interesting because we also have for bars, like, the exact opposite.
11 There's no dram shop liability. Kind of weird. But, you know, we've long
12 extended some theory that, you know, you need to -- if you're opening
13 up a premises to, essentially, someone to use as a -- in this case, I don't
14 know what they were using it for just a party or were they actually
15 staying there.

16 So, I mean, we kind of -- we have -- don't really address it. I
17 don't know that the legislature has really looked at, you know, what are
18 the limits, the outer limits of this concept of what is a hotel. It's
19 interesting.

20 MR. KAY: Yeah. So let me address a couple of points there,
21 Your Honor. One, with respect to the statute you cited.

22 THE COURT: For the record 651.051.

23 MR. KAY: It does deal with property owners. There's
24 nothing alleged in this complaint that Airbnb was a property owner. In
25 fact, this is --

1 THE COURT: An owner or keeper of any hotel. And that's
2 their argument is that somehow there's some control element over the
3 people who rent these. I mean, because you got your ultimate owner
4 and that's these other defendants, the Zheng trust people. But then
5 somehow Airbnb inserts itself in this relationship. Like, if this guy just
6 lent his house to a friend for a party, would that be different from a
7 platform that helps you find him and use his house for your party? I
8 mean, you know, it's a very interesting industry, and it's evolving.
9 Developing.

10 MR. KAY: Understood. And I think your question really goes
11 to more of the joint venture theory of the case. The idea that there's
12 some control or there's a purported joint venture between Airbnb and
13 the property owner here. Again, I think if we go to the *Radaker*
14 [phonetic] case that we've cited, you can't -- even under the most liberal
15 interpretation of notice pleading, a plaintiff can't merely allege a legal
16 conclusion, i.e., that something is a joint venture without alleging
17 underlying facts to establish a joint venture. And I want to hit on the
18 point you raised at the very beginning of our argument here, of our
19 discussion.

20 The idea that we are a tourism hospitality industry, under
21 this joint venture theory, in essence, what Lovett is arguing is that online
22 platforms that act as middle persons between a customer and another
23 customer somehow become a joint venture with one side or the other of
24 the deal. The Nevada Supreme Court has never recognized that, Your
25 Honor. Airbnb is an online platform. It acts as a middle person between

1 a renter and a homeowner. If Lovett's theory is correct, especially given
2 some of the statutes you've cited.

3 In essence, any number of companies would suddenly
4 become joint venturers with their customers in the stream of commerce.
5 Let me give you a couple of examples. Let's say Ticketmaster, which
6 serves very much in the same capacity as an Airbnb in that it's an online
7 platform that puts someone who wants to go to a concert together with
8 the venue where the concert is being held under Mr. Lovett's theory, the,
9 for example, Allegiant Stadium and Ticketmaster would be a joint
10 venture for any event that ever occurs --

11 THE COURT: Anybody who got hurt at a Taylor Swift concert
12 or BPS.

13 MR. KAY: Yes. So -- and my wife went to that concert. I
14 heard it was well attended. Yes, you would have, in essence, endless
15 liability for every person that attended that concert. Or let's go to the
16 casinos. Let's say a concierge desk puts one of its hotel guests in contact
17 with Shadow Creek, for example, the golf course, or Allegiant Stadium
18 for an event, they serve as a middle person putting a customer together
19 with a property owner.

20 Again, if there's an incident in the ultimate property, this joint
21 venture theory, in essence, collapses the distinction between them and
22 tries to hold everybody liable for that injury. Again, I would say under
23 *PetSmart*, *Radaker* and the Sanchez cases, under clearly Nevada law,
24 that is not permissible. And again, it would be a different scenario if two
25 things were present in this complaint. What if there were specific

1 allegations about this property showing that it was a problem property
2 or there had been other prior incidents? You know, when you look at the
3 *PetSmart* case or the *Wright* case, that may get Mr. Lovett there. None
4 of those allegations are in this complaint.

5 With respect to the joint venture theory, again, if Mr. Lovett
6 could have alleged that there were specific fact sharing of profits like in
7 the *Radaker* case or in the *Swenson* case, if there had been a pooling of
8 funds, a joint account, an agreement to jointly develop this piece of
9 property, maybe that would establish a joint venture. But on the
10 pleading before you, there simply isn't any sort of factor.

11 THE COURT: So that's our negligence and negligence
12 security. I was interested in negligence per se because I get your point,
13 but then Mr. Schnitzer came back and said, well, there was all these, like,
14 anti-party house codes. So is that just a question-- you would plead that
15 with more specificity?

16 MR. KAY: True. So there's a couple of points there. One --
17 and he does identify a specific ordinance in the opposition to the extent
18 the Court would granted leave to amend to identify. It's Clark County
19 Code 30.44.010. That's what he's relying on in his opposition. But that
20 still doesn't get Mr. Lovett where he needs to be. By its plain terms, that
21 ordinance only applies to property owners. It doesn't apply to online
22 marketplaces like Airbnb that just acts as a middle person in the
23 transaction. There is no Nevada case on point.

24 But I will tell you, the *HomeAway* case we cited very similar.
25 That California statute -- and this was out of San Francisco on short term

1 rentals. It involved a company called HomeAway, which was again an
2 online platform. Very similar capacity as to Airbnb. The Plaintiff there
3 alleged that HomeAway was liable on a negligence per se theory. And
4 that court, similar to what we've argued in our motion and reply, Your
5 Honor, held that the ordinance only impacted property owners, not
6 online booking platforms.

7 And so I don't think amendment gets him -- you know, gets
8 Mr. Lovett and Mr. Schnitzer where they want to go with respect --

9 THE COURT: And so respondeat superior, typically
10 employer/employee kind of situation. There are agents.

11 MR. KAY: Yeah, and that is the fourth thing. I guess, I
12 would, as a procedural matter point out that respondeat superior is not a
13 cause of action separately. It's most typically a theory of liability even if
14 we consider it under the negligence or negligence security issues.

15 You know, first, he hasn't defend the claim in his opposition.
16 And so I think it's rightfully forfeited under EDCR 2.20 because he hasn't
17 presented you with an opposition arguing on behalf of the claim. But
18 even when we look at the merits of it there's no allegation here that
19 Airbnb employed and of the people involved in this, the property owner.
20 Again, it's an online booking platform.

21 The only thing I will point out on that, Your Honor, and also
22 with the joint venture theory is that Mr. Lovett tries to cite you to
23 Airbnb's terms of service and also its online booking policy. Those
24 aren't in the pleadings, so I don't think the Court can or should consider
25 them. But if you do because he raised it in the opposition,

1 understanding you may be considering amendment, those terms of
2 service quite clearly say, and, you know, we attached it to our reply. You
3 can take judicial notice of it. In Section 1.4 of those terms of service, it
4 very clearly says if you choose to use the Airbnb platform as a host or a
5 co-host, your relationship with Airbnb is limited to being an independent
6 third party contractor and not an employee, agent, joint venture or
7 partner of Airbnb for any reason.

8 So to the extent Mr. Lovett has opened the door to you
9 considering the relationship -- contractual relationship here between the
10 property owner of Airbnb, it's very clearly not an employee relationship.
11 Again, this goes straight to the *PetSmart* case too. They had a very
12 similar agreement with their agency adoption group, and the Nevada
13 Supreme Court said if the agreement says that there is no employee,
14 joint venture, or other relationship you don't get to claim respondeat
15 superior or any of these joint venture theories.

16 THE COURT: The final issue is you suggested punitive
17 damages as a minimum should be out.

18 MR. KAY: Yeah, I think that's right, Your Honor.

19 THE COURT: Nothing here alleged that it's extremely
20 outrageous. I mean -- it's extremely outrageous. The kids were shot,
21 and one kid died and the other kid -- I mean, it's terrible. But what did
22 Airbnb do?

23 MR. KAY: And you're exactly -- again this is not --

24 THE COURT: Unless you're -- unless these party houses, in
25 themselves, are extremely outrageous.

1 MR. KAY: And this is not a problem house situation. There's
2 nothing in the complaint or the opposition really identifying any prior
3 issues with this specific house. They identify purported issues, editorials
4 from Toronto newspapers, all of these things outside of the pleading, but
5 they haven't put forth a pleading before you that would satisfy the
6 punitive damages element.

7 I guess I will raise this, and I can address it more in my reply,
8 and write my reply, Mr. Lovett hasn't asked for leave to amend. I know
9 the Court, in my past practice before you, as you're required to do, is
10 fairly liberal with granting leave to amend, but I think he's put in his
11 opposition everything he would amend with, and it's still futile. So to
12 the extent you want to consider leave to amend we would ask that you
13 deny that as well as futile because there's no set of facts that he can use
14 to establish any of his chosen legal theories, Your Honor.

15 THE COURT: Okay. Thanks. Yeah, and I will talk to you in
16 response because I know there's an argument that Mr. Schnitzer has
17 raised. It's interesting to me. Mr. Schnitzer.

18 MR. SCHNITZER: Thank you, Your Honor. Your Honor, did
19 you have some --

20 THE COURT: Talk about the global party ban.

21 MR. SCHNITZER: Yeah. So to me that sort of goes towards
22 the last thing you talked about, which is the punitive damages, right.
23 Because if they're now realizing we've got to put a global ban on party
24 houses, that to me tells me that they knew for a long time that they had
25 problems with party houses, and they consciously disregarded it. Not

1 only that, in Nevada, they consciously disregarded the laws of Clark
2 County that you can't have short term rentals. They don't care if they're
3 having parties. They don't care what they're doing because they're
4 making money, right. They --

5 THE COURT: And so let's talk about the negligence per se,
6 because counsel said, well, but that's just the owner. It's not -- how do
7 you get to Airbnb, it's just the owner?

8 MR. SCHNITZER: Yeah, I would disagree. I don't think that
9 when you're looking at negligence per se, you can say, oh, this just
10 applies to the owner. The ordinance says you cannot have short term
11 rentals. So for someone to put themselves in the situation where they're
12 knowingly renting out a house that cannot be rented legally under the
13 terms that they're renting it, they're putting themselves in that situation.

14 I don't understand how the argument comes to be about
15 that, well, we're just the middleman, so we're not responsible. I mean,
16 that's a convenient argument. I mean, you know, the drug dealer could
17 make the same argument. Hey, I wasn't in possession of the drugs. I
18 was just the middleman. I don't think that applies. I think the statute is
19 there to protect the general prosperity, health, safety, and welfare of the
20 citizens of Clark County. And they acknowledged that. And in order to
21 do that, you have to enforce that against anybody who's trying to get
22 around those laws.

23 And so I don't think certainly at the motion to dismiss stage,
24 you can say, hey, we're going to give them carte blanche to go ahead
25 and keep doing this.

1 THE COURT: Okay.

2 MR. SCHNITZER: Going back to the beginning. You know, I
3 know the Court knows this. This is a motion to dismiss. We have very
4 liberal pleading standards in Nevada. This is not federal court. This is
5 not a summary judgment motion, right. Some of these arguments may
6 have -- may need to be addressed further at a summary judgment phase.
7 But his constant referring that I don't have specific allegations of this, I
8 don't have specific allegations of that, I don't need that for my complaint,
9 and we don't need that to withstand the summary judgment phase. I'm
10 sorry, the motion to dismiss phase.

11 When we talk about duty, Your Honor, what we showed is
12 that they have assumed a duty, right. The property owner themselves
13 cannot conduct a background check. The property owner themselves
14 could not do ID verifications. Airbnb does that by preventing the
15 landowner themselves from performing its duty under the law. I don't
16 think there's any dispute that a landowner would have a duty to do these
17 background checks and to see who's renting the house. By preventing
18 the landowner themselves from doing it, it has assumed the duty.

19 And, in fact, the property owners don't even know the last
20 name of the guest until they agree to have this property booked. Not
21 only that Airbnb markets these rental properties. If you go on Airbnb
22 once your social media feed is going to be flooded with rental properties
23 in the area that you're looking at. So by doing all of these things Airbnb
24 is inserting itself, and they are assuming these duties, certainly enough
25 to the point of -- to get past the motion to dismiss and to do discovery

1 into all of these things.

2 We talked about joint venture. Again, all we need to do is
3 allege there was a joint venture. It's the motion to dismiss stage.
4 There's not a heightened standard. I don't have to explain exactly how
5 this joint venture occurred. We just have to identify the business, allege
6 it was carried on jointly, and that's the *Swenson* case.

7 THE COURT: Now is that the respondeat superior concept?
8 Because I didn't -- I just didn't see respondeat superior really alleged.
9 There's no -- because that's typically, as I said, an employee/employer
10 relationship although I guess arguably it could be agent and principal.

11 MR. SCHNITZER: Right. Agent/principal joint venture. And I
12 agree. I don't think that's a separate cause of action. I think it's a theory
13 of recovery. And to the extent the Court wants me to amend that to sort
14 of subsume respondeat superior as a theory of recovery, I don't have an
15 issue with that. Before I heard the Court say, you know, that it's just the
16 complaint, it's fine. So whatever the Court's preferences is, is fine with
17 me.

18 But when we're talking about joint venture it's an informal
19 partnership and there's case law. There's the *Myers* case. There's a
20 Ninth Circuit case that talks about you can't allow contractual recitations
21 to subterfuge legal obligations. And the *PetSmart* case it looked at, yes,
22 there was a contractual provision that said this is not an agency
23 relationship. That wasn't the end of it. It said the facts do not support a
24 parent agency.

25 So what's in the actual agreement is one aspect of it but

1 what the facts actually show is another thing. And so the Court can't just
2 say well the agreement says that the end of it. The Court's got to look at
3 the facts and see whether there's also a parent agency that allows for a
4 joint venture because joint venture is really a question of fact. And here
5 what I think we're going to show, they share revenue, they share losses.
6 We know Airbnb is here because they provided insurance for the loss.
7 Airbnb issues policies and procedures that the guests and hosts have to
8 abide by the benefit of the host. Airbnb bills and collects the money
9 themselves, and they promote the property.

10 And this is actually really similar to -- it's an insurance bad
11 faith case called *Wohlers*, 114 Nevada 1249. And that case dealt with
12 whether or not the third party administrator was a joint venture with the
13 insurance company. In that case, the Court looked at it and upheld a
14 verdict where the insurance company issued promotional materials,
15 issued policies and procedures, built and collected money, and shared a
16 profit. And that's all it took for the Supreme Court to uphold the findings
17 of the jury that a joint venture exists. And so whether or not a joint
18 venture exists is a question of fact and certainly just based upon the facts
19 that I've shown, it would be enough for a jury to look at it and consider it.

20 And so I don't -- he didn't really address the foreseeability
21 test, but I know Your Honor raised the innkeeper statute. So, yeah, I
22 think the innkeeper statute could apply. But even if we're not looking the
23 innkeeper statute, it's really the same test, right?

24 THE COURT: Right.

25 MR. SCHNITZER: It's did they exercise due care for the

1 safety of others, right? And so the totality of circumstances under
2 [indiscernible]. And all we have to show is that their conduct increased
3 the risk of harm from unwelcomed third-parties with nefarious
4 intentions. That's all we have to show. And so does a party with
5 alcohol, and booze, and local shows, they were advertising -- I think it \$1r
6 or \$2 shots if you come in. Does that increase the likelihood of a crime?
7 Yes. Does alcohol increase the likelihood of fights and fights lead to
8 violence? Yes, of course. And so -- and then there's the *Humphries*
9 case, which is when there's no security at all, murders are foreseeable.

10 And so based upon Nevada law, foreseeability is certainly
11 going to be a question of fact. I think we're going to easily show that.
12 But it's certainly a question of fact. And the cases from other states and
13 from federal courts, I just think don't apply it. As Your Honor pointed
14 out, Nevada's got some interesting laws based upon negligent security,
15 but we don't have DRAM shop.

16 And so Nevada is its own unique animal. And based upon
17 the Nevada case law, I think we passed the motion to dismiss phase.

18 THE COURT: Okay.

19 MR. SCHNITZER: Unless the Court has any other questions,
20 I'll stand on that.

21 THE COURT: Yeah. Thank you very much.

22 MR. SCHNITZER: Thank you, Your Honor.

23 THE COURT: Thank you.

24 MR. KAY: Thank you, Judge Sturman. Let me -- I will tell
25 you, I heard a lot in there that was outside of the pleadings. So unless

1 Your Honor has specific questions, I will focus on what was in the
2 pleadings and what was in the opposition to the extent you're
3 considering amendment here.

4 THE COURT: Okay.

5 MR. KAY: Let me start with the Court's question about the
6 negligence per se statute, the Clark County Code. Mr. Schnitzer said the
7 ordinance stands for the proposition that, quote, "you cannot have short
8 term rentals." You never find who you is. But the Clark County Code
9 that he cites does that very specifically, and it applies only to property
10 owners. It doesn't apply to online booking platforms. In fact, as Your
11 Honor probably well know, the legislature has picked that up most
12 recently in this session, in the 2021 session. Obviously, well after the
13 2018 shooting that occurred in this case.

14 And so that doesn't help Mr. Lovett in terms of what the
15 legislature did, but it did that because there was a gap in the sense that
16 the short term rental ordinances at the County level did not cover online
17 platforms like Airbnb.

18 You know, I will go to the sort of general idea I heard from
19 Mr. Lovett's counsel that as Your Honor reference in ghost hotels and
20 that this was a pervasive problem purportedly nationally or worldwide,
21 and so Airbnb should have known that these things were foreseeable.
22 Yet he cannot cite you to a single case, either from Nevada or anywhere
23 else in the United States where a court has held Airbnb liable for all of
24 these purported things that he says are oppressive, or pervasive, or any
25 of the other things he has either stated in his pleading or his oral

1 argument. That right there raises a red flag because there is no liability
2 here. There's no court that Mr. Lovett has cited that imposes liability
3 under any of these claims or any of the theories he's put in his
4 opposition.

5 To the extent the Court's considering this idea in the
6 opposition that Airbnb undertakes or may prevent its homeowners from
7 conducting background checks, I will note that in the terms of service
8 and also in Mr. Lovett's opposition, the provision he cites have to do
9 with -- it has to do with guest background checks. There's nothing in this
10 complaint suggesting that a guest of this Airbnb property was a shooter.
11 In fact, all of the publicly available coverage says that Mr. Lovett was
12 shot on the way to the property by someone off property.

13 So the idea that Airbnb may undertake some sort of duty or
14 prevent its property owners from investigating its guests or conducting
15 background checks doesn't get him anywhere near liability here.

16 THE COURT: Well, that would be a summary judgment
17 issue, it seems to me. And that's -- as was pointed out, the distinction
18 between state and federal court, which is if you were in federal court, we
19 would expect a very different complaint. We would expect a complaint
20 that told us each and every fact and how it applies to each and every
21 theory. You're not in federal court.

22 MR. KAY: I appreciate that. I argue notice pleadings from
23 both sides almost every week in this building. So I appreciate the
24 Court's point. I still think you get there under *PetSmart* and *Wright* and
25 *Sanchez* in the sense that, again, there are no allegations establishing

1 that this particular property was a problem property or that the Airbnb
2 was aware of any prior incidents on this property and, therefore,
3 undertook the duty to protect unidentified members of the general public
4 and/or was a joint venture with the property owner in this case.

5 And, again, we're not saying that anyone else needs to be
6 dismissed from this case other than Airbnb. Under those clear cases,
7 Airbnb has no liability. There's no set of facts. But Mr. Lovett is
8 obviously free to go forward with this case as to other -- the actual
9 property owner itself and anybody else that was involved with that
10 property the day of the shooting. We're not arguing those points. They
11 all fall or arguably fall within the provisions you've cited with respect to
12 the Innkeeper and some of the other cases.

13 With that, I will rest, unless Your Honor has any additional
14 questions about what we put in our pleadings and what we said here
15 today.

16 THE COURT: No. Thanks very much.

17 I'm going to grant the motion in part and deny it in part. I'm
18 going to grant it as to negligence per se, respondeat superior and
19 punitive damages for this reason, and it's without prejudice for leave to
20 amend.

21 I don't see an allegation here where we have a specific
22 statute for negligence per se that would apply to Airbnb, at least not the
23 way it's pled. There may be a way to argue or to plead it such that the
24 statutes that are out there on party houses would extend to anybody
25 who facilitates the party, arguably. I guess that's the theory, but it

1 doesn't technically read that way, and the complaint doesn't read that
2 way. So I'm going to grant that one.

3 Respondeat superior. I just don't see that. I think that's a
4 very specific concept and again, as mentioned, it's not technically its
5 own independent cause of action, so it doesn't really need to be pled as
6 such. But I just don't see any kind of either principal and agent or theory
7 that's going to apply here. Again, it's sort of evolving, this concept that
8 there was some sort of a joint venture or a -- but I think that that is really
9 the negligence and negligent security. And like I said, the Nevada
10 Innkeeper statute, which I think it really kind of arguably applies.

11 So that's really where it is, in my view. It's really this concept
12 of can you impute this negligence further up the line or do they have
13 their own independent negligence? So those are the -- that's where I
14 really saw it. It's just purely a negligence case.

15 Punitive damages, I just didn't see anything that was extreme
16 and outrageous. Again, of course, if there's some evidence that this
17 particular venue was a known problem, this particular renter was a
18 known problem, that Airbnb should have known that this person went
19 around renting party houses and throwing these wild parties, I just didn't
20 see that as of yet.

21 So if it turns out that I'm wrong and that's out there, then
22 there may be grounds for punitive damages. But based on just a pure
23 negligence case, I don't see it. And this seems to me to be a pure
24 negligence case. And that's where it falls. We've got the two causes of
25 action for negligence and negligent security, and that seemed to pretty

1 much encompass it.

2 So I'm going to grant it without prejudice, because, as I said,
3 something may come out. There may have been some record or some
4 indication that they should have been on notice. And there may be some
5 way to argue that the statute -- the party house regulations and codes
6 would apply to a third-party platform. I just didn't see it as pled. So I'm
7 going to grant it in part and deny it in part.

8 And if you'll prepare that order and send it to Mr. Schnitzer.
9 And I don't know, do you also want to see -- anybody else want to see
10 this order before it goes in? I mean, it's again, granted in part and
11 denied in part. So anybody -- I guess just anybody who wants to see the
12 order before you submit it, let counsel know, and I'm sure he'll show it to
13 you for your review prior to submitting it. Unless there's any other
14 questions.

15 MR. KAY: Thank you very much, Your Honor.

16 MR. SCHNITZER: Thank you, Your Honor.

17 MR. DION: Thank you, Your Honor.

18 THE COURT: All right, see you guys.

19 [Proceedings concluded at 11:19 a.m.]

20

21 ATTEST: I do hereby certify that I have truly and correctly transcribed the
22 audio-visual recording of the proceeding in the above entitled case to the
23 best of my ability.

23 

24 Maukele Transcribers, LLC

25 Jessica B. Cahill, Transcriber, CER/CET-708

Exhibit 2

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DISTRICT COURT
CLARK COUNTY, NEVADA

BRYAN LOVETT, et al.,

Plaintiffs,

vs.

AIRBNB, INC., a Foreign Corporation;
JASPER HAN a/k/a BING HAN, individually;
SHENANDOAH SOUTHWEST, INC., a Nevada
Corporation; ZHENG TRUST c/o FENEX
CONSULTING; LI JUN ZHENG, individually;
ROE HOA; ROE SECURITY COMPANY; DOE
PARTY HOST; ROE PROPERTY
MANAGEMENT COMPANY; DOES XI through
XX, inclusive and ROE CORPORATIONS XI
through XX, inclusive,

Defendants.

CASE NO.: A-19-801549-C
DEPT NO.: 26

PLAINTIFF BRYAN LOVETT'S
[PROPOSED] FIRST AMENDED
COMPLAINT

A TRIAL BY JURY IS DEMANDED
HEREIN

Now comes Plaintiff BRYAN LOVETT, by and through undersigned counsel, and complains as to the conduct of AIRBNB, INC.; BING HAN a/k/a "JASPER" HAN; SHENANDOAH SOUTHWEST, INC.; ZHENG TRUST c/o FENEX CONSULTING; LI JUN ZHENG; and the other Defendants stated above as follows:

JURISDICTIONAL STATEMENT

1. This Court has jurisdiction over this civil tort action pursuant to NRCP 8(a)(4), NRS 13.040, and/or NRS 41.130 as the occurrence giving rise to this case took place in Clark County, Nevada and the amount in controversy exceeds \$15,000.

PARTIES

2. Decedent RAHEEM RICE (“RICE”) was a natural person who resided in Clark County, Nevada at all relevant times. RICE was a senior at UNLV at all relevant times.

3. ERIC RICE is a natural person who resides in Clark County, Nevada at all relevant times. ERIC RICE is the father of Decedent RICE.

4. JEFFERSON TEMPLE (“TEMPLE”) is a natural person who resides in Clark County Nevada. TEMPLE is the Special Administrator of the Estate of Rice.

5. Plaintiff BRYAN LOVETT (“LOVETT”) is a natural person who resided in Clark County, Nevada at all relevant times. LOVETT was a minor at all relevant times.

6. Defendant AIRBNB, INC. (“AIRBNB”) is a Delaware corporation with its principal place of business in San Francisco, California.

7. Defendant JASPER HAN a/k/a BING HAN (“HAN”) is a natural person who resided in Clark County, Nevada at all relevant times. HAN often uses the assumed first name “Jasper” in place of his legal given name “Bing.”

8. Defendant ZHENG TRUST c/o FENEX CONSULTING (“ZHENG TRUST”) is a trust organized under the laws of the State of Nevada.

9. Defendant SHENANDOAH SOUTHWEST, INC. (“SSW”) is a Nevada corporation with its principal place of business in Clark County, Nevada. SSW uses the registered fictitious name “FENEX CONSULTING” in Clark County, Nevada.

10. Defendant LI JUN ZHENG (“ZHENG”) is a natural person who, on information and belief, resided in Clark County, Nevada at all relevant times.

11. On information and belief, Defendant ZHENG and Defendant SSW are both trustees of the ZHENG TRUST. In the alternative, either Defendant ZHENG or Defendant SSW is the trustee of the ZHENG TRUST.

12. Upon information and belief, at all times relevant to this action, Defendant ROE SECURITY COMPANY was operating security on the property or in the neighborhood.

13. Upon information and belief, at all times relevant to this action, ROE HOA was the homeowners association for the area around and including 6145 Novelty St., Spring Valley, NV.

14. Upon information and belief, at all times relevant to this action, Defendant DOE PARTY HOSTS I-III were hosting the party at which Decedent RICE and Plaintiff LOVETT were shot.

15. Upon information and belief, at all times relevant to this action, Defendant ROE PROPERTY MANAGEMENT COMPANY is a company or individual conducting business in Nevada in the County of Clark, and is the management company handling the maintenance, cleaning, and renting out of the property at 6145 Novelty St., Spring Valley, NV, as the agent of the other Defendants.

16. Upon information and belief, each of the Defendants designated herein as DOE Defendants or ROE CORPORATION Defendants are responsible in some manner for the events and happenings herein referred to and caused damage proximately to Plaintiffs as herein alleged.

17. Upon information and belief, each Defendant designated herein as a DOE Defendant and/or ROE CORPORATION Defendant is one or more of the following:

- a. A party responsible in some manner for the events and happenings hereunder referred to, including but not limited to a party responsible for the management or control of the property at issue;
- b. Parties that were the agents, servants, authorities and contractors of the Defendants, each of them acting within the course and scope of their agency, employment, or contract;
- c. Parties that own, lease, manage, operate, secure, inspect, repair, maintain, or are responsible for the property at 6145 Novelty St., Spring Valley, NV;
- d. Parties that have assumed or retained the liabilities of any of the Defendants by virtue of an agreement, sale, or transfer, or otherwise.

BACKGROUND – THE PU\$\$Y PARTY CREW

18. At some point prior to June 2, 2018, three individuals in their late teens or early twenties (the “Crew”) began throwing large social events they dubbed “PU\$\$Y PART[IES]” inside short-term rental houses in Clark County, Nevada.

19. On reference and belief, the Crew rented an entire home in Clark County through Defendant AIRBNB's online platform and hosted a large "PU\$\$Y PARTY" gathering there on at least one occasion prior to June 2, 2018.

20. On information and belief, AIRBNB learned of this prior "PU\$\$Y PARTY" well before June 2, 2018. Nevertheless, AIRBNB took no action, or took unreasonably little action, to prevent the Crew from renting entire homes on its platform.

21. Shortly before June 2, 2018, the Crew began circulating marketing materials for an event they dubbed "PU\$\$Y PARTY EXTENDED PRESENTS PU\$\$Y PARTY PT.1 (NOW IN A FAT ASS VILLA)."

22. Upon reference, the event began at or around 11:00 P.M. on June 2, and the cover charge was \$3 for men and \$0 for women until 1:00 A.M. and rose to \$5 for men and \$3 for women thereafter.

23. To encourage prompt attendance, the flyer promised "FREE BLUNTS" for the first 50 attendees, and "SHOTS @ DOOR." It also promised, among other things, "JUNGLE JUICE," beer pong, drinking games, a pool, and a movie theater.

24. The flyer did not list an address for the event, promising instead that the address would be "GIVEN DAY OF."

BACKGROUND – THE HAN FAMILY'S "FAT ASS VILLA"

25. On June 2, 2018, the Crew announced that their event would take place at 6145 Novelty St., Spring Valley, Nevada 89148 (the "Fat Ass Villa" or "Villa"), situated in a quiet residential neighborhood in unincorporated Clark County, Nevada.

26. As of June 2, 2018, the Villa was owned by Defendant ZHENG TRUST, having been transferred to the ZHENG TRUST by Defendant ZHENG in 2005.

27. As of June 2, 2018, ZHENG TRUST and its trustee—on information and belief either SSW, or ZHENG, or both of them—had the legal right to control access to the Villa.

28. As of June 2, 2018, Defendant HAN had the practical ability to control the Villa.

29. About four years before, when Defendant HAN was roughly 34 years old, he lived in the Villa with his father Jianguo Han and his mother Hui Liu.

1 30. In 2015, HAN and his father Jianguo Han were indicted for, among other things,
2 conspiracy to manufacture a controlled substance. The indictment alleged they had helped run a
3 marijuana grow operation with more than 800 mature plants in two nearby suburban homes.

4 31. In July of 2017, Jianguo Han was convicted on two counts, conspiracy to manufacture
5 marijuana and aiding and abetting the manufacture of marijuana. Jianguo Han remained imprisoned
6 throughout the events giving rise to this suit.

7 32. His son, Defendant HAN, fared better. HAN's counsel argued at closing that
8 although it was "more likely than not that this stuff was marijuana," the jury should punish the
9 government for its "arrogance" in thinking the testimony of a single police officer could prove the
10 "stuff" was marijuana beyond a reasonable doubt. The jury, apparently agreeing, acquitted HAN.

11 33. HAN was not present in the courtroom to learn that he had been acquitted. On
12 reference and belief, HAN, expecting to be convicted, fled before the jury returned a verdict.

13 34. Thereafter, until at least June 2, 2018, HAN either resided in the Villa or was
14 otherwise authorized by ZHENG TRUST to list the property on AIRBNB's platform.

15 35. On information and belief, HAN and ZHENG TRUST agreed to share in the profits
16 or losses associated with listing the Villa on AIRBNB's platform.

17 36. At some point before June 2, 2018, HAN created a Host account on AIRBNB's
18 platform with the display name "Jasper" and used that account to list the Villa for rental.

19 37. On information and belief, during that process AIRBNB required HAN to provide
20 personal information sufficient to allow AIRBNB to run a background check on him.

21 38. On information and belief, AIRBNB run a background check on HAN and was aware
22 that he had been involved in criminal activities as described above.

23 39. AIRBNB allowed HAN to list the Villa on its platform anyway.

24 40. When creating the listing for the Villa, HAN ticked the checkboxes provided by
25 AIRBNB to inform potential Guests that parties and smoking were both forbidden.

26 41. At the time HAN created the listing for the Villa, AIRBNB knew or should have
27 known short-term rentals in unincorporated Clark County, Nevada were forbidden by ordinance.
28

42. AIRBNB advertised to HAN and others its ability to help potential Hosts navigate local ordinances and regulations, and it included on its website extensive guidance directed to HAN and other potential Hosts regarding compliance with local ordinances and regulations in a long list of U.S. cities.

43. However, AIRBNB's website did not advise potential Hosts in unincorporated Clark County that short-term rentals were banned in their jurisdiction, nor did it inform HAN that his listing was illegal at any point during or after its creation.

44. AIRBNB is a sophisticated company that was, at all relevant times, familiar with local ordinances like the one in unincorporated Clark County and was advocating for changes to those laws.

45. AIRBNB has a long history of pushing back against ordinances regulating short-term rentals. For instance, an AIRBNB spokesperson characterized the City of Las Vegas's 2017 ordinance regulating short-term rentals as penalizing homeowners and stated that AIRBNB wished the City of Las Vegas would change course.

46. On information and belief, Clark County government officials contacted AIRBNB on multiple occasions prior to June 2, 2018 and informed AIRBNB that short-term rentals were prohibited in unincorporated Clark County outside of the City of Las Vegas.

47. Upon reference, AIRBNB knew that HAN's listing was located in unincorporated Clark County and therefore violated local ordinances.

48. Upon information and belief, AIRBNB made at least some attempt to comply with local ordinances in certain privileged jurisdictions, but it made little or no attempt to do so in Clark County because it believed the potential for profit from short-term rentals in Las Vegas outweighed the risks involved in aiding and abetting violations of the law, including the risks posed to human life from placing party houses in residential neighborhoods.

BACKGROUND – THE FATAL BOOKING

49. After the Villa was listed on AIRBNB's platform, AIRBNB marketed the Villa, alongside other properties, to persons located in Clark County who searched for short-term rentals within Clark County.

1 50. On or about June 2, 2018, an unidentified member of the Crew (the “Incident Guest”)
2 logged into her AIRBNB account and searched listings near Las Vegas, Nevada to find for a location
3 for “PU\$\$Y PARTY EXTENDED PRESENTS PU\$\$Y PARTY PT.1.”

4 51. On information and belief, during her search, the Incident Guest attempted to book
5 houses other than the Villa, but the Hosts controlling those houses found the Incident Guest’s
6 account and/or her communications suspicious, and they therefore rejected her bookings.

7 52. On information and belief, those Hosts promptly reported suspicions to AIRBNB,
8 which took no action to prevent further booking requests by the Incident Guest for the same night.

9 53. In the alternative, AIRBNB had access to data showing that other Hosts were
10 rejecting the Incident Guest’s attempts to rent a large party house on short notice.

11 54. AIRBNB had the power, right, and ability to flag the Incident Guest’s activities or
12 block the Incident Guest’s account, but it chose not to do so.

13 55. Eventually, the Incident Guest located the listing for the Villa on AIRBNB’s platform
14 and submitted a booking request.

15 56. The Incident Guest’s booking request was received and reviewed by HAN as the
16 holder of the Host account for the Villa.

17 57. On information and belief, HAN took no steps to investigate either the Incident
18 Guest’s identity or her reason for booking a single night on such short notice.

19 58. On information and belief, HAN chose not to investigate the Incident Guest because
20 he relied on AIRBNB to screen potential Guests and because he understood AIRBNB assumed
21 responsibility for the consequences of any failure to screen or monitor Guests.

22 59. Moreover, HAN was hindered in his ability to investigate the Incident Guest because
23 AIRBNB’s platform prevented him even from learning her last name until after the booking contract
24 had been signed and he could no longer cancel the booking without penalty.

25 60. Upon reference, AIRBNB purposefully withheld the Incident Guest’s last name from
26 HAN in accordance with AIRBNB’s policies, which prevented HAN from running his own
27 background checks on Guests.

28

61. On information and belief, HAN’s reliance on AIRBNB to screen potential Guests and his understanding that AIRBNB assumed responsibility for the consequences of any failure to screen were intentionally fostered by AIRBNB through, among other things:

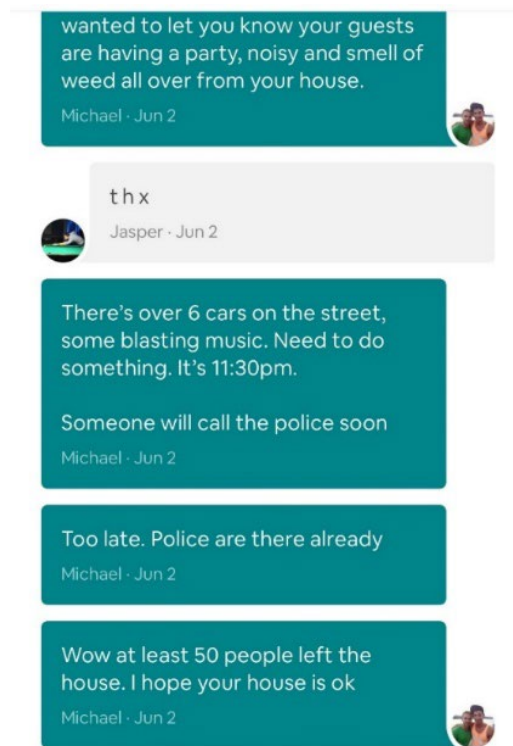
- a. AIRBNB’s requirement that HAN prove his identity—and thus enable AIRBNB to run a background check—to create his AIRBNB Host account;
- b. AIRBNB’s concealment of the personal information of potential Guests that HAN would have needed to run his own background checks;
- c. AIRBNB’s creation of a toothless but reassuring checkbox for Hosts wishing to prevent Guests from hosting parties at their properties;
- d. AIRBNB’s “Host safety guidelines,” which emphasized misleading paraphrases of AIRBNB’s automatic insurance coverage while failing to suggest Hosts either investigate Guests or monitor for house rule violations;
- e. AIRBNB’s “Responsible Hosting” guidelines, which began with a notice about AIRBNB’s “Neighbor Hotline” that encouraged anyone concerned about a Guest’s behavior to bypass the Host and call AIRBNB directly;
- f. AIRBNB’s misleading advertising materials, directed to HAN and other potential Hosts, to the effect that AIRBNB “verified” potential Guests; and
- g. AIRBNB’s misleading advertising materials, directed to HAN and other potential Hosts, to the effect that AIRBNB insured Hosts against both damage to their own property and liability for their Guests’ actions.

62. Relying on the representations outlined above—and more generally on the air of security-without-responsibility intentionally fostered by AIRBNB—HAN approved the Incident Guest’s booking request for the night of June 2–3, 2018.

BACKGROUND – A PARTY TO DIE FOR

63. At about 11:00 P.M. on June 2, 2018, partygoers began arriving at the Villa and the event started to get underway.

64. At approximately 11:30 P.M. on June 2, 2018, HAN's next-door neighbor Michael contacted him through AIRBNB's messaging application, resulting in the following exchange:



65. On reference, HAN did not call the police himself or take any other steps to stop the party.

66. On information and belief, HAN chose not to stop the party because he understood that AIRBNB, as part of its arrangement with him, had agreed to insure him against damage to his property and for personal injury resulting from the party.

67. On information and belief, HAN also chose not to stop the party because he understood that AIRBNB had assumed responsibility for managing relations with the neighbors and the community.

68. On information and belief, prior to contacting HAN, Michael directly informed AIRBNB that the Incident Guest was hosting a large party involving marijuana consumption in the Villa.

69. On information and belief, AIRBNB responded by directing Michael to HAN's AIRBNB profile, but otherwise taking no other action.

1 70. Because this exchange occurred on AIRBNB's platform, AIRBNB could have
2 learned of the party with marijuana use occurring at the Villa no later than when HAN received the
3 messages.

4 71. On information and belief, after Michael contacted HAN through AIRBNB's
5 platform, Michael took no further steps to stop the party because he believed that AIRBNB had
6 agreed to work with HAN to handle any "party house" situations that arose.

7 72. On information and belief, Michael believed this because AIRBNB held itself out to
8 him (and the general public) as being the appropriate contact point for neighbor concerns about
9 parties in its short-term rentals.

10 73. Had AIRBNB not represented to Michael and members of the public that they should
11 contact AIRBNB about parties and other inappropriate or unlawful conduct in its short-term rentals,
12 on information and belief, Michael would have taken further action to end the party, such as telling
13 the partygoers directly to leave or else he would call the police.

14 74. Michael's estimate of 50 attendees was low. On information and reference, over
15 200 people, mostly in their teens and early twenties, attended the party at the Villa.

16 75. One or more police officers arrived at the scene of the party sometime before
17 midnight on the night of June 2-3.

18 76. Most partygoers promptly fled the scene and the police officers soon moved on,
19 incorrectly believing the party had been dispersed and the problem fully addressed.

20 77. After the police left, some of the fleeing partygoers returned and new attendees
21 continued to arrive.

22 78. The party thus quickly returned to full swing and crowds of revelers eventually
23 spilled out of the Villa onto the residential street in front of it and the yards and driveways of
24 neighboring houses.

25 79. Had the police been aware that no one at the party owned the Villa, and that the owner
26 had expressly forbidden the Incident Guest from hosting parties there, the police would likely have
27 arrested the Incident Guest and thereby ended the party.

28

80. Nevertheless, on information and belief, neither AIRBNB nor HAN informed the police that the party was unauthorized or asked them to remove the Incident Guest from the Villa.

81. A few minutes before 1:00 A.M. on the morning of June 3, 2018, LOVETT and RICE arrived at the party and were patrons of it.

82. Shortly thereafter, LOVETT and RICE joined a crowd of partygoers that had spilled out onto the grassy area surrounding or abutting the Villa.

83. At about the same time, HAN and Hui Liu arrived at the scene in separate vehicles and parked across the street from the Villa, but they did not exit their vehicles or disperse the party.

84. From their positions, HAN and Hui Liu had a perfect view of what happened next.

85. At 1:01 A.M., someone fired several gunshots at the crowd of partygoers LOVETT and RICE had just joined.

86. LOVETT was struck in the leg. RICE was struck in the back and killed.

87. Neither RICE nor LOVETT was the intended target of the shooting.

88. On information and belief, the shooter was another partygoer who had briefly left the party and returned following an altercation with a member of the group to whom RICE and LOVETT were speaking.

89. The shooter immediately fled the scene.

90. After witnessing the shooting, HAN and Hui Liu both fled the scene in their vehicles before the police returned and started taking statements.

91. In his last conversation with his mother, RICE had told her that he was going to a house party, but he had reassured her that she didn't need to worry because it was in "a good area."

92. The "good area" reputation of the Villa's neighborhood was due primarily to its quiet, residential, suburban nature, which was fostered by a local ordinance prohibiting potentially disruptive and crime-attracting "transient commercial use[s]" of residential property.

93. Had Defendants complied with Clark County's ordinance scheme and refrained from illegally offering the Villa for short-term rental, the area around it would have remained safe, LOVETT would never have been injured, and RICE would still be alive.

94. Had Defendants provided the typical level of security that lawful Nevada hotels, casinos, and bars provide, the shooter would not have fired at the crowd.

95. Upon information and belief, the shooter was attracted to the party because he knew that parties thrown in short-term rentals generally have little or no security.

96. Upon information and belief, the shooter was a “copycat” shooter who was familiar, from having watched or read the news, with the long history of (often unsolved) drive-by shootings that have occurred at AIRBNB’s short-term rentals.

BACKGROUND – AIRBNB LOSES ITS MOJO

97. For more than a decade after its founding in 2008, AIRBNB held its platform out as the best way to find a location for social gatherings and events like bachelorette parties.

98. AIRBNB followed the “move fast and break things” culture shared by many Silicon Valley companies that seek only to grow revenue and market share as fast as possible, ignoring laws designed to protect the rights of others.

99. This culture of lawlessness allowed AIRBNB to become a so-called Silicon Valley “unicorn,” growing from zero to \$31 billion in valuation in under ten years.

100. AIRBNB collaborated with property owners to put illegal hotels, bars, and nightclubs into residential neighborhoods, all the while shirking its common law duty to provide security.

101. AIRBNB, through sponsored content such as blog posts, specifically marketed the Las Vegas area as suitable for parties.

102. At these wild parties, booze and liquor were constantly flowing.

103. Many of these wild parties targeted minors like LOVETT who would be turned down at lawful bars, hotels, or nightclubs.

104. AIRBNB knew these parties targeted underage teens.

105. AIRBNB did more, however, than simply turn a blind eye to Hosts and Guests using its platform to throw illegal parties.

106. AIRBNB made “parties and events allowed” the default setting for *all* AIRBNB rentals except those where the Host specifically chose to forbid them.

107. AIRBNB purposefully took steps to make it more difficult for Hosts to perform background checks on potential Guests.

108. These steps ranged from reassuring Hosts that AIRBNB “verified” Guests all the way to concealing the last names and identities of Guests from Hosts until the Host had already accepted a contract to rent to the Guest.

109. On information and belief, AIRBNB arranged its platform this way to frustrate Hosts in their ability to police parties on their own properties and to discourage them from even attempting to do so.

110. Over the years, this has resulted in AIRBNBs becoming hotbeds of crime.

111. A search for shootings at AIRBNB parties reveals the following incidents, which represent only a fraction of all shootings that have occurred at AIRBNB-enabled house parties:

Date	Location	Deaths	Injuries	Under-21 Victim(s)?
10/24/2015	Queens, NY	0	2	No
5/29/2017	Lynnfield, MA	1	0	No
7/7/2017	Akron, OH	0	1	Yes
3/24/2018	Reno, NV	0	0	n/a
4/21/2018	San Francisco, CA	0	0	n/a
5/14/2018	Toronto, ON	1	1	No
06/3/2018	Spring Valley, NV	1	1	Yes
10/31/2019	Orinda, CA	5	4	Yes
12/31/2019	Cleveland, OH	3	2	Yes
8/4/2020	Los Angeles, CA	1	4	No
4/11/2021	Wichita, KS	1	3	Yes
8/7/2021	Sunnyvale, CA	1	1	Yes
2/27/2022	Columbus, OH	0	5	Yes
4/3/2022	Draper, UT	2	0	No
4/10/2022	Manvel, TX	0	1	Yes
4/17/2022	Pittsburgh, PA	2	8	Yes
7/11/2022	Alvin, TX	1	3	Yes
9/30/2022	Oakland, CA	2	2	Yes
12/14/2022	Rochester, NY	1	4	Yes
1/25/2023	Jacksonville, FL	0	1	No
1/28/2023	Los Angeles, CA	3	4	No
2/5/2023	Falcon, CO	2	3	Yes
Subtotal for identified incidents:		27	50	65% involved underage victims

112. The above list is incomplete. An idea of how incomplete may be gained by considering a statement from the Las Vegas Metropolitan Police Department in August of 2020, which warned that there had been **fifteen shootings and three murders at short-term rental parties just in Clark County** in the preceding few months.

113. The above list excludes non-shooting violent incidents at AIRBNB parties, such as the fatal stabbing that occurred at a massive AIRBNB-enabled party on July 23, 2020 in Clark County.

114. AIRBNB was (and remains) more familiar than anyone with the scale of the problem its activities created because AIRBNB maintained (and maintains) detailed statistics regarding reports of parties at the properties and claims for property damage at the properties it rents out.

115. Although AIRBNB does not release these statistics publicly, it does publicly tout percentage improvements in these statistics as part of its campaign to show AIRBNB as the best option for owners hoping to turn a profit on their properties without risk and without responsibility.

116. On information and belief, in addition to maintaining detailed statistics on reports of parties at the properties it rents out, AIRBNB also maintains detailed statistics on reports of crimes and incidents of violence that occur in properties it rents out.

117. Faced with mounting public pressure and scrutiny from local governments, AIRBNB implemented a partial ban on “open-invite” parties in late 2019 and a temporary global ban on parties in August of 2020.

118. Finally, AIRBNB made the global party ban permanent in June of 2022.

119. AIRBNB’s stated reason for making the global party ban permanent was that the temporary ban had “proved effective” in reducing the number of parties, to the point that the company saw a 44% year-over-year drop in reported parties.

120. AIRBNB’s stated reason for making the party ban permanent is nonsense. If AIRBNB’s goal was to reduce the number of dangerous house parties taking place in AIRBNB rentals, then making such parties against the rules was a necessary precondition to taking any other action. There was never a scenario for which letting the temporary party ban expire would have made sense as a way to decrease the number of parties.

121. On information and belief, the true reason AIRBNB made the party ban permanent—and the reason it waited so long before doing so—was that AIRBNB’s income from party house rentals was significant, particularly during its early years, so AIRBNB held off on making the ban permanent until it was certain it could continue to make profits without house party revenue.

122. According to AIRBNB’s public statements, during 2021, AIRBNB suspended over 6,600 Guests for “attempting to violate our party ban.” This shows that AIRBNB had both the data and the experience to be able to prevent thousands of parties before they happened.

123. On information and belief, AIRBNB could have implemented the same protections much earlier, in time to prevent the tragic events at issue in this case, but it chose not to because it didn’t want to lose the revenue from house party rentals.

124. On information and belief, had AIRBNB implemented the protections now in place to prevent parties, the Incident Guest and/or the Incident Guest’s booking requests would have been prohibited by AIRBNB’s system and she would have been unable to rent any property in Clark County for the night of June 2–3, 2018.

BACKGROUND – AIRBNB’S BUSINESS RELATIONSHIP WITH HOSTS

125. AIRBNB brings in yearly revenue of over \$8 billion by renting out spaces in a globe-spanning virtual hotel whose policies, procedures, and even prices are to a large extent set by AIRBNB, but whose physical locations are properties owned and maintained by individuals and smaller property management companies AIRBNB calls Hosts.

126. To convince potential Hosts offer properties for rent on AIRBNB’s platform rather than a competitor’s, AIRBNB’s publications directed to potential Hosts promise that AIRBNB makes offering properties for rental not just easier for the Host, but also far less risky.

127. AIRBNB fosters an impression in its Hosts and potential Hosts that if a Host assumes responsibility for owning, maintaining, and cleaning the property to be rented, AIRBNB will take care of everything else, including any concerns about legality or safety.

128. This impression is especially pervasive thanks to the informational asymmetry between AIRBNB and its Hosts, which AIRBNB creates and strives to maintain. For example, AIRBNB refuses to share much of the information it gathers about Guests with Hosts.

129. If one digs several layers deep on AIRBNB’s website and its contracts of adhesion, one can find caveats to and clarifications of this general impression. But even accepting all the caveats, AIRBNB’s relationship with each Host is deeply involved and creates a clear allocation of responsibilities between the parties and places some of the expenses for each booking on each.

130. For example, AIRBNB assumes responsibility for paying sales tax (if any) for bookings, for obtaining both property and liability insurance covering each booking, for handling all credit card and other financial transactions, for maintaining a 24-hours hotline for neighbor complaints, for providing guidance on local legal requirements, for barring repeat rulebreakers from its platform, for advertising/marketing the Hosts’ properties through external ads and its own search function, and otherwise for maintaining and operating its platform.

131. Hosts, meanwhile, assume responsibility for ownership and maintenance of the property and related expenses.

132. AIRBNB also maintains control over whether, to whom, when, and on what terms Hosts may offer accommodations, including by:

- a. Barring listings in the privileged jurisdictions where AIRBNB chooses to comply with local bans;
- b. Banning Hosts who in AIRBNB’s judgment reject too many bookings from members of certain groups, “even while articulating legitimate reasons”;
- c. Barring rentals of particular durations on particular dates, such as they have recently done for one-day rentals on Halloween;
- d. Setting most terms of agreements between Hosts and Guests and setting the options for most of the remainder by creating lists for Hosts to choose from.

133. AIRBNB does not publicly disclose how its own take from each booking is calculated, and it does not disclose what the total fees on any given booking will be until the prospective Guest reaches the checkout page.

134. On information and belief, AIRBNB calculates at least one of the fees it charges on each booking as a percentage of estimated profits from such booking.

135. In the alternative, on information and belief, AIRBNB calculates at least one of the fees it charges on each booking as a percentage of the total revenue from such booking.

136. Due to the acts and practices described above, as well as other acts and practices to be uncovered in discovery, each booking through AIRBNB's platform operates as a joint venture between AIRBNB and the relevant Host.

FIRST CLAIM FOR RELIEF

(Negligence)

137. Plaintiffs repeat and reallege each and every allegation above and below as though fully set forth herein.

138. As also described above, Defendants negligently maintained and controlled the Villa at 6145 Novelty St. and, further, negligently permitted dangerous conditions and situations, not obvious or apparent to LOVETT and RICE, to exist thereon. *See* Rest. 2d of Torts, § 364.

139. In particular, Defendants negligently rented the Villa to the Incident Guest without a sufficient investigation, and Defendants thereafter negligently failed to remedy the dangerous condition that they created despite their knowledge of it and their multiple opportunities to do so. *See id.* §§ 318, 321.

140. Further, Defendants negligently created, or permitted to remain on their land, an attractive nuisance to minors like LOVETT through their use of the Villa.

141. Further, Defendants negligently failed to warn LOVETT and RICE of the presence of those dangerous conditions despite their knowledge of it and their multiple opportunities to do so. *See id.* at § 324(A).

142. As a direct and proximate result of the negligent conduct of Defendants, Plaintiff LOVETT was injured and Decedent RICE was killed.

143. Defendant AIRBNB is further liable because, by the acts and practices set forth above and others to be uncovered in discovery, it assumed the duties of the other Defendants with respect to the Villa and with respect to Plaintiffs.

144. The duties assumed by AIRBNB through its actions, representations, and misrepresentations, in addition to those listed elsewhere in this Complaint, included:

- a. The duty to ensure compliance with local ordinances on short-term rentals;
- b. The duty to run background checks on Hosts and Guests;
- c. The duty to handle complaints of parties reported through AIRBNB's systems by taking all appropriate steps; and
- d. The duty to insure against personal injury and property damage.

145. All Defendants are also liable for one another's actions as joint venturers based on the natures of their relationships as described above and as will be further shown in discovery.

146. As a direct and proximate result of Defendants' negligence and the resultant death of Decedent RICE, Plaintiffs sustained damages in the forms of past and future loss of support, society, comfort, consortium, and companionship, as well as past and future grief and sorrow, and such damages exceed FIFTEEN THOUSAND DOLLARS (\$15,000.00).

147. As a further direct and proximate result of Defendants' negligence, Plaintiff LOVETT sustained damages including, but not limited to, physical pain and suffering, mental pain and suffering, loss of enjoyment of life, and disfigurement, and such damages exceed FIFTEEN THOUSAND DOLLARS (\$15,000.00).

148. As a further direct and proximate result of Defendants' negligence, Plaintiffs incurred and will continue to incur special damages in the form of medical bills and other such special damages in an amount exceeding FIFTEEN THOUSAND DOLLARS (\$15,000.00).

149. Prior to the injuries complained of herein, Decedent RICE and Plaintiff LOVETT were able-bodied and gainfully employable and physically capable of engaging in all other activities for which they were otherwise suited. By reason of Defendants' conduct and as a direct and proximate result thereof, Decedent RICE and Plaintiff LOVETT were and are precluded from engaging in activities and occupations in which they would otherwise have been able to achieve. This has caused and shall continue to cause damages including loss of earnings and earning capacity in an amount exceeding FIFTEEN THOUSAND DOLLARS (\$15,000.00).

150. As a further direct and proximate result of Defendants' negligence and the resultant death of Decedent RICE, the Estate of Decedent RICE incurred unnecessary funeral expenses, burial fees, and other special damages in an amount exceeding TEN THOUSAND DOLLARS (\$10,000).

151. These unnecessary funeral expenses, burial fees, and other special damages are recoverable by the Estate of Rice pursuant to NRS § 41.085. The Estate of Decedent RICE is also entitled to punitive damages pursuant to NRS § 41.085.

152. The conduct of Defendants as alleged herein was willful, oppressive, malicious, and done and conducted with a reckless and wanton disregard for the rights and safety of Decedent and Plaintiffs, such that Plaintiffs are entitled to exemplary (or punitive) damages against Defendants in an amount sufficient to deter such conduct in the future.

153. Plaintiffs have been compelled to retain the services of an attorney to prosecute this action and are, therefore, entitled to their reasonable attorney fees.

154. The conduct of Defendants as alleged herein was willful, oppressive, malicious, and done and conducted with a reckless and wanton disregard for the rights and safety of Decedent and Plaintiffs, such that Plaintiffs are entitled to exemplary (or punitive) damages against Defendants in an amount sufficient to deter such conduct in the future.

SECOND CLAIM FOR RELIEF

(Negligence Per Se)

155. Plaintiffs repeat and reallege each and every allegation above and below as though fully set forth herein.

156. At all relevant times, Defendants were owners, managers, supervisors, or other parties responsible for the Villa located at 6145 Novelty St. and for the rental of the Villa to the Incident Guest and the dangerously unregulated party that was the natural result thereof.

157. On or about June 3, 2018, the subject premises were in an unsafe and hazardous condition and such dangerous condition was known to Defendants.

158. As a direct and proximate result of the unsafe, hazardous condition and Defendants' negligence, a shooting occurred resulting in Decedent's death and Plaintiffs' injuries.

159. Leading up to the shooting, Defendants negligently and/or intentionally violated the codes, rules, regulations, statutes, and ordinances of the State of Nevada and County of Clark, which violations were a but-for and proximate cause of Decedent's death and Plaintiffs' injuries.

160. In particular, Defendants negligently and/or intentionally violated the then-effective versions of Clark County Ordinance 30.44.010(b)(7)(A), which provided that all land uses not expressly permitted are prohibited, and Clark County Ordinance 30.44.010(b)(7)(C), which further emphasized that “[t]ransient commercial use of residential development for remuneration is prohibited in all residential zoning districts.”

161. The Villa and the surrounding area are zoned “R-2 Medium Density Residential” with the planned land use described as “Medium Density Suburban Neighborhood.”

162. The codes, rules, regulations, statutes, and ordinances were designed to protect the Decedent and Plaintiffs from the type of injuries they sustained on June 3, 2018.

163. The ordinances were further designed to prevent the creation of public or attractive nuisances like the one Defendants created on their land through their use of the Villa.

164. All Defendants are also liable for one another’s actions as joint venturers based on the natures of their relationships as described above and as will be further shown in discovery.

165. Further, or in the alternative, AIRBNB is liable for violating the ordinance because, with full knowledge of the existence of the ordinance, it conspired with HAN on or about June 2, 2018 to violate the ordinance by renting the Villa to the Crew. The conspiracy was:

- a. Formed on or about June 2, 2018 when AIRBNB, per its arrangement with HAN, displayed the Villa to the Incident Guest and marketed it to her;
- b. Had as its objective to complete a short-term rental of the Villa in violation of the ordinance for money;
- c. Furthered by the act of HAN of giving access to the Villa to the Crew; and
- d. Furthered by the acts of AIRBNB in marketing the Villa; accepting money for the short-term rental; paying sales tax on the short-term rental; divvying up funds generated by the short-term rental; forwarding Michael’s complaint on to Han to alert him that the police may be coming to his property; and/or attempting to reassure Michael that something would be done to handle his complaint.

166. Further, or in the alternative, AIRBNB is liable for violating the ordinance because it aided and abetted HAN in violating the ordinance, by taking all of the steps listed above.

167. Further, or in the alternative, AIRBNB is liable for violating the ordinance because it assumed the duty to comply with it (1) by barring rentals in some privileged jurisdictions and (2) providing HAN with guidance on complying with local ordinances, but purposefully failing to inform him that he could not legally rent the Villa in unincorporated Las Vegas.

168. As a further direct and proximate result of Defendants' negligence, Plaintiffs incurred and will continue to incur special damages in the form of medical bills and other such special damages in an amount exceeding FIFTEEN THOUSAND DOLLARS (\$15,000.00).

169. Prior to the injuries complained of herein, Decedent RICE and Plaintiff LOVETT were able-bodied and gainfully employable and physically capable of engaging in all other activities for which they were otherwise suited. By reason of Defendants' conduct and as a direct and proximate result thereof, Decedent RICE and Plaintiff LOVETT were and are precluded from engaging in activities and occupations in which they would otherwise have been able to achieve. This has caused and shall continue to cause damages including loss of earnings and earning capacity in an amount exceeding FIFTEEN THOUSAND DOLLARS (\$15,000.00).

170. The conduct of Defendants as alleged herein was willful, oppressive, malicious, and done and conducted with a reckless and wanton disregard for the rights and safety of Decedent and Plaintiffs, such that Plaintiffs are entitled to exemplary (or punitive) damages against Defendants in an amount sufficient to deter such conduct in the future.

171. Plaintiffs have been compelled to retain the services of an attorney to prosecute this action and are, therefore, entitled to their reasonable attorney fees.

THIRD CLAIM FOR RELIEF

(Negligent Security)

172. Plaintiffs repeat and reallege each and every allegation contained above and incorporate the same herein by reference as though fully set forth herein.

173. On June 2–3, 2018, Defendants, and each of them, owed duties to members of the general public as invitees and guests on their premises, including Plaintiffs and Decedent, to take reasonable measures to keep said individuals safe from dangers and hazards, the existence of which

1 they knew, or should have known through reasonable inspection, caution, investigation, and
2 awareness.

3 174. Defendants, and each of them, owed duties to members of the general public as
4 invitees and guests on their premises, including Plaintiffs and Decedent, not to create dangers and
5 hazards.

6 175. Defendants, and each of them knew or should have known that there was a danger to
7 patrons, including Plaintiffs and Decedent.

8 176. Despite this knowledge, Defendants, and each of them failed to take adequate and
9 reasonable measures to appropriately ensure the safety of the general public, including Plaintiffs and
10 Decedent.

11 177. Despite this knowledge, Defendants, and each of them, created a danger to the safety
12 of the general public, including Plaintiffs and Decedent.

13 178. The Defendants and their employees and agents were improperly trained, supervised,
14 and hired to handle the dangers and hazards connected with the party for which they were responsible
15 and/or created.

16 179. Defendants and each of them breached said duties owed to Plaintiff as a result of their
17 negligence, carelessness, and recklessness by failing to maintain adequate security on the property.

18 180. As a direct and proximate result of the conduct of each of the Defendants, Plaintiff
19 BRYAN LOVETT was injured and Decedent RICE was killed.

20 181. As a direct and proximate result of the conduct of each of the Defendants, Plaintiffs,
21 sustained damages as a result of the death of Decedent RICE. Plaintiffs sustained past and future
22 loss of support, society, comfort, consortium, companionship and disfigurement as well as past and
23 future, grief or sorrow; and such other damages in excess of FIFTEEN THOUSAND DOLLARS
24 (\$15,000.00).

25 182. Decedent RICE and Plaintiff BRYAN LOVETT sustained damages including, but
26 not limited to physical pain and suffering; mental pain and suffering; loss of enjoyment of life and
27 disfigurement; Plaintiffs, and each of them, have sustained damages in excess of FIFTEEN
28 THOUSAND DOLLARS (\$15,000.00).

183. Prior to the injuries complained of herein, Decedent RICE and Plaintiff BRYAN LOVETT were able-bodied men, gainfully employable and physically capable of engaging in all other activities for which they were otherwise suited. By reason of the premises and as a direct and proximate result therefore, Decedent RICE and Plaintiff BRYAN LOVETT were precluded from engaging in activities and occupations in which he would have been able to achieve.

184. This has caused and shall continue to cause Decedent and Plaintiff BRYAN LOVETT a loss of earning and earning capacity to their damages in a presently unascertainable amount, the allegations of which Plaintiff prays leave of this Court to insert herein.

185. By reason of the premises and as a direct and proximate result therefore, Plaintiff BRYAN LOVETT, continues to and shall continue to be limited in his activities and occupations in which he is able to achieve. This has caused and shall continue to cause Plaintiff a loss of earning and earning capacity to his damages in a presently unascertainable amount, the allegations of which Plaintiff prays leave of this Court to insert herein.

186. As a direct and proximate result of the aforementioned, Decedent RICE and Plaintiff BRYAN LOVETT sustained injuries all or some of which conditions may be permanent and disabling in nature, all to their general damage in a sum in excess of \$15,000.00.

187. As a direct and proximate result of the aforementioned, Decedent RICE and Plaintiff BRYAN LOVETT were required to and did receive medical and other treatment for their injuries received in an expense all to their damages in a sum in excess of \$15,000. Said services, care, and treatment are continuing and shall continue in the future, at a presently unascertainable amount.

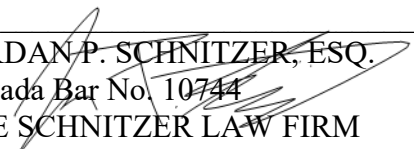
188. Plaintiffs have been compelled to retain the services of an attorney to prosecute this action and are, therefore, entitled to their reasonable attorney fees.

WHEREFORE, the Plaintiff LOVETT, expressly reserving his right to amend this Amended Complaint at the time of trial of this action to include all items of damages not yet ascertained, demands judgment against the Defendants, and each of them, as follows:

1. For special damages to each of the Plaintiffs including, but not limited to, medical expenses and lost wages and earning capacity exceeding FIFTEEN THOUSAND DOLLARS (\$15,000);

2. For general damages, including but not limited to for pain and suffering, in excess of FIFTEEN THOUSAND DOLLARS (\$15,000);
3. For punitive or exemplary damages in an amount to be determined at trial;
4. For pre- and post-judgment interest;
5. For Plaintiffs' reasonable attorneys' fees;
6. For the costs of this suit; and
7. For such other and further relief as the Court deems appropriate.


DATED on this 21 day of August, 2023.

BY: 
JORDAN P. SCHNITZER, ESQ.
Nevada Bar No. 10744
THE SCHNITZER LAW FIRM
9205 W. Russell Road, Suite 240
Las Vegas, Nevada 89148
Attorney for Plaintiff, Bryan Lovett

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial of all triable issues in the above matter.

DATED on this 21 day of August, 2023.

BY: 
JORDAN P. SCHNITZER, ESQ.
Nevada Bar No. 10744
THE SCHNITZER LAW FIRM
9205 W. Russell Road, Suite 240
Las Vegas, Nevada 89148
Attorney for Plaintiff, Bryan Lovett