

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

FILED
6/21/2019 6:36 PM
DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL
2016CH15489

LEILA MENDEZ and ALONSO ZARAGOZA,)	
)	5515173
Plaintiffs,)	Case No. 16 CH 15489
)	
v.)	Judge Sanjay T. Tailor
)	
CITY OF CHICAGO, et al.,)	
)	
Defendants.)	
)	

PLAINTIFFS’ MOTION TO EXCLUDE DEFENDANTS’ EXPERT

Plaintiffs Leila Mendez and Alonso Zaragoza hereby move under Illinois Rules of Evidence 702 and 703 to exclude the report of Defendants’ named expert, Bryan Esenberg.

INTRODUCTION

Plaintiffs’ surviving claim before this Court concerns, in part, whether the City of Chicago’s surcharges on home-sharing—taxes of four and two percent, respectively, in addition to the City’s standard hotel tax, which home-sharing guests also must pay—violate the Uniformity Clause of the Illinois Constitution. Plaintiffs have alleged that the surcharges violate the Uniformity Clause because (1) there is no “real and substantial difference,” *Federated Distributors, Inc. v. Johnson*, 125 Ill. 2d 1, 8–9 (1988), between hotel guests who do not pay the surcharges and home-sharing guests who do, and (2) the surcharges do not bear any reasonable relationship to the object of the City’s home-sharing ordinance. Second Am. Compl. ¶¶ 135–142.

The City, in response, asserts that home-sharing makes long-term housing less affordable and thus contributes to homelessness in a way that ordinary hotel accommodations (supposedly) do not. Exhibit A, Defs.’ Resp. To Pls.’ First Set of Interrog. (“Defs.’ 1st Interrog. Resp.”) No. 11. In response to Plaintiffs’ second argument, the City asserts primarily: (1) that the four

percent surcharge bears a reasonable relationship to its purported purpose of preventing homelessness; and (2) that the two percent surcharge bears a reasonable relationship to its purported purpose of providing housing and supportive services for victims of domestic violence, specifically because home-sharing (supposedly) reduces the availability of affordable housing for victims of domestic violence. *Id.* Nos. 10-14; Exhibit B, Defs.’ Resp. to Pls.’ Second Set of Interrog. (Defs.’ 2nd Interrog. Resp.) Nos. 27-28.

To refute the City’s purported justifications, the Plaintiffs retained an expert witness, Dr. Adrian Moore. Dr. Moore has opined that certain studies the City has relied on (the “Studies”), which purport to show a relationship between home-sharing and rising long-term rents in some cities other than Chicago, do not actually establish that home-sharing has this tendency, let alone establish that home-sharing is likely to increase homelessness in Chicago. The City, in turn, has produced a report (attached, minus exhibits, as Exhibit C) from its own expert witness, Bryan Esenberg, Deputy Commissioner of the City of Chicago Department of Housing, who has opined that the Studies and his own observations, do provide a basis for concluding that increased home-sharing will lead to increased rents and homelessness in Chicago.

Plaintiffs now move to exclude Esenberg’s report and testimony for three reasons. *First*, Esenberg’s deposition testimony (attached in relevant part as Exhibit D) shows that he lacks any knowledge of econometric and statistical methods and therefore is not qualified to opine on the Studies or Dr. Moore’s conclusions about them. *Second*, Esenberg’s testimony shows that he did not apply any methodology, let alone a reliable one, in forming his opinion. *Third*, Esenberg’s testimony shows that he lacks basic knowledge regarding single room occupancy housing and zoning procedures in Chicago and therefore is not qualified to opine on these factors’ relative influence on the availability of affordable housing.

STANDARD

“[I]t is within the trial court’s discretion to determine whether a witness is qualified as an expert.” *Thompson v. Gordon*, 221 Ill. 2d 414, 432 (2006). For expert testimony to be admissible, however, the proffered expert must be “qualified as an expert by knowledge, skill, experience, training, or education” so that “the testimony will assist the trier of fact in understanding the evidence.” *Friedman v. Safe Sec. Servs., Inc.*, 328 Ill. App. 3d 37, 44 (1st Dist. 2002). And an expert testifying to scientific analysis must base his testimony on a methodology that is generally accepted in the field as being sufficiently reliable. *In re Commitment of Simons*, 213 Ill. 2d 523, 530 (2004).

ARGUMENT

I. Esenberg lacks any knowledge of econometric and statistical methods and otherwise has no basis for evaluating the reports on which the City relies.

The Court should exclude Esenberg’s report and testimony because Esenberg has no knowledge of econometric and statistical methods and lacks any other basis for evaluating the reports on which the City relies.

In his report, Esenberg primarily states that he disagrees with Dr. Moore’s conclusions about the Studies. While Dr. Moore opined that one cannot draw any conclusions about home-sharing’s effects on homelessness from the Studies, Esenberg summarily opined in his report that, to the contrary, one can.

Esenberg’s deposition testimony shows that he lacks any basis for evaluating or even understanding the Studies. By his own admission, he has no experience performing econometric or statistical analysis. Exh. D, Esenberg Dep. at 43:14–19. His master’s degree is in real estate, not economics, and he has never written a graduate thesis or published any academic articles. *Id.* 37:18-19, 42:24-43:8. Accordingly, Esenberg was unqualified and unable to opine on—or even

explain—the methods applied by the Studies’ authors. The publications the City and Esenberg have cited that supposedly show a connection between home-sharing and rising rents are:

- Dayne Lee, *How AirBnB Short-Term Rentals Exacerbate Los Angeles’s Affordable Housing Crisis, Analysis and Policy Recommendations*, 10 Harv. L. & Pol’y Rev. 229–253 (2016);
- Mark Merante & Keren Mertens Horn, *Is Home Sharing Driving Up Rents? Evidence from Airbnb in Boston* (Univ. of Mass. Boston Dep’t of Econ., Working Paper No. 2016-03);
- Stephen Sheppard & Andrew Udell, *Do Airbnb Properties Affect House Prices?* (Jan. 1, 2018) (unpublished manuscript);
- Office of the New York City Comptroller, *The Impact of Airbnb on NYC Rents* (Apr. 2018);
- Kyle Barron et al., *The Sharing Economy and Housing Affordability: Evidence from Airbnb* (Apr. 1, 2018) (unpublished manuscript);
- David Wachsmuth, et al., McGill Univ. Sch. Of Urban Planning Urban Politics & Governance Research Group, *The High Cost of Short-Term Rentals in New York City* (Jan. 30, 2018);
- Josh Bivens, Econ. Policy Inst., *The Economic Costs and Benefits of Airbnb* (Jan. 30, 2019);
- D.C. Working Families, *Selling the District Short* (2017)

Exh. C, Esenberg Report at 3–5.

Regarding the first publication, which purportedly shows a correlation between home-sharing and rising rents in Los Angeles, Esenberg testified that he was not aware that it is a law

review student note, Exh. D., Esenberg Dep. 53:5–7, that he does not know whether such student notes are peer reviewed,¹ *id.* at 53:8–10, and that he does not know whether he normally relies on student notes in formulating policy advice or making policy decisions, *id.* at 53:14–17. Esenberg further testified that he does not know whether the note’s author has any training in economics, *id.* at 53:18–20, or what methodology the author applied “[o]ther than laws of supply and demand,” *id.* at 54:3–5, 65:6–8. He testified that he does not know whether the author performed “the kind of econometric analysis that an economist would perform to show that one factor [such as increased home-sharing] causes another [such as increased homelessness],” *id.* at 65:9–20.

Regarding the paper on Boston by Merante and Horn, Esenberg testified that he did not know whether it was peer reviewed, *id.* at 69:14–16, could not identify the methodology the authors applied, *id.* at 69:19–21, and could not say how strong of a statistical correlation between increased Airbnb density and increased rent the study found, *id.* at 71:1–4.

Regarding the three papers about New York City—by Sheppard and Udell, the New York City Comptroller’s Office, and Wachsmuth, et al., respectively—Esenberg again could not identify the methodology any of the authors applied. *Id.* at 76:1–3, 77:16–18, 83:9–11. With respect to the first two (he was not asked about the third), Esenberg also could not state whether the authors found a statistical correlation between home-sharing and rising long-term rents, *id.* at 75:20–24, 77:6–15, 78:8–12.

Regarding the nationwide study by Barron, et al., Esenberg was again unable to state what methodology the authors applied or whether the authors found a statistical correlation

¹ They are not, and law reviews’ student editors generally lack knowledge necessary to evaluate the quality of articles drawing on non-legal academic disciplines such as economics. See Richard A. Posner, *Against the Law Reviews*, Legal Affairs (Nov.–Dec. 2004), http://www.legalaffairs.org/issues/November-December-2004/review_posner_novdec04.msp.

between home-sharing and rising rents. *Id.* at 78:5–12. Regarding the paper by Bivens, Esenberg admitted that it merely cited other studies on the above list and therefore provided no additional independent support for the City’s position. *Id.* at 90:21–24.

Regarding the paper by DC Working Families, Esenberg stated that he is “not sure” who the institutional author is. *Id.* at 91:23–24. He acknowledged that he had not read the article from the *Real Deal* website on which the DC Working Families paper relied, and did not know whether that article applied reliable economic or statistical methods. *Id.* at 94:24–95:3. He further admitted that he had not seen the report by Thomas Davidoff that the DC Working Families paper cited, *id.* at 95:14–20, and that he does not know whether that study applied reliable econometric or statistical methods, *id.* at 95:21–23. Further, the DC Working Families paper did *not* directly cite Davidoff’s study, but rather a blog post reporting Davidoff’s findings, and Esenberg testified that he did not know whether that blog post’s report was accurate. *Id.* at 96:3–13.

In other words, Esenberg’s testimony reveals that he has no expertise that would qualify him to opine on the findings of the publications cited in his report—the reports that supposedly show a connection between home-sharing and increased rents in cities other than Chicago. He could not assess their reliability, or even summarize their purported findings. The Court should therefore exclude this portion of his report and any testimony from him regarding these publications and the subjects they address.

II. Mr. Esenberg’s opinion is not founded on any methodology.

In addition, the Court should exclude Esenberg’s report and testimony because they are not based on a reliable methodology—indeed, they are not based on any methodology at all. In general, “scientific evidence is admissible if the methodology underlying [an expert’s] opinion is

sufficiently established to have gained general acceptance in the particular field in which it belongs.” *Donnellan v. First Student, Inc.*, 383 Ill. App. 3d 1040, 1057 (1st Dist. 2008) (internal marks and citation omitted). But a court cannot even resolve that issue—and therefore cannot admit proffered expert testimony—where, as here, an expert cannot even identify *any* methodology that he applied.

In the “Affirmative Opinions” section of his report, Esenberg simply lists the publications the City relies on, summarizing or quoting portions he believes support the City’s position, and then asserts that the publications are “of a type that would be reasonably relied upon by policy makers and advisers in positions such as mine in forming opinions and inferences upon the subjects the reports address.” Exh. C, Esenberg Report at 5.

Asked what he meant by “policy makers and advisers in positions such as mine,” Esenberg testified that he was referring to City of Chicago officials such as himself, namely “the deputy commissioners, managing deputy commissioners, and the commissioners in the city as well as the Mayor’s Office who make policies and laws.” Exh. D., Esenberg Dep. at 46:7–47:16. He admitted that he does not know “what policymakers outside the city of Chicago would rely on.” *Id.* at 51:21–52:4. Thus, Esenberg’s report only establishes, at most, that the City of Chicago relies on this “type” of report (whatever that means). It does not establish—as it must—that experts in any particular *field* rely on such reports or that it is *reasonable* for the City of Chicago staff to rely on such reports. *See McKinney v. Hobart Bros. Co.*, 2018 IL App (4th) 170333 ¶ 47 (party seeking to introduce expert testimony that relies on facts or data gathered by others “ha[s] the burden of laying a foundation for [the] expert opinion by showing not only that [the proffered expert] himself [is] qualified but also that his reliance on [others’] work was (1) customary in [his] field and (2) reasonable”).

Further, Esenberg was unable to explain the “type” of reports he and others supposedly rely on in forming opinions and inferences. That is, he could not describe any method by which he or the City selects reports to rely on in giving public policy advice. Asked how he determines which reports to rely on in formulating his opinions, he stated that it would be a matter of “consensus” among the staff members involved. Exh. D, Esenberg Dep. at 47:17–48:13. But that does not answer the question; it does not explain *how* he and the others choose which reports to rely on. He said it might matter who authored a report, but that he does not know “what value [he would] weight that with compared to other considerations.” *Id.* at 48:14–22. He also stated that he does not consider whether a report is peer reviewed,² *id.* at 49:7–10, or the econometric or statistical methodology that a report applies, except that he is concerned that it have a “large enough sample size.” *Id.* at 50:9–14. Asked how he could know whether a sample size is large enough to make a study reliable, given that he is not familiar with econometric and statistical methods, he was unable to answer. *Id.* at 50:18–51:15.

In summary, Esenberg’s “Affirmative Opinion” is little more than an attempt to justify the City’s reliance on the Studies by just summarily asserting that the City does, in fact, rely on such reports for reasons he cannot explain. The Court should therefore exclude Esenberg’s “Affirmative Opinion” because it lacks any foundation in a reliable methodology or expertise in any relevant field.

² As part of its inquiry into the reliability of testimony like Mr. Esenberg’s, the Court is required to consider, among other things, whether the research on which the purported expert relies is peer reviewed. *Donaldson v. Cent. Ill. Pub. Serv. Co.*, 199 Ill. 2d 63, 80 (2002).

III. Mr. Esenberg’s lack of knowledge of housing and zoning matters render his opinion unreliable.

Some portions of Esenberg’s opinions depend on facts related to affordable housing and zoning. His deposition testimony reveals, however, that he is not an expert in these matters and lacks knowledge of critical facts regarding the decline of single room occupancy hotels (“SRO”s) and zoning procedures in Chicago.

A. Esenberg lacked any basis for opining that home-sharing caused the recent elimination of an SRO building in Chicago.

In his report, Esenberg purports to have “seen the effects of house sharing first-hand” in Chicago based on the alleged recent conversion of a single room occupancy hotel (“SRO”) in the Logan Square neighborhood “into a building that will be reserved for short term rentals.” Exh. C, Esenberg Report at 7. But Esenberg’s deposition testimony reveals that Esenberg had no basis for concluding that short-term rentals were responsible for the elimination of that SRO building.

Esenberg testified that he does not know whether the building in question would still be operated as an SRO if short-term rentals were not an option—i.e., he admitted that he does not actually know whether short-term rentals actually caused the elimination of this particular affordable housing. Exh. D, Esenberg Dep. at 27:17–28:5. He testified that he does not know how many of the building’s 24 units will be used for short-term rentals, or even whether more than one unit in the building will be rented on a short-term basis. *Id.* at 25:8–21. Esenberg also testified that he was not aware that the City’s home-sharing ordinance would prohibit more than six units of the building from being used for home-sharing³—which means that his report’s assertion that the building would be “reserved for short-term rentals” is legally impossible. *Id.* at 25:4–7.

³ See Chi. Muni. Code §§ 4-6-300(h)(9), 4-14-060(e).

Esenberg's testimony also shows that he has no knowledge of the history of the decline of SRO housing in Chicago, let alone knowledge of its causes. He testified that he does not know how many SRO buildings or units currently exist in Chicago and does not even have a "ballpark" sense of those figures. *Id.* at 12:16–13:6. Asked whether there has been an overall decline in SRO buildings in Chicago in recent decades, and whether "decades ago, there were a lot more SROs than there are now," he testified that he does not know. *Id.* at 13:7–16, 17:22–18:2.

When he was shown articles documenting the long, severe decline of SROs in Chicago from the mid-1970s through the present, Esenberg stated that he did not know whether they were correct, either in their specifics or in the general trend they described. When shown a *Chicago Tribune* article⁴ reporting that SRO units in Chicago declined from 52,130 units in 1973 to 13,554 units in 1994, he could not say whether the figures were correct, whether they were "about right," or even whether they "reflect[ed] the general trend of the decline during that time period." *Id.* at 13:23–14:21. When shown a *Chicago Magazine* article⁵ reporting that the number of Chicago SRO buildings declined from 106 in 2008 to 81 in 2013, Esenberg stated that he did not know whether it was correct. *Id.* at 16:6-21. Asked about the article's statement that Chicago lost 17,000 SRO units between 1976 and 1986, Esenberg stated that he did not know whether it was correct or even whether it was consistent with the general trend in Chicago during that time period. *Id.* at 17:5–15.

Esenberg's deposition testimony also shows that he lacks knowledge of the housing market in the Logan Square neighborhood and thus lacks any basis for concluding that the recent

⁴ Steve Mills, *SRO Hotels Continue to Dwindle*, Chi. Trib., July 25, 1994, <https://www.chicagotribune.com/news/ct-xpm-1994-07-25-9407250121-story.html>.

⁵ Whet Moser, *The Long, Slow Decline of Chicago's SROs*, Chi. Mag., June 14, 2013, <https://www.chicagomag.com/Chicago-Magazine/The-312/June-2013/The-Long-Slow-Dwindle-of-Chicagos-SROs/>.

loss of an SRO there was attributable to short-term rentals rather than other factors affecting the neighborhood's housing market generally. Although he testified that rents generally have risen in the neighborhood, he could not say how much they have risen, when they began rising, why they have risen, or whether the neighborhood lacks affordable housing. *Id.* at 9:22–10:11, 11:22–24.

With no knowledge of the history of SROs' decline in Chicago, and minimal knowledge of the Logan Square real estate market, Esenberg had no knowledge or expertise that would qualify him to attribute the recent loss of one particular Logan Square SRO to the existence of home-sharing as opposed to the various other factors—factors that caused the elimination of almost all of Chicago's SRO buildings in the decades before home-sharing platforms existed or to the other factors that have caused Logan Square long-term rents to rise, but about which Esenberg was unaware. And, again, Esenberg admitted that he could not even say whether the building in question would still be used as an SRO if home-sharing were not permitted there. The Court should therefore exclude Esenberg's report and testimony to the extent that it is based on the elimination of the SRO.

B. Esenberg lacks any basis for opining on zoning.

Plaintiffs' expert, Dr. Adrian Moore, has cited literature showing that zoning restrictions are one of the greatest factors making housing unaffordable in U.S. cities. Esenberg discounts this, however, asserting that in Chicago “[i]t's fairly easy” to get zoning changes that would allow for the creation of more housing. *Id.* at 115:14–116:10.

Yet Esenberg also testified that he is “by no means a zoning expert.” *Id.* at 117:5–6. And his testimony demonstrates that he is not familiar with the process for obtaining a zoning change in Chicago. Most notably, he asserted that it is not necessary to get one's alderman's blessing to obtain a zoning change. *Id.* at 116:12–18. This is contrary to the reality—so well known that this

Court may take judicial notice of it—that Chicago aldermen can and do exercise so-called “aldermanic prerogative” to approve or deny any zoning changes in their respective wards—and that they have used this power to block construction of affordable housing. *See, e.g.,* Tanvi Misra, *How Chicago’s Aldermen Help Keep It Segregated*, CityLab, Aug. 2, 2018⁶; Patricia Fron, et al., *Aldermanic Prerogative is the Grease That Oils the Machine*, Chi. Trib., Feb. 7, 2019⁷; Fran Spielman, *Aldermen to Be Stripped of Absolute Power Over Licenses and Permits, Not Zoning*, Chi. Sun-Times, May 14, 2019 (discussing incoming mayor’s high-profile efforts to curb aldermanic prerogative)⁸; Chicago Lawyers’ Committee for Civil Rights Community Law Project, *Chicago Land Use: A Guide for Communities*⁹ 3 (“Under the current system, almost all zoning changes rely upon the approval of the local alderman.”).

Because Esenberg lacks basic knowledge of Chicago zoning procedures—and, as a result, believes that obtaining a zoning change to build affordable residential housing is easier than it actually is—he is not qualified to opine on how such procedures affect the supply of affordable housing in Chicago, compared to other factors such as home-sharing. That alone is reason enough for the Court to exclude his report and testimony.

CONCLUSION

The deposition testimony of Defendants’ proffered expert witness, Bryan Esenberg, shows that he is not qualified to opine on the studies the City has relied on or on factors affecting the availability of affordable housing in Chicago. The Court should therefore exclude Esenberg’s

⁶ <https://www.citylab.com/equity/2018/08/how-chicagos-aldermen-help-keep-it-segregated/564983/>.

⁷ <https://www.chicagotribune.com/opinion/commentary/ct-perspec-aldermanic-prerogative-zoning-political-corruption-0208-20190207-story.html>.

⁸ <https://chicago.suntimes.com/city-hall/2019/5/14/18626943/aldermen-to-be-stripped-of-absolute-power-over-licenses-and-permits-not-zoning>.

⁹ <https://tinyurl.com/y3yovpun>.

report and testimony in considering the parties' cross-motions for summary judgment and at any trial in this case.

Dated: June 21, 2019.

Respectfully submitted,

LEILA MENDEZ and ALONSO ZARAGOZA

By: /s/ Jacob Huebert
One of their Attorneys

Liberty Justice Center
Cook County No. 49098
Jeffrey Schwab (#6290710)
190 S. LaSalle Street, Suite 1500
Chicago, Illinois 60603
(312) 263-7668
(312) 263-7702 (fax)
jschwab@libertyjusticecenter.org

Goldwater Institute
Jacob Huebert (#6305339)
Timothy Sandefur (#6325089 / pro hac vice #61192)
Christina Sandefur (#6325088 / pro hac vice # 61186)
500 E. Coronado Road
Phoenix, Arizona 85004
(602) 462-5000
(602) 256-7045 (fax)
litigation@goldwaterinstitute.org

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I, Jeffrey Schwab, an attorney, hereby certify that on June 21, 2019, I served the foregoing Plaintiffs' Motion to Exclude Defendants' Expert via electronic filing service provider FileTime Illinois to Weston Hanscom (Weston.Hanscom@cityofchicago.org), Richard Danaher (Richard.Danaher@cityofchicago.org), and Jason Rubin (Jason.Rubin@cityofchicago.org).

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.



Jeffrey M. Schwab

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

LEILA MENDEZ and ALONSO ZARAGOZA,)	
)	
Plaintiffs,)	Case No. 16 CH 15489
)	
v.)	Judge Sanjay T. Tailor
)	
CITY OF CHICAGO, et al.,)	
)	
Defendants.)	
)	

**LIST OF EXHIBITS
TO PLAINTIFFS' MOTION TO EXCLUDE DEFENDANTS' EXPERT**

Exhibit A – Defendants' Responses To Plaintiffs' First Set of Interrogatories.

Exhibit B – City of Chicago's Responses to Plaintiffs' Second Set of Interrogatories.

Exhibit C – Report of Defendants' Expert, Bryan Esenberg (exhibits omitted).

Exhibit D – Transcript of Deposition of Bryan Esenberg (excerpts).

Exhibit A

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

LEILA MENDEZ, et al.,)	
)	
Plaintiffs,)	Case No. 2016-CH-15489
)	
v.)	Judge Sanjay T. Tailor
)	
CITY OF CHICAGO, et al.,)	
)	
Defendants.)	
)	

**DEFENDANTS' RESPONSES
TO PLAINTIFFS' FIRST SET OF INTERROGATORIES**

Defendant City of Chicago ("City") responds to Plaintiffs' First Set of Interrogatories as follows:

INTERROGATORY NO. 1

Identify all persons with knowledge of any of the events alleged or referred to in Paragraphs 1 through 21 and 129 through 151 of Plaintiffs' Amended Complaint, including the nature and substance of each person's knowledge.

RESPONSE: The City objects to this Interrogatory as vague, overbroad and unduly burdensome. Subject to and without waiving these objections, the City states that Stefan Schaffer, Deputy Policy Director, Mayor's Office, has knowledge of the policy reasons behind the imposition of the surcharge at issue, including the analysis that was conducted prior to its imposition. Other persons with knowledge of these subjects include:

- Beth Beatty, Deputy Director, Financial Policy, Finance
- Rosa Escareno, Commissioner, Department of Business Affairs & Consumer Protection
- Maria Guerra, Director of Legislative Counsel & Government Affairs, Mayor's Office
- Samantha Fields, Budget Director, Office of Budget & Management

- Steven Valenziano, Assistant Zoning Administrator, Department of Planning & Development
- Members of the Chicago City Council

Investigation continues. The City will supplement this Response as appropriate.

INTERROGATORY NO. 2

Identify all witnesses you may rely on in defense of this case, including the nature and substance of each person's knowledge and anticipated testimony.

RESPONSE: The City anticipates that it will rely on Mr. Schaffer as a witness, who can testify about the policy reasons behind the imposition of the surcharge at issue, including the analysis that was conducted prior to its imposition. The City has not yet identified who else it may be calling as witnesses in this case. Once that determination is made, the City will duly supplement its response.

INTERROGATORY NO. 3

With respect to each and every person who may be used to present expert evidence regarding this action pursuant to Illinois Supreme Court Rule 213(f), identify:

- a. all opinions to be expressed, with a description sufficiently complete to include all of the information in your possession or control about such opinions;
- b. the specific allegations of the parties' pleadings to which such opinions are relevant, identified by pleading title and paragraph number;
- c. the basis, reasons, underlying data, and other information considered and relied on by the witness in forming the opinions to be expressed;
- d. all publications authored by the witness within the preceding ten years;
- e. all correspondence between the witness and the City;
- f. all drafts of the report produced for this litigation.

RESPONSE: The City has not yet identified who, if anyone, it will be calling as an expert witness in this case. Once that determination is made, the City will duly supplement its response.

INTERROGATORY NO. 4

Identify any and all meetings in which any member or agent of the City participated relating to the drafting and consideration of the Ordinance, specifically including those related to the addition of §§ 3-24-030(B) and 4-5-10(36), (37), and (38) to the Chicago Municipal Code.

RESPONSE: The City objects to this Interrogatory on the grounds that it seeks information that is neither relevant nor likely to lead to the discovery of relevant information. The surcharge and registration fees added by the Ordinance are either valid or invalid as written, and what was said in oral or written communications prior to passage of the Ordinance has no bearing on that issue. See Empress Casino Joliet Corp. v. Giannoulis, 231 Ill. 2d 62, 76 (2008) ("The reasons justifying the classification ... need not appear on the face of the statute, and the classification must be upheld if any state of facts reasonably can be conceived that would sustain it."). The City also objects that this Interrogatory is overbroad and unduly burdensome. The City further objects to the extent that the Interrogatory seeks information that is protected from disclosure by the attorney-client privilege, the work product privilege and/or the legislative privilege.

INTERROGATORY NO. 5

Identify any other meeting of any members of the City Council, a City Council committee, the City's Finance Department, or the City's Department of Business Affairs and Consumer Protection relating to the consideration or imposition of any tax or fee on vacation rentals, shared housing units, or shared housing unit operators from 2015 through the present.

RESPONSE: The City objects to this Interrogatory on the grounds that it seeks information that is neither relevant nor likely to lead to the discovery of relevant information. The surcharge and registration fees added by the Ordinance are either valid or invalid as written, and what was said in oral or written communications prior to passage of the Ordinance has no bearing on that issue. See Empress Casino Joliet Corp. v. Giannoulis, 231 Ill. 2d 62, 76 (2008) ("The reasons justifying the classification ... need not appear on the face of the statute, and the classification must be upheld if any state of facts reasonably can be conceived that would sustain it."). The

City also objects that this Interrogatory is overbroad and unduly burdensome. The City further objects to the extent that the Interrogatory seeks information that is protected from disclosure by the attorney-client privilege, the work product privilege and/or the legislative privilege.

INTERROGATORY NO. 6

Identify each and every short term residential rental intermediary that has paid the license fee imposed by Chi. Muni. Code § 4-5-010(37).

RESPONSE: The City objects to this Interrogatory on the grounds that it seeks information that is neither relevant nor likely to lead to the discovery of relevant information. Subject to and without waiving this objection, the City responds that, as of the date of this Response, the following short term residential intermediaries have paid the license fee: AIRBNB ACTION, LLC d/b/a Airbnb; HOMEAWAY.COM, Inc.

INTERROGATORY NO. 7

Identify the number of shared housing unit operators that have paid the license fee imposed by Chi. Muni. Code § 4-5-010(38).

RESPONSE: The City objects to this Interrogatory on the grounds that it seeks information that is neither relevant nor likely to lead to the discovery of relevant information. Subject to and without waiving this objection, the City responds that, as of the date of this Response, 26 shared housing unit operators have paid the license fee.

INTERROGATORY NO. 8

Identify each and every fact that forms the basis for the City's denial, in its Answer, of Paragraph 133 of the Amended Complaint, which states that "some individuals stay (and pay taxes) only at vacation rentals or shared housing units in Chicago, and some individuals stay (and pay taxes) only at hotels, bed-and-breakfasts, or other 'hotel accommodations' that are not vacation rentals or shared housing units."

RESPONSE: The City objects to this Interrogatory on the grounds that it lacks foundation. Paragraph 133 of the Amended Complaint alleged that "[t]here are individuals who are members of the first class of taxpayers who are not members of the second class of taxpayers ..." While

the City does not deny that there may be some individuals who stay (and pay taxes) only at vacation rentals or shared housing units in Chicago (hereafter collectively "shared housing units"), and some individuals who stay (and pay taxes) only at hotels, bed-and-breakfast establishments ("B&Bs"), or other hotel accommodations that are not shared housing units, the City denies that there is an identifiable "class of taxpayers" who stay only in shared housing units or an identifiable "class of taxpayers" who stay only at hotels or B&Bs.

INTERROGATORY NO. 9

Identify each and every fact supporting the City's position, reflected in its Answer to Paragraph 137 of the Amended Complaint, that the home-sharing surcharge's stated purpose — to "fund supportive services attached to permanent housing for homeless families and to fund supportive services and housing for the chronically homeless," Chi. Muni. Code § 3-24-030 — bears a reasonable relationship to the object of the Ordinance.

RESPONSE: The City objects to this Interrogatory on the grounds that it is vague and lacks foundation. Subject to and without waiving these objections, the City states that the surcharge's stated purpose is the same as the object of the Ordinance and therefore by definition bears a reasonable relationship to it.

INTERROGATORY NO. 10

Identify each and every fact supporting the City's position, reflected in its Answer to Paragraph 138 of the Amended Complaint, that guests of vacation rentals and shared housing units affect homelessness, or that vacation rentals and shared housing units have any greater connection to homelessness than other commercial and non-commercial traveler housing accommodations, such as hotels, bed-and-breakfasts, and the houses of friends or relatives.

RESPONSE: The City objects to this Interrogatory on the grounds that it lacks foundation. Subject to and without waiving this objection, the City states that studies indicate that house sharing has a tendency to reduce the availability of affordable housing, thereby contributing to the problem of homelessness. Each housing unit that is used for short-term house sharing rentals is a unit that is not available for use as permanent housing for residents. Hotels and B&Bs are

generally located in non-residential districts and therefore do not have that effect. There are only about 199 hotels in Chicago, with a total of about 51,600 rooms available for rent, and there are only about 20 B&Bs. By contrast, there are listings for over 6,369 shared housing units available for rent, largely in residential neighborhoods, so they use up much more housing that would otherwise be available for permanent housing. Investigation continues. The City will supplement this Response as appropriate.

INTERROGATORY NO. 11

Identify each and every real or substantial difference between vacation rentals and shared housing units, on the one hand, and other establishments included in the definition of hotel accommodations, on the other, asserted by the City and that the City relied on in denying Paragraph 134 of the Amended Complaint in its Answer.

RESPONSE: There are real and substantial zoning differences among the different types of hotel accommodations. While neither hotels nor B&Bs are permitted in residential single-unit districts (RS1, RS2, RS3), shared housing units are permitted in such districts. Similarly, only shared housing units are permitted in low density multi-unit districts (RT3.5). Consequently, shared housing units limit the market for housing available for long term use while hotels and B&Bs do not. Also, hotels and B&Bs have owners or employees who are present when guests stay at those establishments, while shared housing units generally do not. Furthermore, regulators and public safety officials know where hotels and B&Bs are located, and they know who to contact if needed. By contrast, shared housing units are widely dispersed and often anonymous, with only a limited amount of information provided on web site listings, thereby making enforcement and regulation more difficult, time consuming, and expensive. Investigation continues. The City will supplement this Response as appropriate.

INTERROGATORY NO. 12

Identify each and every object of the home-sharing surcharge.

RESPONSE: The purpose of the surcharge is to fund supportive services attached to permanent housing for homeless families and to fund supportive services and housing for the chronically homeless.

INTERROGATORY NO. 13

Identify any and all public policies that the City alleges support the home-sharing surcharge.

RESPONSE: One public policy consideration supporting the house sharing surcharge is caring for the less fortunate, including the homeless. Homelessness is a significant problem in Chicago and nationwide. Addressing that problem is an important public policy consideration, and addressing the problem requires revenue, which the house sharing surcharge helps provide. Studies indicate that house sharing has a tendency to reduce the availability of affordable housing, thereby contributing to the problem of homelessness. Each housing unit that is used for short-term house sharing rentals is a unit that is not available for use as permanent housing for residents. In addition, it is an important and long-standing public policy consideration to keep residential neighborhoods relatively quiet, peaceful and uncongested. This is one reason that house sharing was not allowed before the ordinance at issue went into effect, and it is a reason why hotels and B&Bs must generally be located in areas that are zoned for non-residential uses. Investigation continues. The City will supplement this Response as appropriate.

INTERROGATORY NO. 14

Identify each and every way that the City asserts that the home-sharing surcharge bears a reasonable relationship to any object of the legislation or to any public policy.

RESPONSE: See Responses to Interrogatory Nos. 10 - 13.

INTERROGATORY NO. 15

Identify the ways in which vacation rentals and shared housing units disrupt the desired physical character of Chicago's residential neighborhoods, and how the City believes the home-sharing surcharge prevents this type of disruption.

RESPONSE: In general, shared housing units are located in residential neighborhoods. Guests of shared housing units are not permanent residents of those neighborhoods and have no particular stake in the well-being of the neighborhood. They are transient guests, generally from out of town, and they often take up parking spaces that would otherwise be available to residents. In some cases, they are there to "party," which can mean noise and other disturbances for neighbors. There is no requirement that an owner, or an employee of the owner, be present to supervise their activities, as there is at a hotel or B&B. The surcharge does not necessarily prevent disruption, but there is no legal requirement that a tax have such an effect – only that it meet the requirements of the Uniformity Clause, which the surcharge does. Investigation continues. The City will supplement this Response as appropriate.

INTERROGATORY NO. 16

Identify the ways in which vacation rentals and shared housing units decrease the number of units of affordable housing, and how the home-sharing surcharge mitigates these effects.

RESPONSE: Studies indicate that house sharing has a tendency to reduce the availability of affordable housing, thereby contributing to the problem of homelessness. Each housing unit that is used for short-term house sharing rentals is a unit that is not available for use as permanent housing for residents. The proceeds of the surcharge are used to fund supportive services attached to permanent housing for homeless families and to fund supportive services and housing for the chronically homeless. The City will produce documents providing additional details about the programs that the surcharge funds. Investigation continues. The City will supplement this Response as appropriate.

INTERROGATORY NO. 17

Identify the ways in which vacation rentals and shared housing units cause or increase guest-created disturbances in the City, and how the home-sharing surcharge mitigates these effects.

RESPONSE: See Response to Interrogatory No. 15.

INTERROGATORY NO. 18

Identify each and every fact on which the City relies to justify its denial of Paragraph 142 of the Amended Complaint, which states that "for the purpose of licensing fees, there is no real and substantial difference between hotels, bed-and-breakfast establishments, vacation rentals, and shared housing units."

RESPONSE: There are only about 199 hotels in Chicago, with a total of about 51,600 rooms available for rent, and there are only about 20 B&Bs. By contrast, there are listings for over 6,369 shared housing units available for rent. Hotels are licensed, are in non-residential zoning districts, and have employees on site. Since there are relatively few of them, it is relatively easy and inexpensive for the City to perform license checks, building inspections and other required activities. The same is generally true of B&Bs. By contrast, licensing and inspecting all of the available shared housing units would be administratively inconvenient and expensive. In fact, when the City first allowed house sharing, by the same ordinance that imposed the surcharge, it had to spend over \$1.1 million to set up a system for registering and regulating shared housing units. Investigation continues. The City will supplement this Response as appropriate.

INTERROGATORY NO. 19

Identify each and every alleged real or substantial difference between hotels, bed-and-breakfast establishments, vacation rentals, and shared housing units that the City believes justifies the imposition of different fees under Chi. Muni. Code § 4-5-010.

RESPONSE: See Response to Interrogatory No. 18.

INTERROGATORY NO. 20

Identify each and every fact that the City alleges supports its Answer to paragraph 148 of the Amended Complaint, which denies that the Code's definitions of vacation rentals and shared housing units are virtually identical.

RESPONSE: The City objects to this Interrogatory on the grounds that it lacks foundation. The City does not deny that the ordinance definitions of vacation rentals and shared housing units are virtually identical. The City denies the allegation, of paragraph 148 of the Amended Complaint, that the different fee systems for vacation rentals and shared housing units are unjustifiable. Pursuant to the pertinent Code provisions, a unit owner may choose which licensing system to use, and this will have an effect on which regulations and procedures will apply.

INTERROGATORY NO. 21

Identify each and every object of Chi. Muni. Code § 4-5-010, which imposes no license fee on the owner or tenant of a single shared-housing unit but does impose license fees on hotels, bed-and-breakfasts, vacation rentals, and shared housing unit operators.

RESPONSE: The owner of a single shared housing unit is generally an individual who is not otherwise in the business of renting out hotel accommodations. By listing their units through intermediaries, the owners of such units allow the City to deal primarily with just a few intermediaries rather than a large number of individual unit owners. The intermediaries help monitor the rentals of such units, and they pay much larger license fees, based in part on the number of units they list. Owners of multiple shared housing units are more likely to be real estate developers or investors who are in the business of renting out hotel accommodations. It is important for the City to be able to have some control over their activities, and requiring them to obtain a license helps provide that control because, among other things, the City can put a hold on - or refuse to renew – the license of an operator that is creating problems. Investigation continues. The City will supplement this Response as appropriate.

INTERROGATORY NO. 22

Identify any and all public policies that the City alleges support its decision to exempt owners and tenants of a single share-housing unit from the license fees that apply to hotels, bed-and-breakfasts, vacation, rentals, and shared housing unit operators under Chi. Muni. Code § 4-5-010.

RESPONSE: The City objects to this Interrogatory on the grounds that it lacks foundation. See Response to Interrogatory No. 21.

INTERROGATORY NO. 23

State the factual basis for the City's denial of Paragraph 149 of the Amended Complaint.

RESPONSE: See Response to Interrogatory No. 21.

INTERROGATORY NO. 24

Identify all documents and other tangible items Defendants may use in defense of this action.

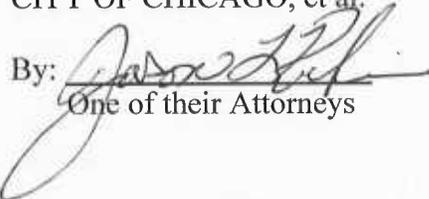
RESPONSE: The City will produce documents responsive to Plaintiffs' First Set of Requests for Documents. The City has not yet identified which documents it will use in defense of this action. The City will duly supplement its response to this Interrogatory.

INTERROGATORY NO. 25

Identify each person who provided information needed to respond to any interrogatory or request herein, including which interrogatory (by number) was addressed by each such person respectively.

RESPONSE: Stefan Schaffer provided information needed to respond to all of the Interrogatories herein. Joy Adelizzi provided information needed to respond to Interrogatory Numbers 6, 7, 10 and 18. Steven Valenziano provided information needed to respond to Interrogatory Numbers 10, 11, 13, 15, 16, 18 and 21.

CITY OF CHICAGO, et al.

By: 
One of their Attorneys

Weston Hanscom
Jason Rubin
City of Chicago Law Department
Revenue Litigation Division
30 N. LaSalle Street, Suite 1020
Chicago, Illinois 60602
(312) 744-9077/4174
(312) 744-6798 (fax)
Weston.Hanscom@cityofchicago.org
Jason.Rubin@cityofchicago.org
Attorney No. 90909

CERTIFICATION

On this day, July 6th, 2018, under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the answers to interrogatories as set forth in this document are true and correct to the best of his knowledge, information and belief.



Stefan Schaffer
Deputy Policy Director for City of Chicago

CERTIFICATE OF SERVICE

I, Jason L. Rubin, an attorney, hereby certify that on July 10, 2018, I served the foregoing **DEFENDANTS' RESPONSES TO PLAINTIFFS' FIRST SET OF INTERROGATORIES** on Defendants' counsel by electronic mail sent to Jacob Huebert, jhuebert@libertyjusticecenter.org, Jeffrey Schwab, jschwab@libertyjusticecenter.org, Timothy Sandefur, tsandefur@goldwaterinstitute.org, and Christina Sandefur, csandefur@goldwaterinstitute.org.

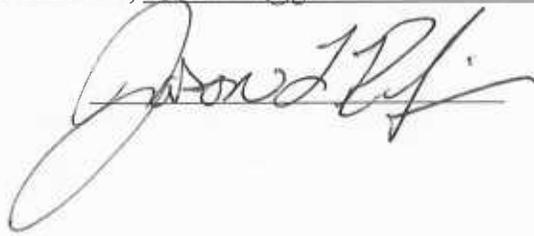
A handwritten signature in black ink, appearing to read "Jason L. Rubin", is written over a horizontal line. The signature is cursive and stylized.

Exhibit B

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

LEILA MENDEZ and ALONSO ZARAGOZA,)

Plaintiffs,)

v.)

CITY OF CHICAGO, a municipal corporation;)
And ROSA ESCARENO, in her official)
capacity as Commissioner of the City of)
Chicago Department of Business Affairs and)
Consumer Protection,)

Defendants.)

Case No. 16 CH 15489

Hon. Sanjay T. Tailor

**CITY OF CHICAGO'S RESPONSE TO PLAINTIFFS' SECOND
SET OF INTERROGATORIES**

Defendant City of Chicago ("City") responds to Plaintiffs' Second Set of Interrogatories as follows:

INTERROGATORY NO. 26

Identify each and every fact the City will rely on to show that the stated purpose of the Amendment's 2% surcharge — "to fund housing and related supportive services for victims of domestic violence," Chi. Muni. Code 3-24-030(C) — bears a reasonable relationship to the object of the Ordinance.

Response: The City objects to this Interrogatory on the grounds that it is vague and lacks foundation. Subject to and without waiving these objections, the City states that the surcharge's stated purpose is the same as the object of the Ordinance and therefore, by definition, bears a reasonable relationship to it.

INTERROGATORY NO. 27

Identify each and every object of the Amendment's 2% surcharge.

Response: The purpose of the surcharge is to fund housing and related supportive services for victims of domestic violence.

INTERROGATORY NO. 28

Identify any and all public policies that the City alleges support the Amendment's 2% surcharge.

Response: One public policy consideration supporting the surcharge is caring for victims of domestic violence. Survivors and victims of domestic violence often report that lack of safe and affordable housing is one of the primary barriers they face in choosing to leave an abusive partner. Studies indicate that house sharing has a tendency to reduce the availability of affordable housing, thereby contributing to the problem of domestic abuse victims lacking affordable housing. Each housing unit that is used for short-term house sharing rentals is a unit that it not available for use as permanent or transitional housing for victims of domestic violence. This also negatively impacts the housing available to the City and non-profit organizations seeking to shelter victims of domestic violence.

Another related policy consideration is to reduce the number of homeless people in Chicago. Domestic violence is seen as a predictive factor of homelessness. Studies indicate that domestic violence significantly contributes to homelessness due to lack of available and affordable housing for those seeking to escape a domestic abuse situation. A related policy consideration is to comply with HUD's federal mandate to prioritize domestic violence victims when addressing issues of homelessness. Compliance with that mandate is necessary in order to secure access

to the limited federal resources provided to combat homelessness. Investigation continues. The City will supplement this Response as appropriate.

INTERROGATORY NO. 29

Identify the "related supportive services for victims of domestic violence" the City funds, has funded, plans to fund, or may fund with revenue from the Amendment's 2% surcharge.

Response: The surcharge will enable the City to maintain existing shelter beds, fund additional shelter beds, and build a new shelter for victims of domestic violence. Additionally, the City currently supports approximately 30 different programs through various partner organizations who offer services to survivors of domestic violence. Some of these services include a 24/7 domestic violence hotline, immediate crisis counseling, safety planning, explanation of victim rights under the Illinois Domestic Violence Act, emotional support and guidance, crisis intervention, shelter placement, legal advocacy, linking survivors to medical and health services, child care, job training and housing options. Investigation continues. The City will supplement this Response as appropriate.

INTERROGATORY NO. 30

Identify each person who provided information needed to respond to any interrogatory or request herein, including which interrogatory (by number) was addressed by each such person respectively.

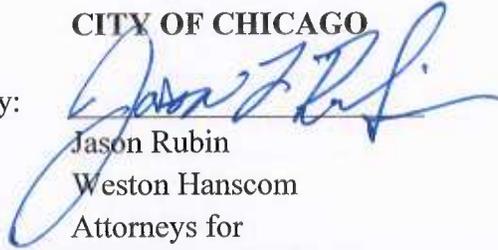
Response: Stefan Schaffer-City of Chicago Chief Resilience Officer, Christopher Wheat-Asst. to the Mayor, Anne Sheahan-Assistant to the Mayor, Robin Ficke-Research Director for World Business Chicago and Maura McCauley-Director of Homeless Prevention, Policy and Planning for the Chicago Department of Family

and Support Services all either provided or confirmed the accuracy of information used in answering Interrogatories Number 28 and 29.

Respectfully submitted,

CITY OF CHICAGO

By:



Jason Rubin
Weston Hanscom
Attorneys for
Defendants

Weston Hanscom
Deputy Corporation Counsel
City of Chicago Law Department
Revenue Litigation Division
30 N. LaSalle, Suite 1020
Chicago, IL 60602
(312) 744-9077

Jason Rubin
Senior Counsel
City of Chicago Law Department
Revenue Litigation Division
30 N. LaSalle, Suite 1020
Chicago, IL 60602
(312) 744-4174

CERTIFICATION

On this day, November 7, 2018, under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the answers to Interrogatories as set forth in this document are true and correct to the best of his knowledge, information and belief.



Stefan Schaffer
Chief Resilience Officer for City of Chicago

CERTIFICATE OF SERVICE

I, Jason Rubin, an attorney, hereby certify that on November 7, 2018, I caused the foregoing City of Chicago's Response to Plaintiffs' Second Set of Interrogatories to be served on:

Jeffrey Schwab
Liberty Justice Center
Cook County No. 49098
190 S. LaSalle Street, Suite 1500
Chicago, Illinois 60603
jschwab@libertyjusticecenter.org

via messenger delivery and electronic mail; and on

Jacob Huebert
Christina Sandefur
Timothy Sandefur
Goldwater Institute
jhuebert@goldwaterinstitute.org
csandefur@goldwaterinstitute.org
tsandefur@goldwaterinstitute.org

via electronic mail.



Exhibit C

REPORT OF BRYAN ESENBERG

March 28, 2019

A. Introduction

I am a Deputy Commissioner in the City of Chicago's Department of Housing, and I have been asked to determine whether there is support for the proposition that house sharing has a tendency to reduce the availability of affordable housing, thereby contributing to the problem of homelessness. I have also been asked to review and respond to the report of Dr. Adrian Moore, submitted by the plaintiffs in the case of Mendez, et. al. v. City of Chicago, et. al., 16 CH 15489.

B. Qualifications

1. My educational background is as follows:

1998 BA Economics, Indiana University
2006 MA Real Estate, University of Illinois – Chicago

2. My employment background is as follows:

City of Chicago, Dept. of Housing [formerly Planning & Development], Chicago, IL
05/17 to present

Deputy Commissioner, Multifamily Finance and Housing Preservation

- Oversee the City's investment in multifamily affordable housing and housing preservation programs
- Direct the planning and coordination of multifamily financing tools to include tax credits, bond cap, TIF and HUD funding totaling over \$100M annual
- Provide day to day management for the underwriting team and act as the division liaison for interdepartmental coordination
- Represent the division in strategic planning sessions for new funding sources, bonus programs and pilot programs to increase affordable housing opportunities and improve neighborhoods

City of Chicago, Dept. of Planning and Development, Chicago, IL
11/13 to 05/17

Assistant Commissioner, Housing Preservation

- Oversaw the management and implementation of the Troubled Buildings Initiative [TBI], the MicroMarket Recovery Program [MMRP] and the Neighborhood Stabilization Program [NSP]

- Provided guidance and direction to MMRP community partners, technical liaisons and delegate agencies under a revised community forward strategy to address vacant buildings and neighborhood change
- Leveraging MMRP and TBI, worked with the Dept. of Law, Dept. of Buildings and colleagues at DPD to develop and monitor the integration and collaboration of disparate division programs to achieve joint and related programmatic goals resulting in an expedited process to reclaim abandoned buildings
- Managed division day-to-day operations in absence of Deputy Commissioner from December of 2014 to February 2016

NHS Redevelopment Corporation, Chicago, IL
10/06 to 11/13

Real Estate Manager

- Manage day to day operations, budgeting and strategic planning for the real estate and development operations of NHS Chicago.
- Grew the Troubled Buildings single receivership program from 12 units to over 150 units annually. Affected over 1000 units of housing through the program.
- Assisted with City's MicroMarket Recovery Program strategy including vacant building acquisition, leveraging receivership and defining end use for vacant buildings. Raised \$300,000 in private contributions to rehabilitate 3 homes in the West Humboldt MMRP for long term, affordable Veteran housing on 500 Central Park.
- Improved property management operations for a scattered site portfolio of low income rentals across 289 MF units and 22 SF properties. Introduced energy efficiency measures to reduce expenses, implemented an asset management plan and transitioned management operations to third party vendors.

3. As a result of my educational and employment background, I have knowledge and experience that assist me with addressing the issues I have been asked to address in this report. Specifically, my BA in Economics and MA in Real Estate have been the foundation for my career in understanding Chicago's real estate markets, developing affordable housing and administering government housing programs.

C. Materials Reviewed

In connection with this matter, I have reviewed the following materials:

1. The City's answers to plaintiffs' first and second sets of interrogatories.
2. The documents produced by the City, marked D1 – 618.

3. The report of Dr. Moore (Moore deposition exhibit 3).
4. The transcript of the deposition of Dr. Moore, including the deposition exhibits.

I have also performed some research of my own, as discussed below.

D. Affirmative Opinions

In my opinion, there is substantial support for the proposition that house sharing has a tendency to reduce the availability of affordable housing, thereby contributing to the problem of homelessness. Reports discussed at Dr. Moore's deposition include:

- "How Airbnb Short-Term Rentals Exacerbates Los Angeles's Affordable Housing Crisis," Dayne Lee, Harvard Law & Policy Review, vol. 10 pages 229 – 253 (2016), Bates numbers D304 – 328, Moore deposition exhibit 4. This report concluded, among other things, that Airbnb increases rents and reduces the affordable housing stock. *Id.* at 234, D309. The author noted that "[e]ach apartment or home listed year-round on Airbnb is a home that has been removed from the residential housing market ..." *Id.* In addition, "the pressure that STRs [short-term rentals] place on rent prices pushes units out of the margins of affordability for low- and middle-income residents, an effect that cascades throughout the city." *Id.* at 240, D315.
- "From Air Mattresses to Unregulated Business: An Analysis of the Other Side of Airbnb," John W. O'Neill, professor of hospitality management and director of the Center for Hospitality Management at Penn State (2016), D15 – 55, Moore deposition exhibit 7. This report found, among other things, that 58% of Airbnb's Chicago-area revenue came from operators who listed properties for rent more than 180 days per year, 96% came from operators who listed units for rent more than 30 days per year, and 38% came from operators listing multiples units for rent. *Id.* at D33. The neighborhoods with the most properties listed on Airbnb were Lake View, Boystown, the Magnificent Mile, Streeterville, Lincoln Park, Sheffield Neighbors, the Old Town Triangle, Old Town, the Gold Coast, Wicker Park and West Town. *Id.*
- "Is Home Sharing Driving up Rents? Evidence from Airbnb in Boston," Mark Merante and Keren Mertens Horn, University of Massachusetts Boston, Department of Economics (2016), D391 – 426, Moore deposition exhibit 9. This report concluded that in Boston, "a city where the demand for rental housing is outpacing supply and pushing up rents quickly, home sharing is contributing to this dynamic ..." *Id.* at 21 – 22, D412 – 413.
- "Hosts with Multiple Units – A Key Driver of Airbnb Growth: A Comprehensive National Review Including a Spotlight on 13 U.S. Markets," CBRE Hotels, Jamie Lane, Senior Economist and R. Mark Woodworth, Senior Managing Director and Head of Lodging Research (March 2017), D56 – 79, Moore deposition exhibit 8. This report found, among other things, that revenue generated by multi-unit entire-home hosts in Chicago increased by 100% between October 2014 and September 2016, that 77% of

Chicago revenue came from entire-home rentals, and that 24% of the total revenue generated by multi-unit hosts came from hosts with ten or more units. *Id.* at 3, D58, 13, D68.

- “Do Airbnb properties affect house prices?” Stephen Sheppard and Andrew Udell, Williams College Department of Economics (January 1, 2018), D80 – 125, Moore deposition exhibit 5. This report “presented a variety of estimates of the impacts that properties listed for rent on Airbnb appear to have on the market value of residential properties in New York City” and noted that “[t]he direction and magnitude of these impacts has prompted widespread concern and considerable debates about the impact on urban structure and housing affordability in New York City and in other cities around the world.” *Id.* at 41, D122.
- “The Impact of Airbnb on NYC Rents,” Office of the New York City Comptroller Scott M. Stringer (April 2018), copy attached as Exhibit A. This report found that between 2009 and 2016, rental rates rose dramatically in most neighborhoods of New York City, and its empirical analysis attributed 9.2% of the rental rate increase to Airbnb.
- “The Sharing Economy and Housing Affordability: Evidence from Airbnb,” Kyle Barron, Edward Kung and Davide Proserpio (April 1, 2018), D329 – 390, Moore Deposition exhibit 6. Using a dataset of Airbnb listings from the entire United States, this report found that a 1% increase in Airbnb listings leads to a 0.018% increase in rents. *Id.* at 1, D329. The authors concluded that “home-sharing increases rental rates by inducing some landlords to switch from supplying the market for long-term rentals to supplying the market for short-term rentals.” *Id.* at 33, D361. They also stated that their study provided evidence confirming their conclusion that Airbnb raises housing costs for local residents. *Id.* at 33 – 34, D361 – 362. The data reviewed included “effect magnitudes” for the nations’ ten largest metropolitan areas, including the Chicago area. *Id.* at 52, D380.

All of these reports support the proposition that house sharing has a tendency to reduce the availability of affordable housing, and there is no reason to believe that they would not apply to Chicago. In my opinion, these reports are of a type that would be reasonably relied upon by policy makers and advisers in positions such as mine in forming opinions and inferences upon the subjects that the reports address.

In addition, my research has disclosed the following studies that further support the proposition:

- “The High Cost of Short-Term Rentals in New York City,” David Wachsmuth, David Chaney, Danielle Kerrigan, Andrea Shillolo, Robin Basalaev-Binder, Urban Politics and Governance research group, School of Urban Planning, McGill University (January 30, 2018), copy attached as Exhibit B. This report provided a comprehensive analysis of Airbnb activity in New York City and the surrounding region, from September 2014 through August 2017. *Id.* at 2. Key findings were, among other things, that Airbnb had

removed between 7,000 and 13,500 units of housing from New York City's long-term rental market, and that by reducing housing supply, Airbnb had increased the median long-term rent in New York City by 1.4% over the last three years. *Id.*

- “The economic costs and benefits of Airbnb,” Josh Bivens, Economic Policy Institute (January 30, 2019), copy attached as Exhibit C. This report stated, among other things: “The largest and best-documented potential cost of Airbnb expansion is the reduced supply of housing as properties shift from serving local residents to serving Airbnb travelers, which hurts local residents by raising housing costs. ... High-quality studies indicate that Airbnb introduction and expansion in New York City, for example, may have raised average rents by nearly \$400 annually for city residents.” *Id.* at 2.
- “Selling the District Short,” D.C. Working Families (March 2017), copy attached as Exhibit D. The report stated, among other things: “The growth of the commercial STR market has serious negative implications for housing affordability and quality of life for D.C. residents.” Exhibit D at 4.

In my opinion, these reports too are of a type that would be reasonably relied upon by policy makers and advisers in positions such as mine in forming opinions and inferences upon the subjects that the reports address.

E. Responses to Dr. Moore

In his report, Dr. Moore makes a number of arguments with which I disagree. These are listed and discussed below:

- Dr. Moore states that studies which rely on New York City data “may not be representative.” Report at 7. He also claims “[t]here is a rule of thumb in economics ‘New York City is always an outlier’ – meaning that what is true in New York City is not typical of the rest of the United States.” *Id.* at 10. He further states that “[t]here is no clear reason to think the effects of home sharing on rents would [be] as strong as in in [sic.] New York City ...” *Id.* At his deposition, Dr. Moore could cite no academic literature supporting these opinions. Moore deposition transcript at 22. His main explanation was that New York City is more dense than other cities, and its real estate market is less “flexible.” *Id.* at 22-24. It is true that New York City is more dense than Chicago, but I see no reason to believe that the effects of Airbnb found in New York City would not be expected to occur in Chicago as well. Even if, as Dr. Moore suggests, they would not be as strong, that does not mean that they would not be significant. In fact, as I discuss below, in my position with the City of Chicago’s Department of Housing, I have observed such effects in Chicago first hand. In addition, as discussed above, similar reports have been issued using data from Los Angeles, Boston, Washington D.C. and cities nationwide, and those reports have all reached similar conclusions.
- Dr. Moore states that “the type of business and vacation travelers who use Airbnb are not looking for apartments at the bottom of the market.” Report at 9. At his deposition, Dr.

Moore admitted that he did not do any study of Chicago Airbnb listings, to see if this was accurate for Chicago. Moore deposition transcript at 30, 39. Working with my staff, I did do such a study. We found that the most Airbnb listings are indeed in better off neighborhoods. However, we also found that there are many Airbnb listings in almost every neighborhood of Chicago. A map of these results shows 7,167 listings attached as Exhibit E. The report authored by the Office of the New York City Comptroller found a similar pattern in New York City. Exhibit E, Table 2 and Appendix.

- Dr. Moore states that “while conversion to home sharing might affect the total rental housing market, it’s unlikely that those effects are sufficiently strong among the population of renters most vulnerable to disruption to push them into homelessness.” Report at 10. This ignores the spillover effect of house sharing. As noted in “How Airbnb Short-Term Rentals Exacerbates Los Angeles’s Affordable Housing Crisis,” discussed above, the pressure that short-term rentals place on rent prices “pushes units out of the margins of affordability for low- and middle-income residents, an effect that cascades throughout the city.” Id. at 240, D315. In other words, if rent prices increase in the neighborhoods where house sharing is most common, some people who cannot afford those rents move into less expensive neighborhoods, which raises the rents there. This in turn spills over to less well-off neighborhoods, where at some point people who could barely afford the rent before have to move out or get evicted. These people become homeless or at least require governmental assistance to secure housing.
- Dr. Moore draws a distinction between “the effect of home sharing on homelessness” and its effect “on rental prices.” Report at 10. I agree that there are many causes to homelessness. However, an individual’s inability to pay the rent can be one of them. If someone is just barely able to pay the rent, and if the rent goes up, then that person has to move out or be evicted. If that person is already at the bottom of the economic ladder, then there may be no new place to move into, and that person will become homeless or at least need governmental assistance to secure housing.
- Dr. Moore did not include in his report any reference to his deposition Exhibits 7 and 8, discussed above. Those reports included Chicago data showing that a large percentage of house share listings are by investors and developers, as opposed to individuals who truly want to share the unit in which they live. At his deposition, Dr. Moore said he did not include those reports because he did not consider them relevant to the issue of whether house sharing has an impact on the availability of affordable housing. Moore deposition transcript at 34-36. As he put it, given a certain number of units listed on Airbnb, it doesn’t matter who owns the unit. Id. at 44-45. However, Dr. Moore’s conclusion ignores the disparate impact upon the rental market between a host who rents out an extra room versus an absentee host who rents out an entire home or building. Specifically, in the case of the live-in host, renting out a room does not remove housing from the long-term rental market. By contrast, when an investor or developer reserves multiple units for short-term rentals, this does remove those units from the long-term rental market. Therefore, in my opinion, Dr. Moore’s conclusion that the impact on the available stock of housing is the same, regardless of who is listing the unit, is incorrect.

In my position with the City of Chicago Department of Housing, I have seen the effects of house sharing first-hand. In particular, the following single room occupancy hotel (“SRO”) was recently converted into a building that will be reserved for short term rentals: 2001 North California. This is in the Logan Square neighborhood of Chicago. Typically, SROs house people of limited means who are not in a position to sign long-term lease agreements. When this SRO was converted, the City had to help provide resources and assist with finding replacement housing for many people who had previously lived in those buildings. The City required the developer to provide relocation assistance to the residents who will be displaced by this property being removed from the market and no longer being operated affordably. The relocation assistance included a cash settlement for losing their home and help in identifying a new place to live.

F. Conclusion

For the reasons summarized above, I believe there is substantial support for the proposition that house sharing has a tendency to reduce the availability of affordable housing, thereby contributing to the problem of homelessness.

Exhibit D

Mendez vs City of Chicago

16 CH 15489

Deposition of: Bryan Esenberg

Taken on: April 30, 2019

1 (Deposition Exhibit No. 1
2 marked as requested.)
3 (Discussion off the record.)

4 BY MR. HEUBERT:

5 Q. Okay. So you've been handed Exhibit 1.
6 Is this the expert report you prepared in
7 connection with this case minus the exhibits that were
8 attached to it?

9 A. It appears to be that. Yes.

10 Q. Could you, please, turn to page 7 of the
11 report?

12 A. Sure.

13 Q. Wait. I may have said the wrong number so
14 just a second here.

15 I meant page 4 -- I didn't mean page 4. I
16 meant page 7. I apologize for my confusion.

17 A. Okay.

18 Q. Okay. So in the first paragraph on this
19 page you reference a building in the Logan Square
20 neighborhood of Chicago, correct?

21 A. Correct.

22 Q. Rents have risen a lot in Logan Square in
23 recent years, haven't they?

24 A. Yes.

1 Q. Do you have a sense of how much they've
2 risen?

3 A. I do not.

4 Q. Do you have a sense of when they started to
5 rise dramatically?

6 A. I do not.

7 Q. Do you have -- Why do you think rents have
8 risen so much in Logan Square?

9 A. I don't know why rents have risen
10 specifically in Logan Square, but there are a number of
11 factors of rents increasing throughout the city.

12 Q. And what would some of those factors be?

13 A. I mean definitely demand issues,
14 homeownership issues, issues around location
15 preferencing, and issues around supply and the
16 production of supply.

17 Q. And when you say demand issues what do you
18 mean?

19 A. So I think in some estimate we're getting
20 increasing numbers of people hoping to move into the
21 city in specific neighborhoods that are becoming
22 popular like Logan Square.

23 Q. And when you say supply issues what do you
24 mean?

1 A. So supply issues in that the supply issues
2 are basically real estate supply and demand concerns in
3 that there are a number of available units for rental,
4 how many of those are being converted over to
5 homeownership, how many of those are being taken
6 offline and out of the market.

7 Q. There's at least one other factor that you
8 mentioned besides demand issues and supply issues.

9 Do you recall what that was?

10 A. Other than location preferences?

11 Q. Oh, okay.

12 And do location preferences tie into what I
13 already said about demand issues with just people
14 prefer to live there --

15 A. Yeah. I think location is a function of
16 demand.

17 Q. So because of the rising rents in Logan
18 Square people are concerned about a lack of affordable
19 housing there, aren't they?

20 A. It seems to be a problem for a lot of people
21 right now.

22 Q. So is there a lack of affordable housing
23 there in Logan Square?

24 A. I do not know.

1 Q. Looking again at this paragraph on page 7 of
2 your report you reference single-room occupancy hotel
3 or SRO.

4 Can you explain what that is?

5 A. Sure.

6 Single-room occupancy is a zoning
7 classification for a type of hotel or living situation
8 that is predominately for low-income or formerly
9 homeless or currently homeless individuals. The
10 difference between that and a traditional rental
11 situation is that you rent a room that may be not a
12 complete unit. So it may actually just be a room with
13 a shared bathroom facility and that the leasing terms
14 are much more flexible all the way to the night or the
15 week.

16 Q. Do you know how many SRO buildings are
17 operating in Chicago now?

18 A. I do not know how many are operating
19 currently, but it is definitely a concern to the City
20 so the City has an SRO preservation ordinance to
21 maintain as many of them as possible.

22 Q. Do you have a ballpark figure of how many
23 there are?

24 A. I do not.

1 Q. Do you know how many SRO units are being
2 rented or are available for rent in Chicago now?

3 A. I do not know.

4 Q. Do you have any sense of the ballpark of
5 that?

6 A. I do not.

7 Q. Okay. But one thing you could say for sure
8 is Chicago used to have a lot more SROs than it has
9 now; is that fair to say?

10 A. So one thing I can say for sure is that over
11 the last five to ten years there's been an increasing
12 effort with the City to preserve what is left of the
13 SROs and we have an ordinance to help us do that.

14 Q. But before five or ten years ago, decades
15 ago, there were a lot more SROs than there are now?

16 A. I do not know.

17 Q. Okay. I'm going to hand you Exhibit -- Or
18 I'm going to ask the court reporter to mark another
19 exhibit here. This will be Exhibit 2.

20 (Deposition Exhibit No. 2
21 marked as requested.)

22 BY MR. HEUBERT:

23 Q. Okay. Do you see that this appears to be a
24 Chicago Tribune article called SRO Hotels Continue To

1 Dwindle from 1994?

2 A. It appears to be that. That's true.

3 Q. If you turn to the second page, please, and
4 look at the -- Just a second --

5 (Brief pause.)

6 BY MR. HEUBERT:

7 Q. -- second page there's a paragraph that
8 begins from 1973 to 1994.

9 Do you see that paragraph?

10 A. I do.

11 Q. And you say it says during that time period
12 SRO housing fell from 52,130 units to 13,554 units.

13 Do you know whether those figures are
14 correct?

15 A. I do not.

16 Q. Do they seem about right to you?

17 A. I have no context to make that answer.

18 Q. Okay. Do you know whether that would at
19 least reflect the general trend of the decline during
20 that time period?

21 A. I really do not know.

22 Q. Do you see there's a paragraph that begins
23 the report by the non-for-profit Lakefront SRO Corp.?

24 A. Uh-huh.

1 A. I don't know about that time period, but
2 there's a general trend in Uptown that SROs are being
3 privatized which is why the City has an ordinance to
4 preserve SROs.

5 Q. On page 4 of the next to last paragraph do
6 you see that it says in 1986 the Tribune reported that
7 the city had lost 17,000 SROs units since 1976,
8 including 3,000 alone in the West Loop space that now
9 houses the Presidential Towers?

10 Do you know whether any of those numbers are
11 correct?

12 A. I do not.

13 Q. Do you know if they're consistent with the
14 general trend in Chicago between 1976 and 1986?

15 A. I do not.

16 Q. Do you know those numbers to be incorrect?

17 A. I do not know them to be incorrect.

18 Q. And is that also true of the other numbers
19 regarding the number of SRO units I've given you don't
20 know them to be either correct or incorrect?

21 A. That would be true.

22 Q. We may have already covered this, but is it
23 fair to say that in recent decades there has been an
24 overall decline in the number of SRO buildings in the

1 city of Chicago?

2 A. I don't know about recent decades.

3 Q. Is there a time period up to the present
4 when you know there has been a decline in the number of
5 SROs in Chicago?

6 A. So SROs in general are grandfathered in
7 their zoning so they're existing buildings and as they
8 age often there's -- there is a lot of private
9 development interest in purchasing those buildings
10 often because of the location and so what we've done in
11 the city is create a preservation ordinance to begin to
12 preserve affordability with those SROs as long as
13 possible.

14 Q. Okay. And the ordinance was considered
15 necessary because without it more of these buildings
16 would be put toward uses other than SROs as they age
17 and developers want to put them toward some other
18 purpose that they would consider to be more profitable?

19 A. That would be fair.

20 Q. Okay. The SRO ordinance you've referenced
21 that was enacted in 2014; is that right?

22 A. I believe that's correct.

23 Q. Do you know how many SRO buildings the city
24 had at that time?

1 rentals.

2 Q. And that's for the entire building?

3 A. That is their strategy. Yes.

4 Q. Doesn't Chicago's home sharing ordinance
5 restrict the number of units in a building that can be
6 used for short-term rentals?

7 A. I'm not an expert on that.

8 Q. So you don't know -- Do you know whether
9 they're going to use all of the units for short-term
10 rentals?

11 A. I do not know.

12 Q. Do you know how many units they're going to
13 use for short-term rentals?

14 A. I do not know.

15 Q. Do you know whether it's more than one unit?

16 A. I believe it's more than one unit.

17 Q. Do you know whether it's more than two?

18 A. I do not know specifically.

19 Q. So is that no?

20 A. So I do not know if they're going to do more
21 than one unit or more than two units.

22 What I do know is they told me that their
23 leasing strategy is to do short-term rentals.

24 Q. How many -- Do you know how many units will

1 provided to --

2 A. DFSS focuses more on tenants specific or
3 human engagement services so they may have provided
4 options for housing or they may have provided options
5 for resources; but I'm not from the department, nor am
6 I very familiar with that.

7 Q. If those people did go to DFSS do you know
8 whether that would impose additional costs on DFSS to
9 deal with those people?

10 A. Oh, I don't know.

11 Q. Do you know whether the displaced SRO
12 residents found new lodging?

13 A. I do not.

14 Q. Do you know whether any of those displaced
15 residents are now homeless?

16 A. I do not know.

17 Q. Do you know whether the building at
18 2001 North California would still be operating as an
19 SRO if the current owner weren't using it for
20 short-term rentals?

21 A. Are you asking me if the current owner
22 bought it would they maintain as an SRO?

23 Q. I'll try to rephrase the question.

24 Is it your position that if the current

1 owner weren't using this building at least in part for
2 short-term rentals the building would still be in use
3 as an SRO?

4 A. I do not know the intentions of the current
5 owner after they purchased the building, but I do know
6 that the short-term rental situation creates an issue
7 around long-term leasing that makes it difficult for us
8 to negotiate for any on-site affordability in addition
9 to what they're already doing because they are not
10 maintaining leases.

11 Q. Who's not maintaining the leases?

12 A. The -- The current owner. The new owner.

13 Q. Well, they might be having some long-term
14 leases, right?

15 A. They may, but the description they provided
16 to us is that they're going to lease using short-term
17 rental strategies.

18 Q. Okay. But again you don't know what
19 percentage of the leases would be used for short-term
20 versus long-term rentals?

21 A. I do not.

22 Q. If you're a landlord in Logan Square right
23 now and you only care about making money then it would
24 make sense to rent out your place at market rates for

1 A. I did not.

2 Q. I see also that you received a master's
3 degree in real estate from the University of Illinois
4 Chicago in 2006; is that correct?

5 A. That's correct.

6 Q. What is a master's degree in real estate?

7 A. A master's in real estate particularly at
8 UIC is the combination of what is their urban planning
9 program and their MBA program, and so while if you had
10 a master's in economics you would take 16 courses
11 dedicated to economics.

12 My classwork is specific to real estate, but
13 it was all engaged in -- it was specific to real estate
14 finance, real estate economics, and real estate theory.

15 Q. Do you have a sense of what people who get
16 that degree use it for?

17 A. I do not.

18 Q. Did you write a master's thesis?

19 A. I did not.

20 MR. HEUBERT: I'm going to hand the court reporter
21 another exhibit.

22 (Deposition Exhibit No. 4
23 marked as requested.)
24

1 How about the land use law course did that
2 cover things that you applied in forming your opinions
3 in this case?

4 A. It may have. Land use law is a foundational
5 theory of real estate law so it may have had some
6 implications, but I can't remember directly what those
7 would have been.

8 Q. And you mentioned the professional topics
9 course could be various topics.

10 Do you recall what the topic of your
11 professional topics course was?

12 A. Not specifically, but it had to do with the
13 development analysis.

14 Q. Is there anything in that that you think
15 is -- that you applied in forming your opinions in this
16 case?

17 A. I do not recall.

18 Q. Going down to the development finance
19 analysis course is there anything covered in that
20 course that you applied in forming your opinions in
21 this case?

22 A. I do not recall. I believe this case --
23 this class was much more specific to finance.

24 Q. Do you have any academic degrees that aren't

1 listed on your report?

2 A. I do not.

3 Q. Have you ever published anything in any
4 academic journals?

5 A. I have not.

6 Q. Have you ever published articles anywhere
7 else?

8 A. Academic articles, no. But I have been
9 featured in articles, but I've not written any
10 articles. No.

11 Q. Okay. When you say featured in articles you
12 mean quoted or --

13 A. Quoted or asked for, yes.

14 Q. Do you have any experience performing an
15 econometric analysis?

16 A. I do not.

17 Q. Do you have any experience in performing
18 statistical analysis?

19 A. I do not.

20 Q. Did you play any role in drafting Chicago's
21 ordinance regulating home sharing?

22 A. I did not.

23 Q. You advise anyone to your knowledge who
24 played any role in the drafting the home sharing

1 Class 9 designation for affordable housing that they
2 got rid of last year so some of the advocate community
3 has been pushing for changes to the tax code to help
4 homeowners -- help landowners or developers that own
5 and rent affordably that their taxes should also
6 reflect that designation.

7 Q. When you say policymakers and advisors in
8 positions such as mine who are you including in that
9 category?

10 A. So I would -- I would say the deputy
11 commissioner level as well as managing deputy at the
12 commissioner level who often work with the legislative
13 staff within the City to create laws and policy.

14 Q. Are you talking about specific officials in
15 the city of Chicago or are you talking about a broader
16 group of some kind of professionals?

17 A. So in this context I'm talking about the
18 city of Chicago, but I think equally it could be a
19 broader group of professionals or lawmakers.

20 Q. And -- And how would you describe that
21 category of people?

22 A. So initially I described it as the deputy
23 commissioners, managing deputy commissioners, and then
24 commissioners of the various departments working with

1 the Mayor's Office, but there is also instances
2 particularly as I relate to the Class 9 where we worked
3 with the advocate community who was working with the
4 State and the state representatives.

5 Q. So you mean state legislators?

6 A. Yeah.

7 Q. And so you're including state legislators in
8 the group of policymakers here?

9 A. So I think in this case I was specifically
10 talking about the deputy commissioners, managing deputy
11 commissioners, and the commissioners in the city as
12 well as the Mayor's Office who make policies and laws,
13 but as I reflect on it there's no reason why these
14 types of reports wouldn't help any policymaker. I mean
15 these are exactly the type of reports that we would
16 look at.

17 Q. Well, how do you decide what report to rely
18 on when you're considering what policies are
19 appropriate for the City to adopt?

20 A. So I think we rely on a number of reports as
21 opposed to one specific report.

22 Q. Okay. Well, how do you decide which ones?

23 A. I think it's through consensus more than
24 anything else. As everybody reads the reports and

1 begins to believe in digesting what they're saying if
2 there's consensus amongst those who are engaged in the
3 reports as well as the various reports and what they
4 say I think that's how you end up choosing them.

5 Q. And who would this consensus be among?

6 A. It depends on what we're talking about or
7 law or policy.

8 So it could be as small as -- if I was doing
9 a policy within my division it could be as small as me
10 and my underwriting team and maybe the commissioner.
11 If I working across the city I may engage the
12 Mayor's Office and potentially some of the aldermanic
13 and elected officials.

14 Q. When you're deciding what reports to rely
15 on, understanding that you're going to have to reach a
16 consensus with others, but when you're deciding which
17 ones you think should be relied on do you consider who
18 authored the report?

19 A. I think there's definitely a consideration
20 for who authored the report, but I don't know what
21 value I'd weight that with compared to other
22 considerations.

23 Q. Okay. And what kinds of authors would you
24 be more likely to rely on?

1 A. I believe we'd be more likely to rely on
2 university authors or larger, familiar research
3 institutions. And generally I think we try to -- to
4 rely on particularly -- I particularly try to rely on
5 agencies that don't have any sort of intentional or
6 bias perspective on -- on any agenda.

7 Q. Do you consider whether a report was peer
8 reviewed?

9 A. So I do not consider whether a report is
10 peer reviewed. No.

11 Q. Do you consider where it was published?

12 A. I'm concerned with who published it.

13 In terms of where I mean for our purposes we
14 generally stick to the U.S.

15 Q. I suppose I meant where it was in the sense
16 of whether it was in an academic journal, whether it
17 was on a website; whether it was a, you know, policy
18 study put out by some kind of foundation that that sort
19 of thing do you consider the source in that sense.

20 One sort of source would be the author. The
21 other sort of source would be like the publisher.

22 A. So we would consider the author and the
23 publisher, but I wouldn't necessarily consider the
24 medium.

1 Q. And what publishers would you be more likely
2 to rely on?

3 A. So similarly, so nonprofits or research
4 institutions or universities.

5 Q. Do you consider whether the author of a
6 report applied a reliable methodology?

7 A. So there are others that may consider that
8 more than I would. Yes.

9 Q. I'm asking about you.

10 A. So I can -- I'm more concerned about the
11 size of the -- of those engaged.

12 So methodology, yes; but whether it's the
13 econometrics or a statistical analysis, no, I do not.
14 But if it's a large enough sample size then, yes, I do.

15 Q. How do you know whether a sample size is
16 large enough?

17 A. So usually the report will describe it.

18 Q. Well, how do you make a judgment if it's
19 large enough if you're not familiar with the
20 econometric or statistical methods?

21 A. I think my judgment is much more simple than
22 that. If it's a few tens or a few hundreds then I'm
23 not that interested, but if it's, you know, a much more
24 measurable effect that can be replicated or understood

1 on a larger level then I am interested.

2 Q. Well, how do you know whether tens or
3 hundreds are an appropriate sample size in a given
4 field?

5 A. So I think every field is different. So it
6 would have to be -- it would have to be something that
7 we'd be looking at, but I don't know that tens or
8 hundreds would affect policy decisions.

9 Q. Okay. But you did say you judge the
10 reliability of a report by its sample size so I'm still
11 trying to figure out how you determine what's an
12 appropriate sample size.

13 A. Yeah. No. I think a sample size is going
14 to be respective to the topic and report at hand so I
15 don't know that there's a binary answer to that.

16 Q. Do you consider an author or publisher's
17 political or ideological background in deciding whether
18 to rely on its report?

19 A. That has not been a factor that I've had to
20 consider or been known or aware of to have to consider.

21 Q. Going back to your statement that the
22 reports you list are of a type that would be reasonably
23 relied upon by policymakers and advisors in positions
24 such as mine, how do you know what other policymakers

1 and advisors would rely on outside of the city of
2 Chicago?

3 A. So I don't know for sure what other
4 policymakers outside the city of Chicago would rely on,
5 but I do engage a number of other cities both
6 domestically and internationally and we do discuss
7 topics and we do share policy papers and so my
8 assumption is that they rely on similar types of
9 analysis as these.

10 Q. Let's turn to page 3 of Exhibit 1, which is
11 your report.

12 The bullet points that start there are
13 reports that the plaintiffs' expert reviewed; is that
14 right?

15 A. Are you asking me or are you asking your
16 colleague?

17 Q. I'm asking you.

18 A. If you're telling me that, yes, I believe
19 so.

20 Q. Okay. Well, I mean I -- right, that's how
21 it's set up here reports discussed at Dr. Moore's
22 deposition included and then there's bullet points and
23 so that's what we're talking about.

24 And the first thing on here is an item

1 called How Airbnb Short-Term Rentals Exacerbates Los
2 Angeles's Affordable Housing Crisis by Dayne Lee.

3 Do you see what I mean there?

4 A. I do.

5 Q. That article is actually a student note from
6 a law journal, isn't it?

7 A. I do not know.

8 Q. Do you know whether law students' notes are
9 peer reviewed?

10 A. I do not.

11 Q. Do you know whether this student was peer
12 reviewed?

13 A. I do not know.

14 Q. Are law review student notes something you
15 normally rely on in formulating policy advice or making
16 policy decisions?

17 A. I do not know.

18 Q. Do you know whether the author here Dayne
19 Lee has any training in economics?

20 A. I do not know.

21 Q. Have you read the entire note by Dayne Lee?

22 A. I've read this -- the excerpt that was
23 provided to me -- the study that was provided to me.

24 Q. Were you provided with the complete article?

1 A. I believe so or at least the 229 to 253.
2 It's been some time. I'd have to go back and confirm.

3 Q. What methodology did this article apply?

4 A. Other than laws of supply and demand I do
5 not know -- I do not recall.

6 MR. HEUBERT: All right. I'm going to hand the
7 court reporter this as our next exhibit, and can you
8 please mark this as the next exhibit.

9 (Deposition Exhibit No. 5
10 marked as requested.)

11 MR. HEUBERT: I'll give you this copy (tendering).

12 I apologize that these are printed on both
13 sides. We realized kind of too late that we did that.
14 Hopefully that won't make it too hard to find what
15 we're talking about.

16 MR. HANSCOM: Do you want a break?

17 THE WITNESS: No. I'm fine.

18 MR. HANSCOM: Okay.

19 BY MR. HEUBERT:

20 Q. Okay. If you could turn to the page marked
21 down in the lower right-hand corner D00309.

22 A. Mine's cut off.

23 MR. SCHWAB: He might not be able to see that.

24

1 Q. So right now your answer is you don't know;
2 is that right?

3 A. So I think this author makes a strong case
4 that the effect of Airbnb in any neighborhood affects
5 the city as a whole.

6 Q. Okay. What methodology does he use to do
7 that?

8 A. I don't know.

9 Q. Does he perform the kind of econometric
10 analysis that an economist would perform to show that
11 one factor causes another, the change in one thing
12 causes a change in another?

13 A. I do not know.

14 Thumbing through it it does not appear
15 there's an econometric analysis, nor do I know that I
16 would rely on it so -- because there was an econometric
17 analysis.

18 Q. You wouldn't rely on it more if it was an
19 econometric analysis showing causation?

20 A. No.

21 I would let other people on our consensus
22 team worry about that.

23 Q. Do you have economists on your team?

24 A. We have people that are policymakers that

1 somebody for long term then that's fine.

2 I think it's fair to make some distinctions
3 between in which the time somebody lives in their unit
4 and the time at which that unit is available for
5 short-term rental, and I think part of that distinction
6 involves whether or not you can rent it to somebody
7 else on a full-time lease.

8 Q. All right. Going back to your report,
9 Exhibit 1, the third bullet point on page 3 references
10 an article called Is Home Sharing Driving Up Rents?
11 Evidenced from Airbnb in Boston.

12 Do you see what I'm talking about?

13 A. I do.

14 Q. Do you know whether this report was peer
15 reviewed before it was published?

16 A. I do not.

17 Q. Have you read the entire report?

18 A. I have.

19 Q. What methodology do the authors of that
20 article apply?

21 A. I do not recall.

22 MR. HEUBERT: Okay. I'm going to ask the court
23 reporter to mark this as Exhibit 6.

24

1 Q. Okay. Do you know how strong the
2 statistical correlation between increased Airbnb
3 density and increased rent is?

4 A. I do not.

5 Q. Does this article say whether this
6 1.3 to 3.1 percent increase in rents would lead to an
7 increase in homelessness?

8 A. This report I do not believe says it will
9 specifically increase homelessness, but it does say
10 that it will increase rents which makes affordability
11 more difficult.

12 Q. Do you believe that a 1.3 to 3.1 percent
13 increase in rent will increase homelessness?

14 A. So ultimately, yes, I do believe any
15 increase in rents through reduction of supply may have
16 an effect that increases homelessness.

17 Q. Okay. Can you explain the process by which
18 a 1.3 to 3.1 increase in rent would lead to an increase
19 in homelessness?

20 A. Sure.

21 So I think it's very easy for a lot of
22 people to think that neighborhoods work in a silo and
23 the reality is it doesn't. The city is a whole and
24 where people move is often a function of that whole,

1 people were affected by rent changes.

2 Q. Do you think the author's conclusion about
3 Boston tell us anything about the effects of short-term
4 rentals and affordable housing in Chicago?

5 A. So I think studies like this definitely
6 allow us to form some opinions about Chicago.

7 Q. Why?

8 A. So I think studies like this like we've seen
9 across a lot of these studies any time you reduce
10 supply of available rental housing you have an issue or
11 you start to see an uptick in rent prices which has an
12 effect on affordable housing.

13 Q. Going back to Exhibit 1, turning to page 4
14 of your report, do you see the first bullet point on
15 that page which refers an article called Do Airbnb
16 properties affect house prices?

17 A. I do.

18 Q. Have you read that entire article?

19 A. I have.

20 Q. Did this article find a statistical
21 correlation between increasing rents and short-term
22 rentals?

23 A. I do not recall if they had a statistical
24 correlation.

1 Q. Do you recall what methodology the authors
2 of that article applied?

3 A. I do not.

4 Q. Did the article say anything about
5 short-term rentals effect on homelessness?

6 A. I do not believe it specifically cited
7 homelessness.

8 Q. And do you think the author's conclusions in
9 that article about New York City tell us anything about
10 the effects of short-term rentals on affordable housing
11 in Chicago?

12 A. I believe like all these reports it provides
13 enough understanding about supply and demand that we
14 should provide our own opinions for Chicago.

15 Yes, it's been very helpful.

16 Q. Do you think the author's conclusions about
17 New York City tell us anything about the effects of
18 short-term rentals on homelessness in Chicago?

19 A. I think ultimately the concern about
20 homelessness and affordability are the same.

21 So when you lose affordability you
22 exacerbate homelessness.

23 Q. Okay. Now looking at the second bullet
24 point on page 4 do you see there it says there's a

1 report called The Impact of Airbnb on NYC Rents?

2 Do you see what I'm talking about?

3 A. Yes.

4 Q. Okay. Have you read that entire article?

5 A. I have.

6 Q. Did this article find a statistical
7 correlation between increasing rents and short-term
8 rentals?

9 A. I mean the bullet point here says an
10 empirical analysis so if you consider that to be
11 statistical analysis I would say yes, but otherwise I
12 am not sure.

13 Q. Do you know how strong -- Do you know how
14 strong the statistical correlation was?

15 A. I do not.

16 Q. Do you know what methodology the authors of
17 the article applied?

18 A. I do not.

19 Q. Did this article say anything about
20 short-term rentals' effect on homelessness?

21 A. It did not directly cite homelessness.

22 Q. The third bullet point on page 4 of your
23 report refers to an article The Sharing Economy and
24 Housing Affordability: Evidence from Airbnb.

1 Do you see that one?

2 A. I do.

3 Q. Have you read that entire article?

4 A. I have.

5 Q. What methodology did the authors of that
6 article apply?

7 A. I do not recall.

8 Q. Did that article find a statistical
9 correlation between increasing rents and short-term
10 rentals?

11 A. I do not recall if it had a statistical
12 correlation.

13 Q. In your description of this article you say
14 this report found a 1 percent increase in Airbnb
15 listings leads to a 0.018 percent increase in rents.

16 That's a really tiny increase, isn't it?

17 A. I think everything is relative.

18 Q. Well, if you're paying \$1,000 in a month in
19 rent and your rent went up by .018 percent that would
20 be an increase of 18 cents, right?

21 A. Possibly.

22 Q. And so that would mean that if there were a
23 100 percent increase in Airbnb listings someone paying
24 \$1,000 in rent would see an increase of \$18 in their

1 a problem, you don't have too much supply.

2 Q. At the bottom of page 4 of your report
3 there's a bullet point referencing an article called
4 The High Cost of Short-Term Rentals in New York City.

5 Do you see what I mean?

6 A. I do.

7 Q. Have you read that entire article?

8 A. I have.

9 Q. What methodology did the authors of that
10 article apply?

11 A. I do not recall.

12 Q. Did that article say anything about
13 short-term rentals' effect on homelessness?

14 A. I do not believe it specifically cited
15 homelessness.

16 Q. Your description here says that this study
17 found that, quote, Airbnb had increased the median
18 long-term rent in New York City by 1.4 percent over the
19 last three years, unquote.

20 So that means if you were paying \$1,000 a
21 month in rent and it went up by 1.4 percent you'd have
22 an increase in your rent of \$14, right?

23 A. That would be correct.

24 Q. And you think that kind of increase in rent

1 Q. That's the same study by Sheppard and Udell
2 you refer to on page 4 of your report, isn't it?

3 A. I believe so.

4 (Brief pause.)

5 BY THE WITNESS:

6 A. Sure.

7 Q. And now if you look at the next paragraph on
8 page 15, this is the last full paragraph on page 15, do
9 you see it refers to a 2018 study by Wachsmuth et al.?

10 A. Uh-huh.

11 Q. That's the same study by Wachsmuth et al.
12 that you referred to on page 4 of your report, isn't
13 it?

14 A. Yes.

15 Q. And that's the end of the Economic Policy
16 Institute report here is discussion of short-term
17 housing effects on rents, right?

18 A. Yes.

19 Q. So that section just summarized the same
20 report you discussed in your report?

21 It doesn't appear that this author did any
22 additional research on the effects of short-term
23 housing on rents, does it?

24 A. It does not.

1 Q. Looking back at page 5 of your report -- and
2 we can put this exhibit aside -- do you see the second
3 bullet point that refers to something called selling
4 the district short which you attached as Exhibit D to
5 your report?

6 A. Where am I looking?

7 Q. On page 5 of your report is there an item
8 listed there called selling the district short?

9 A. Oh. Yes.

10 Q. Okay. And that was attached as Exhibit D to
11 your report, correct?

12 A. Yep.

13 MR. HEUBERT: Okay. I'll hand an exhibit here to
14 the court reporter.

15 (Deposition Exhibit No. 8
16 marked as requested.)

17 MR. HEUBERT: Oh, sorry. This one is for you and
18 this one over here (tendering).

19 BY MR. HEUBERT:

20 Q. Do you know who authored this item?

21 A. Not off the top my head.

22 It says D.C. Working Families.

23 Q. What is D.C. Working Families?

24 A. Off the top of my head I am not sure.

1 A. I believe it says there's a strong
2 correlation of .93 out of a 1.

3 Q. Right.

4 But based on this -- I mean this is telling
5 us, right, that based on this alone we can't say that
6 one causes the other?

7 A. Yeah. This is telling us there is a strong
8 correlation but does not prove one causes the other.

9 Q. Turning back to page 8 in the last paragraph
10 on the page do you see it references a study by
11 something called The Real Deal?

12 A. Yes.

13 Q. Do you know what The Real Deal is?

14 A. It's just an online like real estate website
15 journal.

16 Q. Is it an academic journal?

17 A. I do not believe so.

18 Q. Do you know who authored that item that was
19 published in The Real Deal?

20 A. I do not.

21 Q. Have you reviewed that study by The Real
22 Deal?

23 A. I do not recall.

24 Q. Do you know whether that study by The Real

1 Deal applied reliable econometric or statistical
2 methods?

3 A. I do not.

4 Q. Do you have any basis for determining
5 whether the findings of The Real Deal article are
6 correct?

7 A. I do not.

8 Q. Now turning to page 9 of Exhibit 8 at the
9 top of the second column do you see a reference to an
10 item by Dayne Lee?

11 A. Yes.

12 Q. That's the same article you referenced on
13 page 3 of your report, correct?

14 A. Correct.

15 Q. Looking further down the middle of the
16 column 9 of Exhibit 8 do you see a reference to a study
17 performed by Thomas Davidoff for Airbnb?

18 A. I do.

19 Q. Have you reviewed Davidoff's study?

20 A. I have not.

21 Q. Do you know whether it applied reliable
22 econometric or statistical methods?

23 A. I do not.

24 Q. Do you see at the top of the third column

1 there's a Footnote 22?

2 A. Uh-huh.

3 Q. All right. Let's look at Footnote 22 on
4 page 30.

5 Do you see that's a citation to a Wall
6 Street Journal blog post?

7 A. I do.

8 Q. So that's the only citation this publication
9 here provides for Davidoff's study, isn't it?

10 A. It appears so.

11 Q. Do you know whether the blog post and
12 Footnote 22 reported Davidoff's findings accurately?

13 A. I do not.

14 Q. Do you rely on secondhand information in
15 blog posts when you give policy advice?

16 A. So we use a lot of different mediums to
17 provide us information, but I don't know that we rely
18 on blog posts.

19 Q. Turning back to page 9 in the middle column
20 do you see that it says that the study found that
21 Airbnb increased the price of all one-bedroom units in
22 New York by an average of \$6 a month?

23 A. I do.

24 Q. Assuming that's true do you think that

1 There are a number of -- There are a number
2 of instances that are not specific to just the
3 availability of a unit or the cost of a unit and so
4 yes.

5 How I weight those I'm not necessarily sure.

6 Q. Do you recall in Dr. Moore's report he noted
7 that the city government may have policies that
8 restrict the supply of housing in the city?

9 A. I don't know -- I don't recall him saying
10 the city may, but I do recall him saying the City has
11 the tools to change the supply of housing. Yes.

12 Q. Do you agree with that?

13 A. Yeah, absolutely.

14 Q. And do you think the City of Chicago has
15 certain policies in place now that restrict the supply
16 of housing compared to what it could be?

17 A. I think every city has instances where they
18 can improve their supply through policy change,
19 absolutely.

20 Q. And are some of those restrictions on what
21 residential buildings can be placed on certain
22 properties?

23 A. What residential buildings can be placed on
24 certain properties that's not what I was specifically

1 thinking of now. No. But that is generally something
2 that at least in Chicago you can get a zoning change.

3 So if you were looking to change it from
4 commercial to residential you could likely do that.

5 So it depends on -- That's really less of a
6 policy issue but that can occur.

7 Q. Anybody can get a zoning change?

8 A. It's fairly easy. We are fairly liberal in
9 our willingness to provide zoning changes to homeowners
10 and residents.

11 We are residentially friendly.

12 Q. Don't you need your alderman's blessing for
13 that?

14 A. No.

15 Q. No?

16 A. No.

17 Q. Doesn't it help?

18 A. I don't know.

19 Q. Aren't there some properties in Chicago say
20 where there might currently be a three-flat but if you
21 were to tear it down you could only build a
22 single-family residence based on the current zoning?

23 A. I don't -- If there was it would be
24 grandfathered in. It would be kind of an outside --

1 That would be an outlier.

2 If you have the existing density then you're
3 generally granted the existing density. It is rare to
4 see an area in which multifamily buildings exist and it
5 is downsized to single family, but I am by no means a
6 zoning expert.

7 MR. HEUBERT: Okay. Well, why don't we take
8 another short break and we'll just see if we have
9 anything else we need to cover, and we're probably
10 getting close to the end.

11 MR. HANSCOM: Sounds good.

12 (A recess is taken.)

13 MR. HEUBERT: I think we're done.

14 MR. HANSCOM: Oh, great. Okay.

15 MR. HEUBERT: Sorry to make you sit down.

16 Do you have anything?

17 MR. HANSCOM: No.

18 THE COURT REPORTER: Signature?

19 MR. HANSCOM: We'll reserve signature.

20 THE COURT REPORTER: Did you need this
21 transcribed?

22 MR. HEUBERT: Yes, please.

23 THE COURT REPORTER: Did you want a copy?
24