

IN THE COURT OF APPEALS
FOR THE STATE OF GEORGIA

Case No. A21A1263

EFFICIENCY LODGE, INC.,

Appellant-Defendant,

v.

ARMETRIUS NEASON; LYNETRICE PRESTON; and ALTONESE
WEAVER,

Appellees-Plaintiffs.

**BRIEF OF AMICUS CURIAE HOUSING JUSTICE LEAGUE, THE
ATLANTA VOLUNTEERS LAWYERS FOUNDATION, THE SOUTHERN
POVERTY LAW CENTER, DANIELLA AIELLO, PH.D., TAYLOR
SHELTON, PH.D., AND BRIAN GOLDSTONE, PH.D. IN SUPPORT OF
PLAINTIFFS-APPELLEES**

Submitted by:

Emily C.R. Early (GA 810206)
Wingo Smith (GA 147896)
The Southern Poverty Law Center
P.O. Box 1287
Decatur, Georgia 30031-1287
Office: (404) 521-6700
Cell: (334) 207-3952
emily.early@splcenter.org
wingo.smith@splcenter.org

Counsel for Amici Curiae

TABLE OF CONTENTS

I. STATEMENTS OF INTEREST OF AMICI CURIAE.....	1
II. SUMMARY OF ARGUMENT	4
III. ARGUMENT	6
A. Extended-Stay Residential Hotels Historically Represent a Key Component of the Continuum of Affordable Housing in the United States and Their Significance Continues to Dramatically Expand.....	6
B. The Experiences of Residents at Efficiency Lodge and Other Extended-Stay Residential Hotels Are Indistinguishable from Other Low-Income Tenants And a Key Part of the Industry’s Business Model.	14
1. <i>Extended-Stay Residential Hotels Compete for, Incentivize, and Profit from Long-Term Residency.</i>	15
2. <i>The experiences of low-income tenants parallels the experience of Plaintiff-Appellees and other residents in residential motels.</i>	19
C. Treating Residents at Extended Stay Hotels as Tenants Promotes Stable Housing and Protects Residents From Abusive Practices, Consistent with the Purpose of Due Process.	23
1. <i>Residents have a protected property interest in their homes.</i>	23
2. <i>According due process rights to extended-stay residents under Georgia’s dispossessory law protects families from abuse.</i>	26
3. <i>The protection of the due process property interests of residences like Plaintiffs in their extended stay properties protects residents in other unconventional residential arrangements.</i>	28
D. Consistent with other housing laws and with the approach of other states, this Court should consider Plaintiffs tenants because they live at Efficiency Lodge as their primary, permanent residence.....	32
1. <i>A guest under Georgia law is a transient lodger.</i>	32
2. <i>Other states employ totality-of-the-circumstances tests to determine whether a resident of an extended stay is a tenant or a guest.</i>	35

3. *Using primary residence as a key factor in whether residents at extended stay motels are tenants is consistent with federal law applicable to Efficiency Lodge and Plaintiffs*.....37

IV. CONCLUSION39

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Amazing Grace Bed & Breakfast v. Blackmun</i> , CIV.A.09-0298-WS-N, 2009 WL 4730729 (S.D. Ala. Nov. 30, 2009).....	38
<i>Bailey v. Stonecrest Condo. Ass'n, Inc.</i> , 304 Ga. App. 484, 696 S.E.2d 462 (2010)	37
<i>Baker v. Rushing</i> , 104 N.C. App. 240, 409 S.E.2d 108 (1991)	35, 36
<i>Baxter v. City of Belleville, Ill.</i> , 720 F. Supp. 720 (S.D. Ill. 1989).....	37
<i>Diplomat Rest., Inc. v. Townsend</i> , 118 Ga. App. 694 (1968).....	34
<i>Ellerman v. Atlanta Am. Motor Hotel Corp.</i> , 126 Ga. App. 194 (1972).....	34
<i>Grayden v. Rhodes</i> , 345 F.3d 1225 (11th Cir. 2003).....	23
<i>Greene v. Lindsey</i> , 456 US 444 (1982).....	23
<i>HSH Eastgate, LLC v. Sheriff of Osceola Cty.</i> , Fla., 6:13-CV-1902-ORL-31, 2015 WL 3465795 (M.D. Fla. June 1, 2015).....	35
<i>Jeffries v. Ga. Residential Finan. Auth.</i> , 503 F. Supp. 610 (N.D. Ga. 1980).....	24, 25
<i>Lindsey v. Nornet</i> , 405 US 56 (1972).....	23

McNeill v. Estate of Lachmann,
 285 N.J. Super. 212, 666 A.2d 996 (App. Div. 1995)36

Patel v. Holley House Motels,
 483 F. Supp. 374 (S.D. Ala. 1979)38

Schwarz v. City of Treasure Island,
 544 F.3d 1201 (11th Cir. 2008).....37

State v. Delvechio,
 301 Ga. App. 560 (2009).....34

Stone v. Clow,
 A13-0984, 2014 WL 902724 (Minn. Ct. App. Mar. 10, 2014)36

Summer v. Hyatt Corp.,
 153 Ga. App. 684 (1980).....34

Traylor v. Hyatt Corp.,
 122 Ga. App. 633 (1970).....34

United States v. Columbus Country Club,
 915 F.2d 877 (3d Cir. 1990)37

United States v. Hughes Mem'l Home,
 396 F. Supp. 544 (W.D. Va. 1975).....38

Walpert v. Bohan,
 126 Ga. 532 (1906).....33, 34

Whipper v. Kirk,
 156 Ga. App. 218 (1980).....25

Wilensky v. Agoos,
 74 Ga. App. 815 (1947).....25

Statutes

42 U.S.C. § 3602(f)37

42 U.S.C. § 3604(f)37

O.C.G.A. § 1-3-133

O.C.G.A. § 1-3-1(b)32

O.C.G.A. § 8-3-200 et seq.32, 37, 38

O.C.G.A. § 43-21-133

O.C.G.A. §§ 43-21-1 et seq.24

O.C.G.A. §§ 44-7-1, et seq.24

O.C.G.A. §§ 44-7-13, 44-7-14.....27

O.C.G.A. § 44-7-3033

O.C.G.A. § 44-7-5024, 26

O.C.G.A. §§ 44-7-50, 44-7-5125

O.C.G.A. §44-7-50(a)24

Other Authorities

Atl. Reg’l Comm’n Reg’l Snapshot: 2020 Regional Housing Affordability (Feb. 17, 2020)..... 18

Barbara Ehrenreich, *Nickel and Dimed: On (Not) Getting By in America*, Henry Holt & Co. (2001) 6

CisionPRWeb, “PadSplit Announces 179% Revenue Growth in 2020” (last visited July 22, 2021).....29, 30

Efficiency Lodge, Inc. (2001), Annual Report, Form 10k-SB (2002), <https://bit.ly/37FywJb> 8, 15

Eric Eckholm, *As Jobs Vanish, Motel Rooms Become Home*, NY TIMES, March 10, 2009. 6

Eric Seymour & Joshua Akers, “*Our Customer Is America*”: *Housing Insecurity and Eviction in Las Vegas, Nevada’s Postcrisis Rental Markets*, *Housing Policy Debate*, 31(3), 516–539 (2020)..... 9, 11

Harris & Thanawala, *Suit: Atlanta Area Housing Site Illegally Evicted Residents*, Assoc. Press.....27

J.D. Capelouto, *Families Forced Out of Extended Stay Motel in South DeKalb as Activists Sound Alarm*, Atlanta Journal Constitution, Sep. 11, 2020.....20

Kate Santich & Caroline Glenn, *Families living in Central Florida hotels fear homelessness during coronavirus pandemic*, Capital Gazette, Apr. 17, 2020 8

Kathleen Allen, et al., *When Extended-Stay Becomes Home*, LiveNorcross (May 2019) at pp. 6-7, <https://bit.ly/3g1Fay3> 19

Leslie A. Brownrigg, *People Who Live in Hotels: An Explanatory Overview*, U.S. Census Bureau, Statistical Research Division (May 31, 2006), pp. 24-26 16

Michael E. Kannell, *Many Norcross families working but trapped in extended-stay hotels*, Atlanta Journal-Constitution (Mar. 24, 2020) 19

Mya Frazier, *When No Landlord Will Rent to You, Where Do you Go?: How extended-stay hotels and motels became the last housing option for thousands of low-income Americans*, NY TIMES MAGAZINE, May 20, 2021, p. 13, <https://nyti.ms/3ADUngF>.....*passim*

Nat’l Low Income Hous. Coal, *Housing Needs by State-Georgia*, <https://bit.ly/3lZoVVW>..... 17

Nat’l Low Income Hous. Coal, *Out of Reach 2021: The High Cost of Housing*, <https://bit.ly/2UiGrcA> 17

Padsplit, *Frequently Asked Questions, “What kind of law does my room fall under?”* (last visited July 22, 2021), <https://bit.ly/3rt502y>.....30

Paul Groth, *The History of Residential Hotels in the United States*, Univ. of Ca. Press, p.1 (1990)..... 6

Rebecca Burns, “Like Airbnb, but for Flophouses,” NEW REPUBLIC, June 23, 202129, 30, 31

Ron Harris & Sudhin Thanawala, *Suit: Atlanta Area Housing Site Illegally Evicted Residents*, ASSOC. PRESS, Oct. 7, 2020
<https://abcn.ws/3AGa7Qr>.....22

S.O. Thompson, *Higher Risk of Homelessness for Extended-Stay Hotel Residents*, *Journal of Affordable Housing & Community Development Law*, 29(2), 245-255 (2020)..... 9

Zachary Hansen & J.D. Capelouto, *Extended Stay Motel with Ties to Former Governor Facing Lawsuit From Residents*, *AJC*, Oct. 7, 2020 <https://bit.ly/3xG4foi>23

I. STATEMENTS OF INTEREST OF AMICI CURIAE

HOUSING JUSTICE LEAGUE (“HJL”) is a grassroots, member-led organization that builds power in low- to moderate-income, metro-Atlanta neighborhoods highly impacted by the housing crisis. By mobilizing communities around foreclosure, eviction, tenant rights, and public land rights—with an emphasis on leadership development and fostering a culture of resistance through non-violent direct action—HJL strives to transform Atlanta’s approach to housing. Members of HJL’s Eviction Defense Working Group have worked closely with residents of extended stay residential hotels across metro Atlanta, including the Efficiency Lodge on Flat Shoals Road in Decatur, Georgia—which is at issue in this lawsuit—to take collective action for better housing conditions and more just treatment by management.

ATLANTA VOLUNTEER LAWYERS FOUNDATION (“AVLF”) is a nonprofit legal organization that provides free representation to low-income tenants. AVLF is the largest provider of pro bono legal services in the greater Atlanta area. For over forty years, AVLF has provided high-quality advocacy, legal representation, education, and holistic services at no cost to low-income families with civil legal needs at critical times in their lives. AVLF’s programs include services for tenants involved in landlord-tenant disputes or facing eviction, survivors of intimate partner abuse, employees seeking unpaid wages, and family members

addressing probate matters. AVLF provides legal representation in landlord-tenant matters in Fulton County and Clayton County courts. Through its work, AVLF has developed an intimate familiarity and expertise with the problems facing low-income tenants whose landlords fail to provide safe living conditions, unlawfully withhold security deposits, and pursue illegal evictions outside of the court process.

THE SOUTHERN POVERTY LAW CENTER (“SPLC”) has provided pro bono civil rights representation to low-income persons in the Southeast since 1971, with particular focus on combating unlawful discrimination and ending poverty. The SPLC provides educational materials, engages in policy reform, and develops litigation to eradicate economic penalties and punishment disproportionately impacting Black and Brown communities, to ensure meaningful access to social safety nets, including housing, and opportunities for economic investment in their communities.

BRIAN GOLDSTONE, Ph.D., is a journalist, cultural anthropologist, and National Fellow at New America. He is currently writing a book entitled *The New American Homeless*, which will be published by Crown/Penguin Random House. The book, based on a 2019 article in *The New Republic* magazine, investigates America’s crisis of housing insecurity and the dramatic rise of the “working homeless.” As part of this research, he spent ten months (January to October 2020) reporting on families residing at the motel owned by Efficiency Lodge, Inc. in

Decatur, Georgia—some of whom had been living at the motel for over two years. He received his Ph.D. from Duke University in 2012 and was subsequently a postdoctoral fellow at Columbia University and a Visiting Scholar at Emory University.

TAYLOR SHELTON, Ph. D., is an Assistant Professor in the Department of Geosciences at Georgia State University. He studies socio-spatial inequality in cities with a focus on how mapping and data visualization can assist in better understanding urban social and environmental phenomena, with a particular interest in housing inequality.

DANIELLA AIELLO, Ph. D., is an urban geographer and Postdoctoral fellow with the Canadian Mortgage and Housing Corporation (“CMHC”) and the Social Sciences and Humanities Research Council of Canada (“SSHRC”) in the Department of Geography and Planning at Queen’s University. She specializes in community-based research and housing inequality, with a focus on evictions in both Atlanta, GA and Vancouver, Canada. Having completed her Ph. D. in Geography at the University of Georgia, she has worked closely with community-based groups in Metro Atlanta and the Athens area on issues of housing inequality. These amici represent the legal issues raised in this appeal from the perspectives of low-income, housing-unstable residents living in extended-stay residential hotels.

II. SUMMARY OF ARGUMENT

The trial court's order and accompanying injunction against Appellant-Defendant Efficiency Lodge, Inc. ("Efficiency Lodge") must be upheld for a number of legal as well as pressing public policy reasons that amici curiae seek to address on behalf of the interests of the thousands of extended-stay and residential hotel residents across the State of Georgia.

First, the Brief demonstrates the significant role that extended-stay residential hotels have historically played and more importantly, that they continue to play in the current and ever-shrinking affordable housing market throughout the metro Atlanta area and the State of Georgia. It is no coincidence that extended-stay residential hotels have created a business model that relies on long-term residents and offers incentives to vulnerable low-income individuals and families left with no other options in an unaffordable housing market. Relying on recent extensive studies and news coverage on the rise of extended-stay residential hotels, as well as first-hand experience of housing advocates and organizers, this amicus Brief offers multiple comparators between traditional low-income tenants and landlords and extended stay residents and extended-stay motels to justify this Court's affirmance of the lower court's decision.

Second, the Brief explains that extended-stay residents have due process property interests in their extended-stay hotel residences that Georgia's

dispossessory law protects. A failure to uphold the lower court's injunction cannot protect those due process rights or prevent the abuses of low-income extended-stay hotel residents that will certainly follow from a reversal of the lower court's order. Rather, it would only allow businesses like Efficiency Lodge to continue to adjust their business model and illegally and immorally exploit the housing instability of economically vulnerable individuals and their families.

Finally, the Brief concludes that upholding the lower court's injunction is necessary to remain consistent with housing laws' and other states' treatment of residents of extended-stay and residential hotels.

For all of these reasons, this Court should uphold the trial court's order and adopt a test to determine tenancy that gives primary consideration to whether the resident lives at the dwelling as his or her sole, permanent residence. Such an outcome would promote stability in Georgia's extremely limited affordable housing market; uphold Plaintiffs-Appellees' ("Plaintiffs") and other extended-stay and residential hotel residents' due process property rights in their extended-stay hotel residences, including their rights against self-help evictions and the emotional and often physical violence that accompanies such evictions, and their right to habitable living conditions; and mirror the responsibilities of Efficiency Lodge and other extended-stay and residential hotels under other states' laws and under federal law.

III. ARGUMENT

A. *Extended-Stay Residential Hotels Historically Represent a Key Component of the Continuum of Affordable Housing in the United States and Their Significance Continues to Dramatically Expand.*

Researchers have long identified extended-stay and other residential hotels as a key segment of the affordable housing continuum that caters especially to very low-income people. Paul Groth, *The History of Residential Hotels in the United States*, Univ. of Ca. Press, p.1 (1990); Barbara Ehrenreich, *Nickel and Dimed: On (Not) Getting By in America*, Henry Holt & Co. (2001); Eric Eckholm, “As Jobs Vanish, Motel Rooms Become Home,” NY TIMES, Mar. 10, 2009. Indeed, the use of hotels as permanent or semi-permanent housing has a long history in the United States, dating back to the late 19th century. *See* Groth, *The History of Residential Hotels in the United States* at 1. Even as of 30 years ago, residential hotels represented such an important segment of the American housing market that between one and two million people were living in hotels, which meant that more Americans were living permanently in hotels than were living in public housing during that time. *Id.* This imbalance, and the more consistent role that residential hotels play in providing accessible and affordable housing to low-income individuals who are shut out of higher-rent markets, has only grown since.

In tandem with the demolition of public housing across the country, the generally rising cost of housing, and rising rent burdens—particularly since the 2008

financial crisis, hotels of various kinds have steadily become havens for the working poor. The economic instability introduced by the COVID-19 pandemic has in turn led to even further considerable housing insecurity for many low-income renters. According to research published by the *New York Times* that looks only at hotels formally classified as extended-stay residences, there are approximately half a million such hotels in the United States—a number up from just 200,000 in the early 2000s. Mya Frazier, *When No Landlord Will Rent to You, Where Do you Go?: How extended-stay hotels and motels became the last housing option for thousands of low-income Americans* (hereinafter “*When No Landlord Will Rent to You*”), NY TIMES MAGAZINE, May 20, 2021, p. 13, available <https://nyti.ms/3ADUngF>. While all other hotels had a combined occupancy rate of just 44% during the 2020 calendar year due to the COVID-19 pandemic and associated closures of tourist accommodations, the Extended Stay America chain, for example, remained open and reported an occupancy rate of 74% across the country, *id.*, signaling its importance and the consistent demand for permanent and semi-permanent hotel accommodations due to the major lack of other affordable housing options.

A key aspect that makes these accommodations accessible to low-income renters are the less strict credit requirements compared to private apartment markets. Even in its 2001 annual report to the Securities and Exchange Commission, Efficiency Lodge indicated that “persons who cannot meet the credit standards of

apartments” are among the most typical guests of their extended-stay chain. Efficiency Lodge, Inc. (2001), Annual Report, Form 10k-SB, (2002), <https://bit.ly/37FywJb>.

Moreover, contrary to industry discourse that focuses on transient travelers, itinerant workers, and single-person households, extended-stay and other residential hotels are not simply used as housing for single individuals. In fact, many residents of these hotels are families with children. According to a 2019 survey of residents in nine Norcross, Georgia residential hotels, approximately 40% of tenants have children living with them. These residential hotels are so ingrained in the housing fabric of metro Atlanta that Gwinnett County school buses make over 90 stops each day at extended stay hotels, serving more than 600 students living full-time in these buildings. Frazier, *When No Landlord Will Rent to You*, NY TIMES MAGAZINE, at 46. The situation is similar in the much smaller Clayton County, where school buses stop at 20 different extended stay residences to pick up and drop off students whose families have made these places home. *Id.* This is in no way unique to the metro Atlanta area, however, as families across the country with school-aged children—including cities like Anaheim, California; Orlando, Florida; and Columbus, Ohio—have been pushed into residential hotels due to the lack of accessible and affordable housing. Kate Santich & Caroline Glenn, *Families living in Central Florida hotels fear homelessness during coronavirus pandemic*, CAPITAL GAZETTE, Apr. 17, 2020;

see also Eckholm, “As Jobs Vanish, Motel Rooms Become Home; Frazier, *When No Landlord Will Rent to You*, NY TIMES MAGAZINE.

As noted by various scholars, there exists no comprehensive database of residential hotels across the United States—much less, an accounting how many people are living in them or the conditions under which they are living. Eric Seymour & Joshua Akers, “*Our Customer Is America*”: *Housing Insecurity and Eviction in Las Vegas, Nevada’s Postcrisis Rental Markets* (hereinafter “*Our Customer is America*”), HOUSING POLICY DEBATE, 31(3), 516–539 (2020); S.O. Thompson, *Higher Risk of Homelessness for Extended-Stay Hotel Residents*, JOURNAL OF AFFORDABLE HOUS. & CMTY. DEV. LAW, 29(2), 245-255 (2020).

However, given that Atlanta has been identified as one of the metropolitan areas most reliant on residential hotels for stopgap affordable housing, *cf.* Seymour & Akers, “*Our Customer Is America*”: 31(3), 516–539, this Brief seeks to quantify the possible scope of metro Atlanta’s residential hotel market and thus, show how many individuals and families may be affected by the ruling in this case. To identify both branded extended stay and other residential hotels potentially being used as permanent or semi-permanent housing, we used the following methods:

- a) Identifying the residential hotels from which tenants had contacted amicus curiae the Housing Justice League’s tenant hotline for assistance since the start of the COVID-19 pandemic;

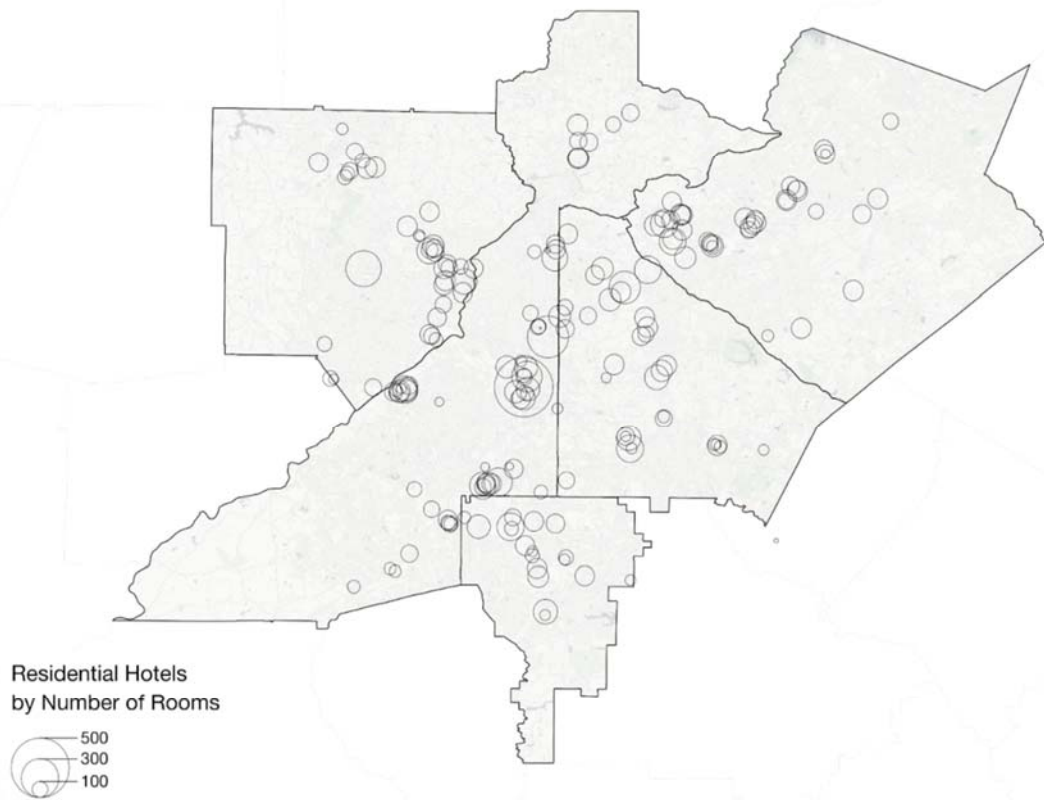
- b) Identifying those hotels listed in the 2019 LiveNorcross report “When Extended-Stay Becomes Home” as being predominantly used as permanent housing;
- c) Identifying those hotels listed in Fulton County Tax Assessor records as having the land-use code for “Micro Budget Motel”;
- d) Identifying residential hotels of the same brand name or chain located in the remaining 4 Atlanta metro counties (DeKalb, Cobb, Gwinnett, and Clayton), using the Fulton County Tax Assessor records land-use code for “Micro Budget Motel” as a proxy; and
- e) Identifying those hotels that are explicitly branded as being extended-stay hotels in online business directories for hotel chains.

Using these methods, we identified a total of 45 different hotel brands operating in Georgia, including several chains as well as stand-alone hotels with no larger brand affiliations, representing a total of 235 different residential hotel locations. With the list of 235 extended-stay or other potential residential hotels, we used a combination of methods to establish room counts for each hotel.¹

¹ Unit estimates for DeKalb, Fulton and Clayton County were taken from Tax Assessor records, while estimates for other counties (or hotels with missing data in Tax Assessor records) were ascertained via listings on TravelWeekly.com, other hotel listing websites or through a phone survey carried out by researchers and volunteers.

The results from this dataset reveal the far-reaching impact that the outcome of this appeal will have on housing security for low-income residents who face barriers accessing most other housing markets. Figures 1 and 2 below show the geographical spread of extended-stay residential hotels across the 5 metro Atlanta counties. The locations on the map in Figure 1 are sized according to the number of rooms. Of the 235 extended-stay or economy residential hotels that are likely used for semi-permanent or permanent housing, there are an estimated total of 25,815 units. *See* Fig 2. Extended-stay and economy hotels have a wide range of units from 16 to over 500 at some locations. *See* Fig. 1. The average number of units across the hotels is 109; the median is 110. There are 11 Efficiency Lodge locations in metro Atlanta—all but one owned by Ray Barnes, with the other owned by a business partner—totaling 1,435 rooms. *See* Fig 3.

Residential Hotels in the 5 metro counties surrounding Atlanta, GA



Source: Aggregated data from county tax assessor records, LiveNorcross report, Housing Justice League's tenant hotline database, and online residential hotel business directories.

FIG 1. RESIDENTIAL HOTEL MAP - 5 METRO COUNTIES IN GEORGIA

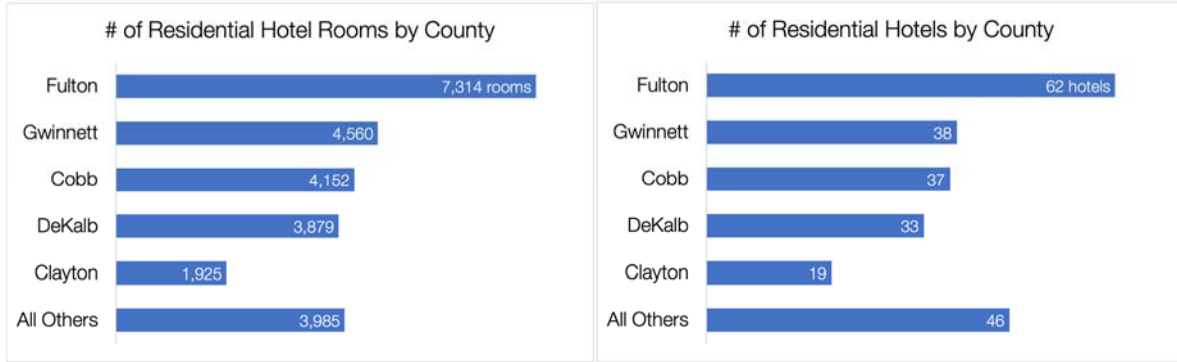


FIG. 2. NUMBER OF RESIDENTIAL HOTEL ROOMS AND HOTEL LOCATIONS BY COUNTY IN GEORGIA

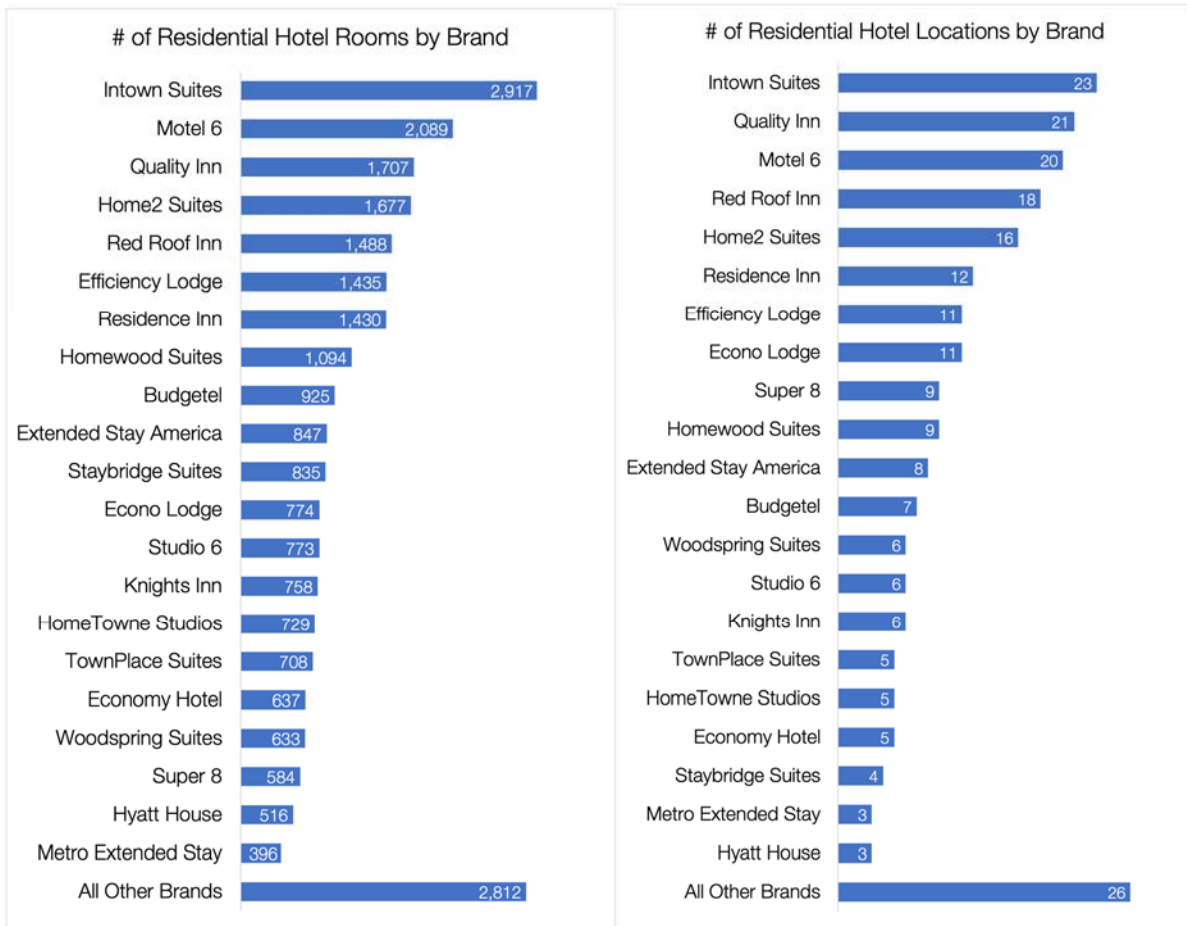


FIG. 3. NUMBER OF RESIDENTIAL HOTEL ROOMS AND HOTEL LOCATIONS BY BRAND IN GEORGIA

Given these methods, our full dataset provides a liberal estimate of how many rooms *could be* used as residences when the hotels are at a maximum capacity.² However, carrying out conservative calculations, based on the 72% occupancy rate reported by Extended Stay America as a proxy, *Frazier, When No Landlord Will Rent to You*, N.Y. TIMES, as well as the 40% family occupancy rate reported in the LiveNorcross report, Kathleen Allen, *et al., When Extended-Stay Becomes Home*, LiveNorcross (May 2019), pp. 6-7, available at <https://bit.ly/3g1Fay3>, this research estimates that the 25,815 rooms in the 5 metro Atlanta counties could represent anywhere between 30,000 to 47,000 people. Thirty thousand would be a conservative estimate, based on families of 3 persons, and all the remaining units occupied by single persons. While this case concerns 3 residents at one motel, the number of residential hotels in the largest metro area of Georgia suggests that a failure to uphold the lower court's injunction would have a devastating impact on low-income renters with limited access to affordable housing in the region.

B. *The Experiences of Residents at Efficiency Lodge and Other Extended-Stay Residential Hotels Are Indistinguishable from Other Low-Income Tenants And a Key Part of the Industry's Business Model.*

Many residents living in Efficiency Lodge, experience housing insecurity, violence, and unsafe housing conditions that resemble that of other low-income

² The conservative estimate accounts for the possibility that not all units in residential hotels are always used as a residence, nor is occupancy typically at 100%.

tenants. For them, Efficiency Lodge is home, and because home comes with the same risks of violence from illegal evictions and the horrible conditions that many low-income tenants experience, this Court should ensure that those residents have the same protections enjoyed by all tenants.

1. Extended-Stay Residential Hotels Compete for, Incentivize, and Profit from Long-Term Residency.

Efficiency Lodge argues that treating residents as tenants because they live at the motel as their primary residence creates an unworkable rule. It goes on to argue that when a resident ceases being a guest and becomes a tenant, that is the unilateral experience of the resident, not a mutual understanding with the hotel. This argument obscures the reality that Efficiency Lodge, and other establishments like it, targets low-income individuals and families as long-term residents as an essential part of its business model. *See* Efficiency Lodge, Inc., Annual Report, Form 10k-SB,.

Extended-stay residential hotels use a combination of incentives to entice low-income and unhoused residents that differ dramatically from what hoteliers use to attract transient guests. Included in the incentives Efficiency Lodge and other similar businesses use to attract long-term residents are: 1. reduced rates tied to reduced services; 2. acceptance of cash payments and not requiring a credit card to secure charges; 3. accepting weekly or daily payments; and 4. no credit checks. Leslie A. Brownrigg, *People Who Live in Hotels: An Explanatory Overview*, U.S.

Census Bureau, Statistical Research Division (May 31, 2006), pp. 24-26. Moreover, extended-stay residential hotels take advantage of economic market forces that push low-income families to their businesses, acknowledging that they cater “primarily to people who can’t get into formal housing.” *Frazier, When No Landlord Will Rent to You*, N.Y. TIMES MAGAZINE.³ Once extended-stay hotels secure the tenancy, they benefit from the longevity of residents’ stays, with residents staying months and even years. Efficiency Lodge and its ilk want the advantages of an extended tenancy, without the duties proscribed to landlords and the protections afforded to tenants under Georgia law.

Extended-stay hotels exploit the housing instability experienced by low-income and unhoused families and individuals. Many low-income families and individuals have nowhere to go and seek the stability associated with long-term residency at extended stay hotels to avoid homelessness. Georgia tenants are facing a dire scarcity of affordable units across the state. While construction of new units is seen across the metropolitan Atlanta area, the units are luxury apartments, not units affordable to low-income tenants or working families. The National Low

³ An extensive portrait of Stephen Siegel, chief executive of the Siegel Group with extended-stay properties across the United States, including in Alabama, Mississippi, Louisiana, Tennessee, and Texas, includes descriptions of a loyalty program for tenants, discounts for on-time rental payments, slogans such as “Bad Credit OK” and “Flexible-Stay Living”, and active marketing to the poor by offering Siegel Group-branded blankets to homeless shelters. *Frazier, When No Landlord Will Rent to You, Where Do You Go?*, N.Y. TIMES MAGAZINE.

Income Housing Coalitions reports that Georgia has a shortage of over 190,000 affordable homes. Nat'l Low Income Hous. Coal, *Housing Needs by State-Georgia*, <https://bit.ly/3lZoVVW>.

In addition to the lack of available affordable housing inventory, low-income families do not have the necessary income to secure housing where it is available, thereby pushing them to extended-stay hotels for long-term residency. The 2021 National Housing Wage estimates that hourly wage, full-time workers must earn at least \$24.90 per hour on average nationwide to afford the fair market rent for a two-bedroom apartment and \$20.40 per hour to afford a one-bedroom apartment. Nat'l Low Income Hous. Coal, *Out of Reach 2021: The High Cost of Housing*, <https://bit.ly/2UiGrcA>, p. 2. For the State of Georgia, the housing wage needed to afford a two-bedroom apartment is \$19.42 per hour. *Id.* at 20. As the federal minimum wage is \$7.25 per hour, a Georgia worker would need to work 107 hours per week to afford a two-bedroom apartment, and 92 hours per week to afford a one-bedroom apartment. *Id.* at 63.

The “overwhelming majority of lower income households . . . are cost-burdened,” paying more than thirty percent of their income toward rent, with some paying forty, fifty, or sixty percent of their income toward housing costs. *Atl. Reg'l Comm'n Reg'l Snapshot: 2020 Reg'l Hous. Affordability* (Feb. 17, 2020), available <https://bit.ly/3fYDBRH>. The number of cost-burdened homes has increased over

the past ten years, as rental costs have increased quicker than household income among renters. *Id.* In 2018, the number of cost-burdened households in the Atlanta metropolitan region was 523,670 households, with over 51.5% of those households having incomes of less than \$50,000. *Id.*

Other circumstances that push low income families to extended stay hotels include poor credit scores that result in the families and individuals paying more in upfront fees to secure housing, including increased and/or nonrefundable security deposits, and less-than-stellar rental histories or past evictions leading to denial of rental applications. The mere filing of an eviction against a tenant has a detrimental and long-lasting impact on tenants' abilities to secure future housing. Families with evictions on their records struggle to find adequate housing and can become shut out from the traditional rental housing market. Low-income families' use of extended stay hotels as long-term housing has been appropriately described as "a way of life that chose them" with few available alternatives. Frazier, *When No Landlord Will Rent to You*, N.Y. Times MAGAZINE.

Studies help to illuminate low-income families' use of extended stay hotels as their primary residence. In a 2018 survey of nine extended stay hotels conducted in Norcross, Georgia, 84% of the respondents described the hotels as their place of residence, with 40% residing at the hotels for a year, and 22% residing at the hotels for more than three years. Allen, *When Extended-Stay Becomes Home*,

LiveNorcross, pp. 6-7.⁴ The majority of the residents were working families, with 69% of the respondents having one or more full time jobs. *Id.* at 7. Forty-seven percent of the residents had an eviction on their records, and 47% had experienced homelessness at least once. *Id.* at 8. The vast majority of the respondents, 85%, were cost-burdened, paying more than 35% of their income toward rent, and individual residents discussed the difficulty in saving money for large security deposits and first month's rent in order to secure traditional housing. *Id.* at 8-9.

2. The experiences of low-income tenants parallels the experience of Plaintiff-Appellees and other residents in residential motels.

Since March 2020, members of Housing Justice League's ("HLJ") Eviction Defense Working Group have been operating a hotline for tenants who are facing eviction or dealing with problems with their landlords. Through this hotline, HLJ has heard from numerous tenants living in extended-stay residential motels across Atlanta, including from the Efficiency Lodge hotel on Flat Shoals Road in Decatur at issue in this case, with whom HLJ closely worked in the fall of 2020 on a campaign to demand justice for the self-help evictions and the abysmal living conditions. In HLJ's experience, working with Efficiency tenants and other extended

⁴ See also Michael E. Kannell, *Many Norcross families working but trapped in extended-stay hotels*, AJC (Mar. 24, 2020), <https://www.ajc.com/business/many-norcross-working-but-trapped-hotels/3Z7B3mvpQwqc2yKjIW2rtO/>

stay residents, the problems they face with the managers of their hotels closely mirror the problems other tenants face with their landlords.

One of the most urgent problems faced by residents living in residential hotels with which HLJ worked is the threat of physical expulsion from their home. In June and July 2020, HLJ received several calls on its hotline from residents of Efficiency Lodge reporting threats of immediate ouster by management. Efficiency Lodge followed through on these threats on September 8, 2020, when several residents were forced out of their homes at gunpoint by armed private security officers. J.D. Capelouto, *Families Forced Out of Extended Stay Motel in South DeKalb as Activists Sound Alarm*, Atlanta Journal Constitution, Sep. 11, 2020, <https://bit.ly/3s968sB>. Few, if any, of the residents who were removed had somewhere else to sleep that night; it took a DeKalb elected official working with a local church to arrange emergency housing for the evicted Efficiency Lodge residents to prevent them—at least temporarily—from facing homelessness. *Id.* These residents had not treated Efficiency Lodge as a hotel; it was their only home, and when they were uprooted, they had no other home to return to—just like countless other low-income tenants across Atlanta. This was true of every single extended-stay hotel resident that HLJ heard from through its hotline: if forced to leave, all of them faced homelessness or struggled to find somewhere else to stay. HLJ reported One resident at an extended-stay residential hotel in Norcross,

Georgia, reported that she was terrified of being thrown out and having to live in her car with her four children.

And because managers of extended-stay and residential hotels do not believe they are constrained by laws governing eviction, their reasons for expelling residents can be capricious and arbitrary. One resident at an extended-stay residential motel in Lithia Springs reported being singled out for surveillance by the general manager of the motel before being forced to leave. Another resident in Stone Mountain reported being threatened with removal after asking for a tissue. And several callers living at extended-stay residential motels reported being threatened with ouster over payments that they made but that management claimed to have not received, or over surprise charges they did not know they owed.

But that extended-stay residential hotels often do not go through the proper legal channels to evict residents does not distinguish the experience of their residents from that of many low-income tenants in Atlanta. Many tenants from HLJ's hotline report that their landlords, sometimes successfully, tried to force them to leave their home without serving them with a dispossessory warrant and getting a writ of possession from the court, as they are legally required to do.

Another point of overlap between the experience of extended-stay residents and that of other low-income tenants is the physical quality of their homes and the refusal of management to conduct even basic upkeep. At the Efficiency Lodge in

Decatur, residents reported problems like mold, flies, roaches, trash, floods, and fires, among other hazardous conditions. According to DeKalb County officials, the County “found more than 300 code violations at the lodge in July 2018 and another 30 violations in January [2020].” Ron Harris & Sudhin Thanawala, *Suit: Atlanta Area Housing Site Illegally Evicted Residents*, ASSOC. PRESS, Oct. 7, 2020, found at <https://abcn.ws/3AGa7Qr>. A resident of a different extended-stay hotel reported extensive mold problems in their home that were so bad that they had to go to the emergency room because of severe headaches. Another resident also reported mold at their extended-stay residential hotel in Decatur, in addition to repair issues and water contamination. These are all common problems faced by low-income tenants, as well, and demonstrate that managers at extended-stay and residential hotels view residents not as guests with options for where to stay—or whether to stay at a hotel at all—but as tenants trapped in abhorrent living conditions by the same broader forces that trap other low-income tenants in similarly awful conditions.

Further evidence of extended stay hotels’ relationship with residents being more similar to the landlord-tenant relationship (particularly at the lower end of the market) than the hotel-guest relationship is the Decatur Efficiency Lodge residents’ reports to HLJ that they had arrangements with management to receive discounts on rent in return for doing maintenance work, like painting, at the hotel. Zachary Hansen & J.D. Capelouto, *Extended Stay Motel with Ties to Former Governor*

Facing Lawsuit From Residents, AJC, Oct. 7, 2020, <https://bit.ly/3xG4foi>. These arrangements are similar to others that HLJ has seen at low-end apartment complexes in Atlanta, where landlords attempt to save money on maintenance by recruiting tenants to do maintenance work instead of hiring professionals.

C. Treating Residents at Extended Stay Hotels as Tenants Promotes Stable Housing and Protects Residents From Abusive Practices, Consistent with the Purpose of Due Process.

1. Residents have a protected property interest in their homes.

Treating residents of extended-stay hotels as tenants protects their property interests in their residences under the Due Process Clause of the U.S. Constitution. *See Greene v. Lindsey*, 456 US 444, 451 (1982) (finding public housing tenants faced with summary eviction proceedings possessed significant property interest in remaining in their homes sufficient for procedural due process to apply); *Lindsey v. Nornet*, 405 US 56, 74-79 (1972) (assuming, without question, that periodic month-to-month tenancy constituted property interest entitled to 14th Amendment protections); *see also Grayden v. Rhodes*, 345 F.3d 1225, 1232 (11th Cir. 2003) (finding plaintiff-tenants enjoyed a constitutionally-protected property interest in continued residency at their apartments); *Jeffries v. Ga. Residential Finan. Auth.*, 503 F. Supp. 610, 618 (N.D. Ga. 1980) (“The interest at stake here, an individual’s interest in remaining in his home, is unquestionably substantial. . . . An individual’s interest in his home is traditionally afforded a certain degree of sanctity in our legal

system. That sanctity finds its expression, among other places, in the fourth amendment, and it is no less entitled to recognition [under the Fourteenth Amendment].”). Thus, in seeking to remove residents who treat its extended stay properties as their sole residence, Efficiency Lodge must follow Georgia dispossession law, whose “procedure . . . is consistent with the height of due process concerns.” *See Jeffries*, 503 F. Supp. at 620.

Such protections afford the resident several rights and remedies under O.C.G.A. §§ 44-7-1, *et seq.*, that a guest does not have under O.C.G.A. §§ 43-21-1 *et seq.*, as Plaintiffs note. Appellees’ Br. 13-16. The most important of those rights is a judicial eviction procedure, which is significantly different from the process for summary notice and removal provided in the innkeeper-guest laws. *Id.* §§ 43-21-3.1, 3.2. Under the landlord-tenant statute, the landlord may only recover possession of the dwelling from the tenant in a civil action in which the issue of the right of possession is determined. *See id.* § 44-7-50. Specifically, landlords must provide a notice to vacate as dictated by the lease terms, or by Georgia law if a tenancy at will. *Id.* § 44-7-7. And after providing proper notice, landlords have to make a demand for possession. O.C.G.A. §44-7-50(a); *see Wilensky v. Agoos*, 74 Ga. App. 815 (1947) (landlord required to provide demand for possession separate from 60-day notice to vacate); *see also Whipper v. Kirk*, 156 Ga. App. 218 (1980). Under the formal process, the landlords then provide an affidavit of claims to the court and

ensure service of the summons on the tenant, and the tenant has the opportunity to respond by filing an answer with defenses and counterclaims. O.C.G.A. §§ 44-7-50, 44-7-51.

A failure to protect these rights and remedies of residents would illegally and immorally exploit the vulnerability of low-income families who reside at extended-stay residential hotels like Efficiency Lodge's as a last resort, leaving them with no security in their homes. To illustrate, extended-stay hotels like Efficiency Lodge could disregard requirements to fix flooding, electrical, molding or other conditions issues in tenants' individual units on their property that is the landlord's duty to address to ensure a habitable residence. *See supra.*, Section III.B.2. Automatic dispossession would also cause residents to lose everything—physical shelter, at least temporarily all of their personal possessions housed by that shelter, and the stability that their residence offers in their children's schooling as well as accessible employment and medical care. *Cf. Jeffries*, 503 F. Supp. at 618 (“Arbitrary evictions contradict the goal of social justice, foster an atmosphere of hostility, and contribute to feelings of anomie and alienation.”). And as occurred in this case, it would also permit law enforcement—including private security—to remove residents from the only home they know, erroneously depriving them of their property without lawful process. Neither the law nor public policy at the state or federal level permits such an outcome.

Accordingly, contrary to Efficiency Lodge's argument, whether any particular person is a resident and therefore subject to removal under the landlord-tenant statute cannot be determined solely by the alleged contract that Efficiency Lodge required the person to sign before moving in. Rather, residents' protected property interests in their extended-stay tenancies under Georgia and federal law must be considered and respected.

2. *According due process rights to extended-stay residents under Georgia's dispossessory law protects families from abuse.*

Permitting self-help evictions, without according due process to extended-stay residents, predictably leads to private violence by Efficiency Lodge and similar businesses. Without the protections afforded to tenants by the judicial dispossessory process dictated by Georgia law, O.C.G.A. § 44-7-50, residents are left to fend for themselves in confrontations with extended-stay hotel operators and their employment of armed security or even law enforcement to remove families from their homes, as demonstrated by this case. And even before the occurrence of self-help evictions—which are often based on arbitrary reasons, including failure to pay unexplained or unwarranted charges—tenants report repeated threats of “eviction” from the extended-stay residential hotel operators, causing undue stress to families experiencing housing instability and in fear of homelessness. *Supra* pp. 18-21.

As noted above, the formal dispossessory process guarantees protection of tenants from self-help evictions and other unlawful actions by the landlord. *See supra* pp. 24-25. The availability of defenses and counterclaims are powerful tools to secure a tenant's continued right to remain in their rental property while holding their landlord accountable for failing to abide by their statutorily-mandated duties. Without these formal steps, including requiring landlords to obtain the court's permission to secure a writ of possession and remove tenants, extended-stay hotel tenants are in constant jeopardy of displacement and homelessness.

Here, in addition to perpetuating a lack of protection in self-help evicting its residents, Efficiency Lodge acted like a landlord in cutting corners and costs on repairs, while also hoping to eschew its landlord's duty to make repairs under Georgia law. *See* O.C.G.A. §§ 44-7-13, 44-7-14. As discussed in Section III.B, residents living in Efficiency Lodge's residential units and in other similar extended-stay properties often experience uninhabitable living conditions that other low-income tenants' experience. Vulnerable families are left in precarious positions with unsafe and unhealthy rental units. Efficiency Lodge residents reported mold stemming from water intrusion, pest infestations, overflowing trash, flooding, and fires. *See Harris & Thanawala, Suit: Atlanta Area Housing Site Illegally Evicted Residents*, ASSOC. PRESS (reporting that DeKalb County had cited Efficiency Lodge for hundreds of code violations over two years). Other residents of extended-stay

residential motels reported insufficient plumbing causing leaks, lack of hot water, severe mold, and roach infestations. *Supra* pp. 21-22.

Extended-stay and residential hotel residents should be afforded the opportunity to request repairs in their rental units, and to pursue affirmative claims against the owners when they fail to uphold the duty to repair. Without the enforcement of these affirmative rights, extended-stay and residential hotel residents are left to live in rental properties with uninhabitable physical conditions.

3. The protection of the due process property interests of residences like Plaintiffs in their extended stay properties protects residents in other unconventional residential arrangements.

Protecting the due process rights of residents in extended-stay and residential hotels prevents future and emerging business models from preying on vulnerable families. Absent such protections, business models like Efficiency Lodge that reap all the financial benefits of a traditional landlord-tenant relationship while avoiding its costs, encourages new business to enter the increasingly unaffordable housing market to find ways to profit while depriving families of due process under state dispossessory law. A recent case in point is PadSplit, which books and processes payments at weekly rental rates—known as “dues”—for rooms rented by low-income individuals—known as “members”—in co-living spaces in subdivided homes owned by private owners. *See* Rebecca Burns, “Like Airbnb, but for Flophouses,” *NEW REPUBLIC*, June 23, 2021, <https://bit.ly/3rIVgqR>. PadSplit’s

model, as well as the deprivation it may work on vulnerable families, is nearly identical to Efficiency Lodge's model.

Similar to Plaintiff-Appellees whose *sole, permanent* residence is their unit at Efficiency Lodge, PadSplit rooms are the *sole* residence of its renters, as well as the personal possessions they bring with them. Like Plaintiffs who pay Efficiency Lodge to rent a room/suite, PadSplit renters pay an agreed-upon amount to reside at the property for an extended period. Padsplit and extended-stay or residential hotels such as Efficiency also attract the same tenants: low-income individuals who are left with no other affordable housing option and require a place to stay for an extended, indefinite period. *Id.* (noting annual median income of users is \$22,000); CisionPRWeb, "PadSplit Announces 179% Revenue Growth in 2020" (last visited July 22, 2021), <https://bit.ly/2UF2dY7> (claiming PadSplit helps provide "safe, clean, and affordable housing" and estimating Padsplit has kept thousands from homelessness); *supra* Section III.A.-B. And similar to Efficiency Lodge's self-help eviction practices, PadSplit has been reported to have ousted residents by changing electronic key locks when they do not pay fees or otherwise fail to comply with their Padsplit rental agreement. *See* Burns, "Like Airbnb, but for Flophouses," NEW REPUBLIC, <https://bit.ly/3rlVgqR>; *supra* Section III. B.

But the purported innovative rental business model of PadSplit—or Efficiency Lodge, for that matter—does not change or obscure the underlying landlord-tenant

relationship between Padsplit and the residents of its properties or permit such companies to disregard landlord-tenant law protections.⁵ Like tenants in an apartment unit, residents in Padsplit's rooms—like residents at Efficiency Lodge's extended-stay residential motels—have a due process interest in their rental room, where they assume a lengthy stay in exchange for repeated and regular payments, with the owner's or manager's knowledge and consent; which offers them continued semi-permanent stability of shelter; and which third parties (i.e., job, family, etc.) treat as their residence. *See* CisionPRWeb, "PadSplit Announces 179% Revenue Growth in 2020" (last visited July 22, 2021), <https://bit.ly/2UF2dY7>; *supra* Section III.A. & III.C. The realities of this rental arrangement cannot be ignored, and the property interests of these renters—whether in shared co-living rental arrangements, extended stay hotels, or traditional apartment units or rental homes—must therefore be protected.

Otherwise, if PadSplit's and other opportunistic or disruptive housing rental models—centered around providing an affordable housing alternative for an individual's *sole* residence—are not evaluated under a landlord-tenant framework

⁵ Padsplit recently updated its website to advise that a rental agreement and membership for more 30 days of occupancy may create a landlord/tenant relationship. Padsplit, Frequently Asked Questions, "What kind of law does my room fall under?" (last visited July 22, 2021), <https://bit.ly/3rt502y>; *see also* Burns, "Like Airbnb, but for Flophouses," NEW REPUBLIC, <https://bit.ly/3rlVgqR> (explaining Padsplit founder's representation that for more than a year, Padsplit has followed landlord-tenant law in all jurisdictions where it operates, provided that a member has stayed for more than 30 days).

and do not afford their residents proper pre-eviction notice and opportunity, they will effectively be permitted to illegally (and immorally) exploit the housing instability of economically vulnerable individuals and their families—all under the guise of fulfilling a pressing social need for affordable housing. *See* Burns, “Like Airbnb, but for Flophouses,” *New Republic*, <https://bit.ly/3rIVgqR> (noting renters’ complaints against PadSplit for moving them to other properties or evicting them without notice or process, damaging their personal property, or failing to address other unruly, harassing renters and maintenance issues on property); Section III.B. But in the end, these models, when unregulated by landlord-tenant laws, only disrupt the landlord-tenant legal framework by not following it. This cannot be permitted.

In sum, to uphold due process property protections of nontransient residents’ rental property interests, the law must consider the changing landscape of rental housing arrangements in a nation where the affordable housing market in metropolitan cities like Atlanta continues to shrink, and apply dispossessory legal process when a resident treats a property as their sole residence. Efficiency Lodge’s position on appeal and before the trial court fails to afford such protection, and the trial court’s order must therefore be upheld.

D. *Consistent with other housing laws and with the approach of other states, this Court should consider Plaintiffs tenants because they live at Efficiency Lodge as their primary, permanent residence.*

At the heart of Efficiency Lodge’s argument is that residents who inhabit its hotel as their primary residence should be considered guests rather than tenants, without examining what defines a guest and whether that definition should apply to the reality experienced by its residents. This argument is nonsensical based on Georgia’s own treatment of the terms “guests” and “tenants” and other states’ and federal law’s treatment of extended-stay or residential hotel residents.

First, Georgia law requires that this Court give the terms in a statute their ordinary meaning, O.C.G.A. § 1-3-1(b), and that the laws be construed in harmony with other laws that are related. As argued below, the ordinary meaning of guest infers transience and would exclude people who make the motel their primary residence. *Second*, this interpretation is consistent with other states’ laws that consider residency in determining whether to apply protections under landlord-tenant law. *Finally*, protections under the Fair Housing Act would treat Plaintiffs as tenants residing at Efficiency Lodge, not as guests of an innkeeper. Upholding the trial court’s decision therefore harmonizes these different areas of law.

1. A guest under Georgia law is a transient lodger.

A guest under Georgia law is one who pays a fee to the innkeeper for the purpose of entertainment at that inn. O.C.G.A. § 43-21-1. There is no further

definition for guest, so courts must apply its “ordinary signification.” O.C.G.A. § 1-3-1. Accordingly, the Supreme Court of Georgia has found the term guest includes transients. Related Georgia laws, by contrast, infer residency for tenants. *See* O.C.G.A. § 44-7-30 (“A ‘Residential rental agreement’ means a contract, lease, or license agreement for the rental or use of real property as a dwelling place”). The trial court, therefore, did not err in looking at the circumstances involving Plaintiffs’ stay at Efficiency Lodge and concluding that they were residents and thus, tenants under the law.

As far back as the early 1900s, innkeepers sought to avoid liability for harms caused by their negligence when providing “entertainment” to people who did not also pay for lodging, prompting the Supreme Court of Georgia to state that “[a]ncient common-law definitions of an inn are not altogether applicable to modern conditions and methods of travel and of innkeeping.” *Walpert v. Bohan*, 126 Ga. 532 (1906). To replace those ancient notions, the Court offered its own definition of innkeeper: “one who regularly keeps open a public house for lodging and entertaining transient comers, on the general expectation of his suitable recompense.” *Id.*

Following *Walpert*, Georgia courts have not had an occasion to decide under what conditions someone staying at a hotel is no longer a “transient comer.” However, courts have not taken the same categorical approach that Efficiency Lodge suggests in its brief. Instead, they have looked at the facts of the individual cases and

decided a guest remained a guest while eating in a restaurant operated by the hotel, *Summer v. Hyatt Corp.*, 153 Ga. App. 684 (1980), and in the hotel parking lot, *Traylor v. Hyatt Corp.*, 122 Ga. App. 633 (1970), and *Ellerman v. Atlanta Am. Motor Hotel Corp.*, 126 Ga. App. 194 (1972), while also finding that when a hotel operated a facility for the entertainment of others, it was not sufficient to make a someone who was not lodged with the hotel its guest. *Accord Walpert*, 126 Ga. at 534 (finding innkeeper who maintained public bathhouse next to beach did not have innkeeper-guest relationship with public who used bathhouse); *Summer*, 153 Ga. App. at 684–85 (“[T]he fact that an innkeeper provides the above services [of a restaurant] does not establish a guest-innkeeper relationship.”); *see also State v. Delvechio*, 301 Ga. App. 560, 562 (2009) (holding that person is not guest if they used stolen credit card to pay for room); *Diplomat Rest., Inc. v. Townsend*, 118 Ga. App. 694 (1968) (providing “entertainment” in form of restaurant without lodging is not sufficient to create an innkeeper-guest relationship). Despite the verbiage in Georgia’s code that everyone who pays an innkeeper for entertainment is a guest, the clear interpretation from our courts is not every “entertainment” a hotel provides makes someone who pays for its enjoyment a guest of an innkeeper.

Furthermore, the Georgia Supreme Court’s interpretation of the innkeeper-guest relationship infers guests are transient, and courts since have performed factual reviews in these cases to determine whether someone is a guest of a hotel in different

circumstances. The trial court's approach was therefore consistent with this case law and looked at the facts to determine whether Plaintiffs were transient guests or residents of the hotel.

2. *Other states employ totality-of-the-circumstances tests to determine whether a resident of an extended stay is a tenant or a guest.*

In addition, the trial court's finding that Plaintiffs, as residents in an extended-stay residential hotel, are tenants under Georgia law aligns with other states' tests to determine an individual's tenant status in extended-stay hotels, like Efficiency Lodge's.

States employ tests that weigh factors that define when someone receives protections from eviction owed to a tenant rather than the summary procedures reserved for short-term guests at a motel. *See Baker v. Rushing*, 104 N.C. App. 240, 247, 409 S.E.2d 108, 112 (1991) ("Whether the Plaintiffs here were residential tenants must be determined by looking at all of the circumstances, and the fact that a building is identified as a "hotel" and those who reside in it as "guests" is not determinative"); *id.*, *e.g.* (upholding denial of summary judgment where plaintiffs used premises as primary residence, among other factors); *see also HSH Eastgate, LLC v. Sheriff of Osceola Cty.*, Fla., 6:13-CV-1902-ORL-31, 2015 WL 3465795, at *4 (M.D. Fla. June 1, 2015) (finding that although statutory scheme does not define with certainty line between transient and non-transient, "the most important

indicator of this intent is whether the dwelling unit is the guest's sole residence”); *Stone v. Clow*, A13-0984, 2014 WL 902724, at *3 (Minn. Ct. App. Mar. 10, 2014) (“The length of the stay, the existence of a special contract, the rate or method of payment, and the possession or nonexistence of a home or permanent residence elsewhere are all material, but not necessarily controlling, factors to be considered in determining the question”); *McNeill v. Estate of Lachmann*, 285 N.J. Super. 212, 217, 666 A.2d 996, 999 (App. Div. 1995) (explaining that most important factors in determining whether one was domiciled at a hotel, or was a transient guest were “the length of the actual residence coupled with the clear manifested intention of the plaintiff and his family to remain as residents at the hotel for an indefinite period”).

As *Baker* explains, Efficiency Lodge’s label for itself is not sufficient to determine the nature of its relationship with Plaintiffs. Efficiency Lodge’s argument asks this Court to ignore the reality of its business model and the experience of residents in its hotel. Such an approach contradicts other states’ framework. Efficiency Lodge actively seeks long-term residents, does not provide services that one would expect at a hotel that caters to transient visitors, and maintains the physical condition of its property in the same fashion as other landlords who house low-income tenants. *Supra* Section III.A-B. More importantly, the residents at Efficiency Lodge have no other home and use Efficiency Lodge as their primary, permanent residence.

3. *Using primary residence as a key factor in whether residents at extended stay motels are tenants is consistent with federal law applicable to Efficiency Lodge and Plaintiffs.*

The trial court's approach harmonized the law of innkeepers and that of landlords by looking at the factual circumstances to determine when a person inhabiting an extended stay motel becomes a tenant. However, in deciding that non-transient residents of hotels are tenants, it also aligned Efficiency Lodge's duties with those of landlords and owners under the Fair Housing Act.

The Fair Housing Act⁶ prohibits discrimination in the sale or rental of a dwelling. *See generally* 42 U.S.C. § 3604(f). Dwelling is further defined as any building or structure that is “designed or intended for occupancy as, a residence by one or more families.” 42 U.S.C. § 3602(f). The FHA does not further define residence, so courts have used its ordinary meaning to determine whether a particular arrangement is a dwelling under the FHA. *See Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1214 (11th Cir. 2008) (finding drug rehabilitation facility was dwelling); *United States v. Columbus Country Club*, 915 F.2d 877, 881 (3d Cir. 1990) (same for country club's summer homes because members often stayed up to five months); *Baxter v. City of Belleville, Ill.*, 720 F. Supp. 720 (S.D. Ill. 1989) (same

⁶ The Georgia Fair Housing Act, O.C.G.A. §§ 8-3-200 *et seq.*, is nearly identical and federal cases governing the fair housing are “persuasive precedent” in interpreting Georgia's law. *Bailey v. Stonecrest Condo. Ass'n, Inc.*, 304 Ga. App. 484, 487, 696 S.E.2d 462, 466 (2010).

for shelter for people who had contracted HIV); *United States v. Hughes Mem'l Home*, 396 F. Supp. 544, 549 (W.D. Va. 1975) (same for private children's home because children were residents). Additionally, at least two courts have found that transient accommodations were not dwellings. *See Amazing Grace Bed & Breakfast v. Blackmun*, CIV.A.09-0298-WS-N, 2009 WL 4730729 (S.D. Ala. Nov. 30, 2009) (finding proposed bed and breakfast was "archetype of a 'transient visit'" because it would provide lodging for maximum of three days and therefore was not dwelling); *see Patel v. Holley House Motels*, 483 F. Supp. 374, 381 (S.D. Ala. 1979) (finding motel was not a dwelling when it "provides lodging to 'transient guests'").

Because Efficiency Lodge provides housing to people as their primary residence, it is likely subject to the Fair Housing Act, which looks to whether the structure is used or intended to be used as a person's residence. By finding that residents of Efficiency Lodge are tenants, the trial court's decision properly aligns tenants' expectations to be free from discrimination under the FHA with Georgia's landlord-tenant law.

In sum, this Court should uphold the trial court's decision and adopt a test whose primary factor is whether the unit is the person's primary, permanent residence. Such a test is consistent with the approach in other cases in Georgia interpreting the statute, would mirror decisions in other states that afford tenant

protections to residents at extended-stay hotels, and would align tenant protections with those provided under Georgia and Federal fair housing law.

IV. CONCLUSION

Efficiency Lodge is not looking for certainty—it seeks absolution. Its business model provides affordable housing under the guise of a hotel to avoid the reciprocal duties to its residents and the costs of being a landlord. However, Georgia law and public policy require this Court to look beyond a one-sided contract to the factual circumstances of the tenancy between Efficiency Lodge, Inc. and Plaintiffs, as well as Plaintiffs’ protected due process interests in their extended stay and enforce the landlord-tenant relationship. For the reasons discussed above, and in Plaintiffs’ appellate briefing, this Court should uphold the trial court’s injunction.

CERTIFICATE OF COMPLIANCE

In compliance with Georgia Court of Appeals Rule 24(f)(1) and (3), this submission does not exceed the word count limit imposed by Local Rule 24.

Respectfully submitted,

/s/ Emily C.R. Early

Emily C.R. Early (GA 810206)

The Southern Poverty Law Center

P.O. Box 1287

Decatur, Georgia 30031-1287

Office: (404) 521-6700

Cell: (334) 207-3952

emily.early@splcenter.org

Counsel for Amici Curiae

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of August, 2021, I filed the foregoing **BRIEF OF AMICUS CURIAE HOUSING JUSTICE LEAGUE, THE ATLANTA VOLUNTEERS LAWYERS FOUNDATION, THE SOUTHERN POVERTY LAW CENTER, DANIELLA AIELLO, PH.D., TAYLOR SHELTON, PH.D., AND BRIAN GOLDSTONE, PH.D. IN SUPPORT OF PLAINTIFFS-APPELLEES**, with the Clerk of the Court for the United States Court of Appeals for the Eleventh Circuit by using the appellate CM-ECF system. I further certify that I directed a copy of the foregoing to be sent, via first class mail, to the Respondent at:

Lindsey M. Siegel (GA 730072)
Currey Hitchens (GA 940528)
E. Ann Guarrant (GA 314764)
Charles R. Bliss (GA 063385)
Harold Daniel (GA 204000)
Legal Aid Society, Inc.
246 Sycamore Street, Suite 120
Decatur, Georgia 30030-3434
PH: (770) 817-7522
lsiegel@atlantalegalaid.org
chitchens@atlantalegalaid.org
egarrant@atlantalegalaid.org
crbliss@atlantalegalaid.org

Daniel House
119 The Prado NE
Atlanta, Georgia 30309
haldaniellaw@outlook.com

Counsel for Appellees-Plaintiffs

Roy E. Barnes (GA 039000)
Benjamin R. Rosichan (GA 296256)
THE BARNES LAW GROUP, LLC
31 Atlanta Street
Marietta, Georgia 30060
PH: (770) 227-6375
FX: (770) 227-6373

Counsel for Appellant-Defendant

Respectfully submitted,

/s/ Emily C.R. Early

Emily C.R. Early (GA 810206)

The Southern Poverty Law Center

P.O. Box 1287

Decatur, Georgia 30031-1287

Office: (404) 521-6700

Cell: (334) 207-3952

emily.early@splcenter.org

Counsel for Amici-Curiae