

RECEIVED

Jan 17 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

Appellate Case No.: 2022-000754

Case No. 2020-CP-2481

Stefani Eddins,

Appellant,

vs.

Tall Sam I Am, LLC d/b/a Tabbuli,

Respondent.

RECORD ON APPEAL

Michael E. Liska
GARY C. JOHNSON, P.S.C.
SC Bar No. 102542
P.O. Box 55106
Lexington, KY 40505
Tel: 859-268-4300
Fax: 859-268-7318
Email: mliska@garycjohnson.com

Justin D. Maines
THE NYE LAW GROUP P.C.
SC Bar No. 76668
2008 Whitaker Street
Savannah, Georgia 31401
Tel: (912) 200-5230
Fax: (912) 335-6553
Email: jd@thenyelawgroup.com
Attorneys for Appellant

Mark S. Barrow, Esq.
Daniel Q. Atkinson, Esq.
Brandon R. Gottschall, Esq.
SWEENY, WINGATE & BARROW, P.A.
1515 Lady Street
Post Office Box 12129
Columbia, South Carolina, 29211
msb@swblaw.com
dqa@swblaw.com
brg@swblaw.com
Attorneys for Respondent

INDEX

Order May 24, 2022	1
Complaint.....	15
Amended Complaint.....	25
Answer.....	34
Plaintiff's Expert Disclosures.....	41
Defendant's Motion for Summary Judgment	81
Defendant's Memorandum in Support of Motion for Summary Judgment.....	84
Plaintiff's Response to Defendant's Motion for Summary Judgement.....	100
Deposition of Mark E. Williams	133
Deposition of James Rivenbark.....	167
Deposition of Cait Chapin	204
Deposition of Jeff Deihl.....	232
Deposition of Stefani Eddins.....	271
Deposition of Ashley Haynes.....	353
Incident Report.....	395
Photograph of light.....	397
Photograph of scene.....	399
Tabbuli marketing.....	401
Transcript of Record.....	404
Certificate of Appellant.....	431

Order May 24, 2022

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) THE NINTH JUDICIAL CIRCUIT

Stefani Eddins,) Civil Action No.: 2020CP1002481
))
))
Plaintiff,))
))
v.))
))
Tall Sam I Am, LLC d/b/a Tabbuli,))
))
))
Defendant.))

ORDER

This matter came before the Court on April 21, 2022 for hearing on the Defendant Tall Sam I Am, LLC d/b/a Tabbuli's (hereinafter "Defendant") Motion for Summary Judgment. Counsel for Defendant and Plaintiff Stefani Eddins were present. The Court finds that adequate time for pertinent discovery has elapsed, and the Court has considered the arguments of counsel, supporting memoranda, deposition transcript excerpts and other exhibits, and the contents of the record in rendering its decision. For the reasons set forth below, Defendant's Motion for Summary Judgment as to all of Plaintiff's causes of action is **GRANTED**.

FACTS

This is a premises liability case, originally filed in this Court on June 5, 2020. Plaintiff Stefani Eddins alleges that on July 20, 2017, she suffered injuries when a stage lightbulb housing fell onto her head while seated on a couch at Defendant's restaurant, Tabbuli. Plaintiff testified that she and her fiancée Ashley Haynes were on vacation in Charleston at the time and first arrived at Tabbuli around 9:00 PM. The pair were initially seated in the front of the restaurant. Plaintiff testified that waitstaff then informed the two of a fashion show that was to occur shortly

on the restaurant's back patio, and the two moved to a couch facing a stage in the back of the restaurant.

The couch was located adjacent to a structural roof pillar, onto which a large concert speaker had been attached. The light in question was possibly placed on top of this speaker. Plaintiff estimated that approximately forty-five minutes elapsed prior to the light falling onto her head. Plaintiff admitted that she had no knowledge of why the light fell, how it was attached, whether it was secured, who owned the light, or who installed the light. Plaintiff further admitted that she did not see the light at any point before it fell. Haynes testified identically.

There is no evidence in the record that any of Defendant's employees installed the light. There is no evidence in the record that Defendant in any way directed the manner in which the light was to be installed. There is no evidence that Defendant owned, rented, or controlled the light in question in any way. Rather, the evidence shows that Defendant hired a DJ through an independent contractual relationship to provide music and lighting for the fashion show, and that the light fixture in question was provided and installed by the DJ.

Defendant's manager at the time, Cait Chapin, testified that the typical practice of DJs hired to perform at these fashion shows was to bring their own lights, and that these DJs had discretion to place the lights where they wanted. Chapin further testified both that it was the responsibility of the DJs to place their own lighting in a safe and secure manner, and that she told the DJ to "make sure things are, you know, secured and safe." Chapin Dep. at 71:8 – 22. Defendant's Rule 30(b)(6) corporate designee likewise testified that the light was the "duty and responsibility of the DJ that was there that night," and that Defendant does not employ any DJs. Jeff Diehl Dep. 61:1-8; 87:15-18.

Plaintiff retained two expert witnesses. The first, Mark Williams, is a forensic architect. Mr. Williams admitted at deposition that he does not know the manufacturer of the light in question, whether the light included any safety devices designed to secure it to a base, what installation or usage instructions were included with this particular light, the weight of the light, what kind of lightbulb was installed, or whether music was playing through the speaker at the time it fell. Williams was likewise unsure of the industry standard regarding the usage of stage lights by DJs. Williams further admitted that he has no knowledge of how several of his cited sources pertain to the industry standard for temporary restaurant lighting in Charleston. Williams went on to admit that he was unable to vouch for the scholarly nature of at least one of his cited sources.

While Williams included a number of building, fire, and electrical code sections in his file materials and discussed them at length at deposition, Williams was unable to point to a building, fire, or electrical code section applicable and binding in Charleston, South Carolina that Defendant clearly violated; he further admitted that it would be “preposterous” to get a code inspector to review the temporary lighting in question. Williams Dep. at 80:22 – 81:6. Further, Williams did not know whether the various code sections included in his file materials were the most recent adopted versions – or whether Charleston County had adopted one cited body of code at all. *Id.* at 64: 1-3; 96:24 – 97:1; 75:24 – 76:3 (“Q: Do you know if Charleston County has adopted the 2015 IPMC [International Property Maintenance Code]? A: I don’t know, but I doubt it.”). Williams was also unable to “remember” whether he has ever previously been retained in a case dealing with how a lighting fixture was secured *Id.* at 119:10 – 13.

Williams nevertheless has opined that the light fell because it was not “properly” attached *Id.* at 79:1-4. Williams’ answer when questioned specifically as to his opinion on the cause of the

light's fall, however, was simply "it fell because gravity exists." *Id.* at 92:7 – 93:6. Critically, Williams went on to admit that there is no evidence to "point to" regarding the root cause of the light falling. *Id.* at 92:7 – 93:19.

Plaintiff's second retained expert witness, Mr. James Rivenbark, owns several restaurants and runs a restaurant operation consulting business. He has never previously consulted in litigation or testified as a retained expert. He has no background in engineering, lighting design, installation, or maintenance. He admitted that he knows "very little" about stage lighting. Rivenbark Dep. at 55:15 – 17.

Rivenbark testified that in his capacity as a restaurant owner and manager, he has hired musical acts and DJs to play for events, and that he was unable to recall a single instance on which he had requested such a contractor to adjust or change the installation of their lighting. Moreover, Rivenbark testified that he has never heard of such a request ever happening in the restaurant industry. Rivenbark further admitted that the procedure he would follow to render the premises in his restaurants safe in a situation like this would be to keep a lookout for obvious hazards in equipment set up by independent contractors, discuss that situation with the contractor in question, and expect them to remedy the situation – not his restaurant personnel. *Id.* at 54:13 – 55:2; 67:1 ("No, I'm not going to touch their stuff."). Rivenbark concurred that he had no knowledge of how the light was secured prior to falling. Finally, Rivenbark was unable to point to any alleged actions of Defendant or its personnel that violated an industry standard, regulation, or code in any way causally related to the light falling.

LEGAL STANDARD

A motion for summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is

no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c), SCRCP. “When a motion for summary judgment is made and supported by such facts as would be admissible in evidence at trial, the adverse party may not rest upon the mere allegations of his pleadings. Instead his response to the motion must set forth specific facts, admissible in evidence, showing there is a genuine issue for trial. If he does not so respond, summary judgment should be entered against him.” *Moody v. McLellan*, 295 S.C. 157, 163, 367 S.E.2d 449, 452-53 (Ct. App.1988) (citing Rule 56(e), SCRCP).

“To prevail in an action founded in negligence, the plaintiff must establish three essential elements: (1) a duty of care owed by the defendant to the plaintiff; (2) a breach of that duty by a negligent act or omission; and (3) damage proximately caused by a breach of duty.” *Hinds v. Elms*, 358 S.C. 581, 585, 595 S.E.2d 855, 857 (Ct. App. 2004), *citing Vinson v. Hartley*, 324 S.C. 389, 399, 477 S.E.2d 715, 720 (Ct. App.1996). “The plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case, and on which that party will bear the burden of proof at trial.” *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 116, 410 S.E.2d 537, 545–46 (1991), *citing Celotex Corp. v. Catrett*, 477 U.S. 317, 106 (1986).

ANALYSIS

An action for premises liability lies in negligence. *See Singleton v. Sherer*, 377 S.C. 185, 200, 659 S.E.2d 196, 204 (Ct. App. 2008). As such, the plaintiff must show that (1) the defendant owed a duty; (2) the defendant breached its duty; and (3) as a direct and proximate result of that breach, the plaintiff sustained injuries and damages. *Nelson v. Piggly Wiggly Central, Inc.*, 390 S.C. 382, 391, 701 S.E.2d 776, 780 (Ct. App. 2010) (citing *Bloom v. Ravoir*,

339 S.C. 417, 529 S.E.2d 710 (2000)). Our courts have consistently held “a merchant is not an insurer of the safety of a customer in his store. His duty is to exercise due care to keep his premises in reasonably safe condition.” *Anderson v. Winn-Dixie Greenville, Inc.*, 257 S.C. 75, 77, 184 S.E.2d 77, 77 (1971); *see also Hunter v. Dixie Home Stores*, 232 S.C. 139, 143, 101 S.E.2d 262, 264 (1957); *Pennington v. Zayre Corp.*, 252 S.C. 176, 178, 165 S.E.2d 695, 696 (1969); *Wintersteen v. Food Lion, Inc.*, 336 S.C. 132, 135-136, 516 S.E.2d 828, 829 (1999); *Cook v. Food Lion, Inc.*, 328 S.C. 324, 327, 491 S.E.2d 690, 691 (Ct. App. 1997).

South Carolina law requires proof of a dangerous or defective condition as a prerequisite for the imposition of premises liability upon a business owner. *E.g., Shain v. Leiserv, Inc.*, 328 S.C. 574, 576, 493 S.E.2d 111, 112 (Ct. App. 1997); *Scott v. Cedar Fair Entm’t Co.*, No. Civ. A 0:11-00910, 2012 WL 5306222, at *6 (D.S.C. Oct. 26, 2012). Therefore, to succeed on her negligence claim, Plaintiff bears the burden of proving: (1) Defendant placed the light in a dangerous or defective condition itself, or (2) that Defendant had actual or constructive notice of the presence of the light in a dangerous or defective condition and failed to remove it. *Pennington*, 252 S.C. at 178, 165 S.E.2d at 696. When the business owner or its agents “created the condition at issue, the key question is whether [the customer] presented sufficient evidence to create an issue of fact as to whether this condition was indeed hazardous.” *Shain v. Leiserv, Inc.*, 328 S.C. at 576, 493 S.E.2d 111, 112 (Ct. App. 1997).

I. Plaintiff has failed to establish that Defendant created or knew about a dangerous or defective condition.

The South Carolina Supreme Court upheld summary judgment in favor of a grocery store under similar facts to those of the case at bar in *Garvin v. Bi-Lo, Inc.*, 343 S.C. 625, 541 S.E.2d 831 (2001). In *Garvin*, the plaintiff alleged that she was injured when, after reaching to grab a box of canned items from the top of a stack taller than her, several cans fell and hit her face.

Critically similar to this case, the plaintiff in *Garvin* presented no actual evidence of “some defective manner of stacking the boxes, or that Bi-Lo was on notice that the stacked cans had become rickety,” and merely claimed that the stack of cans was dangerous. *Garvin*, 343 S.C. at 628–29, 541 S.E.2d at 833; *see also id.*, 343 S.C. at 628, 541 S.E.2d at 833 (“This evidence is insufficient, as a matter of law, to demonstrate the store created a dangerous condition.”). Because the plaintiff failed to present such evidence, the Supreme Court held that “there [was] simply no evidence from which a jury could find a dangerous condition was created by Bi-Lo.” *Id.*

Without such evidence here, Plaintiff has not met her burden of establishing constructive knowledge and her claim must fail as a matter of law. *See, e.g., Norris v. Wal-Mart Stores E., L.P.*, 2014 WL 496010 (D.S.C. Feb. 6, 2014) (holding that without evidence proving a spill was on the ground for a specific length of time, a plaintiff cannot establish constructive knowledge). A stationary, inanimate object on top of another stationary, inanimate object is not inherently a hazard. Despite the lengthy testimony of Plaintiff’s experts, there is no evidence that Defendant or anyone else installed the light in a manner which violated a binding and applicable code, regulation, industry standard, or policy and caused the light to fall. There is likewise no evidence that Defendant or anyone else disobeyed a manufacturer’s installation instructions or failed to install an included safety device. There is no credible scintilla of evidence that the light was in a dangerous or defective condition prior to its falling. Therefore, the Court finds that Plaintiff has failed to present sufficient evidence that Defendant created, knew about, or should have known about a dangerous or defective condition pertaining to the light. *See Shain*, 328 S.C. at 576, 493 S.E.2d at 112; *Garvin*, 343 S.C. 625, 541 S.E.2d 831. Plaintiff has thus failed to meet her burden,

and Defendant is entitled to judgment as a matter of law. *Bloom*, 339 S.C. at 421, 529 S.E.2d at 712.

II. Plaintiff has failed to present sufficient evidence of causation.

Moreover, the mere fact that the light fell is not sufficient in itself to prove Defendant acted negligently. *See, e.g., Gillespie v. Wal-Mart Stores, Inc.*, 302 S.C. 90, 91, 394 S.E.2d 24, 25 (Ct. App. 1990) (mere presence of condition insufficient to impose liability on a merchant). “Injuries have countless causes, and not all should give rise to legal liability.” *CSX Transp., Inc. v. McBride*, 564 U.S. 685, 692, 131 S. Ct. 2630, 2637, 180 L. Ed. 2d 637 (2011). Plaintiff has put forth no evidence that any act or omission of Defendants caused or contributed to the light falling, and therefore summary judgment is mandated for Defendant. *Pennington*, 252 S.C. at 178, 165 S.E.2d at 696. As discussed *supra*, despite the extensive discovery in this case, no deponent has testified that they know why this light fell – with the apparent exception of Plaintiff’s retained expert, Mark Williams, who blames the existence of gravity. Gravity may have assisted the light on its downward trajectory, but it did not initiate it. Plaintiff herself admitted that she does not have any idea why it fell. (Pl. Dep. at 27:20 – 28:6). Plaintiff has failed to meet her burden of proving a breach of duty causing the fall of the light and must therefore impermissibly rely on the doctrine of *res ipsa loquitur*.

South Carolina courts have consistently and steadfastly rejected the doctrine of *res ipsa loquitur*. *See, e.g., Watson v. Ford Motor Co.*, 389 S.C. 434, 452-53, 699 S.E.2d 169, 179 (2010) (“We also note that Respondents may not rely solely on the fact that an accident occurred to prove their products liability case under a negligence theory since South Carolina does not follow the doctrine of *res ipsa loquitur*.”). In a negligence case in South Carolina, *actori incumbit*

onus probatio: the plaintiff always bears the burden of affirmatively proving a failure to exercise reasonable care by a preponderance of the evidence, and “this burden of proof cannot be met by relying on the theory that the thing speaks for itself or that the very fact of injury indicates a failure to exercise reasonable care.” *Snow v. City of Columbia*, 305 S.C. 544, 409 S.E.2d 797 (Ct. App.1991) (citing *King v. J.C. Penney Co.*, 238 S.C. 336, 120 S.E.2d 229 (1961); *Gilland v. Peter's Dry Cleaning Co.*, 195 S.C. 417, 11 S.E.2d 857 (1940)). “No inference of negligence arises from the mere fact of injury.” *Id.* (citing *Covington v. Atlantic Coast Line Railway Co.*, 158 S.C. 194, 155 S.E. 438 (1930), *cert. denied*, 282 U.S. 858, 51 S.Ct. 33, 75 L.Ed. 759 (1930)). In essence, a South Carolina plaintiff must prove by direct or circumstantial evidence that the defendant specifically breached a duty of care, not merely point to an injury and claim that someone must have been negligent. *Id.* at FN 7.

Here, Plaintiff has merely done the latter. Instead of identifying a duty and presenting admissible evidence as to how Defendant breached that duty, as South Carolina law requires, Plaintiff has worked her case in reverse by claiming injuries and speculating that those injuries must have been Defendants’ fault. Foundation for Plaintiff’s *a posteriori* assumption simply does not exist. Not one of the deponents provided anything more than mere speculative conjecture as to how this accident occurred. There is no evidence that any negligent act or omission or Defendant’s with respect to premises maintenance, safety, staff training, policies, or procedures caused the light to fall.

Furthermore, Plaintiff’s experts have been unable to present any evidence whatsoever regarding the exact manner in which the light was installed prior to its fall or how that manner may have violated any manufacturer’s recommendations, codes, regulations, or industry standards. Thus, no one can say what caused this accident. Even if this conjecture is to be

believed, Plaintiff's burden is not to prove how this accident *might* have occurred, or what preventative measures may have *prevented* it, but how it *did* occur.

No evidence of a failure to exercise reasonable care exists in this matter. In fact, Plaintiff's own expert James Rivenbark testified that as a restaurant manager, he would have approached this situation in much the same way as did Defendant (Rivenbark Dep. at 54:13 – 55:2; *see also* 67:1). The lack of any evidence proving causation forces Plaintiff to rely on *res ipsa loquitur* through alleging that Defendant somehow caused this light to fall through a mechanism apparently unknown and unobservable to all parties. This is neither an accurate statement of the duty of reasonable care nor a supportable theory of recovery under South Carolina law. Therefore, Defendant is entitled to summary judgment because Plaintiff cannot present a credible scintilla of admissible evidence proving that any negligent act or omission on Defendant's behalf caused this light to fall, and thus any jury considering this case would have to impermissibly rely on *res ipsa loquitur*.

III. Even if the light was installed in a dangerous or defective manner, the only reasonable inference from the record is that it would have been so installed by an independent contractor.

Even assuming that there was sufficient evidence in the record to support a finding that the light was installed in a dangerous or defective condition, Defendant would still be entitled to summary judgment because the only reasonable inference from the record as presented is that any supposedly negligent acts or omissions were solely those of the DJ as an independent contractor. An independent contractor is one who, exercising an independent employment, contracts to do a piece of work according to his own methods, without being subject to the control of his employer except as to the result of the work. *Chavis v. Watkins*, 256 S. C. 30, 180 S. E. 2d 648 (1971). Generally under South Carolina law, a principal is not responsible for the

negligence of an independent contractor. *See, e.g., Duane v. Pressley Construction Co.*, 270 S.C. 682, 244 S.E.2d 509 (1978).

Under these circumstances, the principal is shielded from liability because he has no control over the manner in which the contractor performs the work. *See id.* The only exceptions are 1) in the case of inherently dangerous work, 2) if the principal sees and realizes that the contractor is performing the work in a dangerous manner, 3) if the contractor is known to be unworthy of trust, 4) in the case of a nondelegable duty, or 5) when the principal has hired the contractor for the purpose of performing a wrongful act. *See Blue Ridge Rural Electric Co-op, Inc. v. Byrd*, 238 F. 2d 346 (4th Cir. 1956), *rev'd on other grounds*, 356 U. S. 525 (1958); *Alexander v. Seaboard Air Line R. Co.*, 221 S. C. 477, 71 S. E. 2d 299 (1952); *Simmons v. Robinson*, 303 S. C. 201, 399 S. E. 2d 605 (Ct. App. 1990), *rev'd on other grounds*, 305 S. C. 428, 409 S. E. 2d 381 (1991); *Colin v. City Council of Charleston*, 49 S. C. L. (15 Rich.) 201 (1868).

None of these exceptions apply to this case. Assuming *arguendo* that the light was installed in a dangerous or defective condition, there is no evidence that anyone other than the DJ created this condition. The only reasonable inference from the evidence in this case is that the DJ solely owned, controlled, maintained, and installed the light. The indisputable evidence in this case likewise proves that the DJ was an independent contractor, not an employee. There is no evidence that the lighting installation in this case concerns inherently dangerous work, presents a nondelegable duty, involved an untrustworthy contractor, or that the contractor was hired to perform a wrongful act. There is no evidence that Defendant or any of its employees saw a contractor performing work and realized that it was being done in a dangerous manner. Therefore, assuming that the light was installed in a dangerous or defective condition, Defendant

would still be entitled to judgment as a matter of law because the only reasonable inference from the record is that any such installation would have been performed by an independent contractor.

IT IS THEREFORE ORDERED THAT summary judgment is **GRANTED** in favor of Defendant Tall Sam I Am, LLC d/b/a Tabbuli as to all of Plaintiff Stefani Eddins' causes of action.

IT IS SO ORDERED.

THE HONORABLE BENTLEY PRICE
Presiding Judge
Ninth Judicial Circuit

_____, South Carolina

_____, 2022



Charleston Common Pleas

Case Caption: Stefani Eddins VS Tall Sam I Am Llc , defendant, et al

Case Number: 2020CP1002481

Type: Order/Other

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2022-05-24 09:51:20 page 13 of 13

Complaint

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

STEFANI EDDINS

Plaintiff

v.

TALL SAM I AM, LLC d/b/a TABBULI

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CIVIL CASE NO.:2020-CP-_____

COMPLAINT
(Jury Trial Requested)

Plaintiff, complaining of Defendant above-named, hereby alleges and pleads as follows:

PARTIES, JURISDICTION, AND VENUE

1. On or about July 20, 2017, at the business of Defendant Tall Sam I Am, LLC d/b/a Tabbuli, in Charleston, Charleston County, South Carolina, a light fell on Plaintiff's head causing severe injuries to Plaintiff.

2. Plaintiff Stefani Eddins is currently a citizen and resident of San Pablo, California.

3. Defendant Tall Sam I Am, LLC d/b/a Tabbuli is a limited liability company organized and existing under the laws of the State of South Carolina, with its principal place of business in Charleston County, South Carolina. Its registered agent for service of process is Sam Mustafa, 30 Society Street, Charleston, South Carolina 29401.

4. The substantial acts and omissions alleged herein occurred in Charleston County, South Carolina.

5. This Court has personal jurisdiction over the parties to this action and subject matter jurisdiction over the claims asserted in the Complaint.

6. Venue is proper in Charleston County, South Carolina.

FACTUAL BACKGROUND

7. Plaintiff re-alleges and reincorporates the above paragraphs as if fully set forth verbatim herein.

8. On or about July 20, 2017, Plaintiff was at the business of Defendant Tall Sam I Am, LLC d/b/a Tabbuli, in Charleston, Charleston County, South Carolina.

9. At said time and place, Plaintiff was at Defendant's business as a patron and customer, and at the benefit, of Defendant and as such was a business invitee of Defendant.

10. At all times mentioned herein, Plaintiff was acting in a prudent and lawful manner.

11. At said time and place, a light, which was a dangerous, unsafe, defective and hazardous condition for a number of reasons, including but not limited to the fact it was unsecured, fell on Plaintiff's head causing severe injuries to Plaintiff and the damages set forth herein.

FOR A FIRST CAUSE OF ACTION (Negligence/Gross Negligence/Premises Liability)

12. Plaintiff re-alleges and reincorporates the above paragraphs as if fully set forth verbatim herein.

13. The light, which was a dangerous, unsafe, defective and hazardous condition for a number of reasons, including but not limited to the fact it was unsecured and fell on Plaintiff's head, was the proximate cause of Plaintiff's severe injuries and damages set forth herein.

14. At all times relevant herein, the premises and light were in the direct operation and control of the Defendant.

15. At all times relevant herein, Defendant, and its agents, servants, employees, administrators, managers, partners, joint ventures, alter-egos, representatives, parents/subsidiaries and/or successor corporations for whose acts and conduct Defendant is responsible and liable (hereinabove and hereafter referred to as "Defendant"), knew or should have known of the dangerous, unsafe, defective and hazardous condition and that it constituted a danger to members of the public who were present on the premises.

16. At all times relevant times, Defendant owed a duty to business invitees and guests and other persons lawfully on the property, including Plaintiff, of due care to own, maintain, operate, and/or manage the premises, including the subject light, in a way that was not dangerous, unsafe, defective and/or hazardous, conduct proper and thorough safety and other inspections of the premises, including the subject light, in order to determine whether the premises and light were safe and properly maintained and secured, discover and identify risks, dangerous, unsafe, defective and/or hazardous conditions, take safety precautions to warn of or eliminate unreasonable risks of harm, repair and/or make safe such dangerous, unsafe, defective and/or hazardous condition, and otherwise act appropriately so as to not cause injury and damage to business invitees and guests and other persons lawfully on the premises, including Plaintiff.

17. Defendant breached these duties, knew, or in the exercise of ordinary care, should have known, that an environment free of dangerous, unsafe, defective and/or hazardous conditions was not being provided, the safety of persons was not being attained and maintained, the premises was not being kept in a safe and reasonable condition, and dangerous, unsafe, defective and/or hazardous conditions existed, and otherwise failed to own, maintain, operate, and/or manage the premises, including the subject light, in a way that was not dangerous, unsafe, defective and/or hazardous, conduct proper and thorough safety and other inspections of the premises, including the subject light, in order to determine whether the premises and light were safe and properly maintained and secured, discover and identify risks, dangerous, unsafe, defective and/or hazardous conditions, take safety precautions to warn of or eliminate unreasonable risks of harm, repair and/or make safe such dangerous, unsafe, defective and/or hazardous conditions, and otherwise act appropriately so as to not cause injury and damage to business invitees and guests and other persons lawfully on the premises, including Plaintiff.

18. Defendant breached the duties set forth herein, and was otherwise negligent, negligent per se, grossly negligent, willful, wanton and reckless, and said breaches and failures were the proximate cause of, and otherwise contributed substantially to, Plaintiff's injuries and the damages set forth herein.

19. Defendant was negligent, negligent per se, grossly negligent, willful, wanton, and reckless and breached the duties owed to Plaintiff in one or more of the following ways:

- a. Creating and/or maintaining dangerous, unsafe, defective and hazardous conditions on the subject property;

- b. Overseeing the creation and/or maintaining of dangerous, unsafe, defective and hazardous conditions on the subject property;
- c. Failing to properly and thoroughly inspect the subject property and light in order to discover and identify risks and dangerous, unsafe, defective and hazardous conditions;
- d. Failing to inspect and discover risks and dangerous, unsafe, defective and hazardous conditions on the subject property;
- e. Failing to take safety precautions to eliminate unreasonable risks of harm and dangerous, unsafe, defective and hazardous conditions on the subject property;
- f. Failing to warn of risks and dangerous, unsafe, defective and hazardous conditions on the subject property;
- g. Failing to properly own, operate, and/or maintain the subject property and light so that it was not a risk and dangerous, unsafe, defective and hazardous condition;
- h. Failing to properly oversee the installation and use of the subject property and light so that it was not a risk and dangerous, unsafe, defective and hazardous condition;
- i. Failing to properly safeguard against the risks and dangerous, unsafe, defective and hazardous conditions of the subject property and light;
- j. Failing to properly hire, train, supervise, manage, and retain Defendant's respective agents, servants, employees and/or representatives;
- k. Failing to properly identify and report risks and dangerous, unsafe, defective and hazardous conditions of the premises;

- l. Failing to follow generally accepted standards, regulations and legal requirements applicable to the operation, management, and/or ownership of such a business and/or property;
- m. Failing to use the degree of care and caution that a reasonably prudent entity would have used under the same or similar circumstances; and
- n. In such other particulars that may be established at the trial of this action.

20. Defendant's negligent, negligent per se, grossly negligent, willful, wanton, and reckless conduct and breach of the duties owed to Plaintiff were the direct and proximate cause of the incident and injuries described herein.

FOR A SECOND CAUSE OF ACTION
(Res Ipsa Loquitur)

21. Plaintiff re-alleges and reincorporates the above paragraphs as if fully set forth verbatim herein.

22. The incidents and instrumentalities causing the injuries and harms complained of herein were under the exclusive control of Defendant.

23. The circumstances surrounding the incident, injuries and harms complained of herein under common knowledge and experience create a clear inference that the incident, injuries and harms would not have happened except for the negligent, negligent per se, grossly negligent, willful, wanton and reckless conduct of the Defendant.

24. The injuries and harms complained of herein were a direct result of the incident caused by the negligent, negligent per se, grossly negligent, willful, wanton and reckless conduct of the Defendant.

25. The incident, injuries and harms complained of herein, were entirely the result of the negligent, negligent per se, grossly negligent, willful, wanton and reckless conduct of the Defendant, and were not contributed to in any manner by any voluntary act of Plaintiff.

26. The doctrine of res ipsa loquitur applies to this case, to the incident, injuries, and harms complained of herein, and to the actions and negligent, negligent per se, grossly negligent, willful, wanton and reckless conduct of the Defendant.

FOR A THIRD CAUSE OF ACTION
(Other Liability)

27. Plaintiff re-alleges and reincorporates the above paragraphs as if fully set forth verbatim herein.

28. Defendant is also liable to Plaintiff as a result of Defendant's participation in various joint ventures, parent/subsidiary relationships, and/or successor corporations.

29. Defendant is also liable to Plaintiff as a result of Defendant's negligent supervision and actual supervision of various joint ventures, parent/subsidiary relationships, and/or successor corporations, and their agents, servants, employees and/or representatives.

30. Defendant is also liable to Plaintiff as a result of the invalidity of any indemnification agreements.

31. Defendant is also liable to Plaintiff as alter ego of Defendant's joint ventures, parent/subsidiary relationships, and/or successor corporations, and their agents, servants, employees and/or representatives.

DAMAGES

32. Plaintiff re-alleges and reincorporates the above paragraphs as if fully set forth verbatim herein.

33. As a direct and proximate cause of Defendant's negligent, negligent per se, grossly negligent, willful, wanton, and reckless conduct and breach of the duties owed to Plaintiff, Plaintiff has suffered damages in the form of personal injuries, bodily harm, disfigurement, physical and mental pain and suffering, emotional distress, interference with normal living, interference with enjoyment of life, impairment of health and vigor, fear of extent of injury, limitation of activities, medical expenses, lost wages, and destruction of power and capacity to labor and earn money, and permanent injuries/impairment, all past, present, and future, and all in sums in excess of the jurisdictional limits of this Court and all state and federal courts.

34. As a direct and proximate result of Defendant's negligent, negligent per se, grossly negligent, willful, wanton and reckless conduct as described herein, Plaintiff is also entitled to punitive damages associated with the claims set forth herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays for Judgment against Defendant as follows:

1. Judgment, including an award for actual, special, consequential, and compensatory damages, and punitive damages in an amount to be determined by the jury at the trial of this action against the Defendant, as the law may allow, for the injuries, damages, harms and losses incurred by the Plaintiff as set forth herein, in sums in excess of the jurisdictional limits of this Court and all state and federal courts;

2. Pre-judgment and post-judgment interest;
3. For costs herein expended;
4. Trial by jury; and
5. Any and all other proper relief to which the Plaintiff may be entitled.

GARY C. JOHNSON, P.S.C.

/s/ Michael E. Liska
Michael E. Liska
SC Bar No. 102542
2265 Executive Drive
P.O. Box 55106
Lexington, KY 40505
Tel: 859-268-4300
Fax: 859-268-7318
Email: mliska@garycjohnson.com
Counsel for Plaintiff

-and-

THE NYE LAW GROUP P.C.

Justin D. Maines
SC Bar No. 76668
2008 Whitaker Street
Savannah, Georgia 31401
Tel: (912) 200-5230
Fax: (912) 335-6553
Email: jd@thenyelawgroup.com
Co-counsel for Plaintiff

June 2, 2020
Charleston, South Carolina

Amended Complaint

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

STEFANI EDDINS

Plaintiff

v.

TALL SAM I AM, LLC d/b/a TABBULI

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CIVIL CASE NO.:2020-CP-1002481

**AMENDED COMPLAINT
(Jury Trial Requested)**

Plaintiff, complaining of Defendant above-named, hereby alleges and pleads as follows:

PARTIES, JURISDICTION, AND VENUE

1. On or about July 20, 2017, at the business of Defendant Tall Sam I Am, LLC d/b/a Tabbuli, in Charleston, Charleston County, South Carolina, a light fell on Plaintiff's head causing severe injuries to Plaintiff.

2. Plaintiff Stefani Eddins is currently a citizen and resident of San Pablo, California.

3. Defendant Tall Sam I Am, LLC d/b/a Tabbuli is a limited liability company organized and existing under the laws of the State of South Carolina, with its principal place of business in Charleston County, South Carolina. Its registered agent for service of process is Sam Mustafa, 30 Society Street, Charleston, South Carolina 29401.

4. The substantial acts and omissions alleged herein occurred in Charleston County, South Carolina.

5. This Court has personal jurisdiction over the parties to this action and subject matter jurisdiction over the claims asserted in the Complaint.

6. Venue is proper in Charleston County, South Carolina.

FACTUAL BACKGROUND

7. Plaintiff re-alleges and reincorporates the above paragraphs as if fully set forth verbatim herein.

8. On or about July 20, 2017, Plaintiff was at the business of Defendant Tall Sam I Am, LLC d/b/a Tabbuli, in Charleston, Charleston County, South Carolina.

9. At said time and place, Plaintiff was at Defendant's business as a patron and customer, and at the benefit, of Defendant and as such was a business invitee of Defendant.

10. At all times mentioned herein, Plaintiff was acting in a prudent and lawful manner.

11. At said time and place, a light, which was a dangerous, unsafe, defective and hazardous condition for a number of reasons, including but not limited to the fact it was unsecured, fell on Plaintiff's head causing severe injuries to Plaintiff and the damages set forth herein.

FOR A FIRST CAUSE OF ACTION (Negligence/Gross Negligence/Premises Liability)

12. Plaintiff re-alleges and reincorporates the above paragraphs as if fully set forth verbatim herein.

13. The light, which was a dangerous, unsafe, defective and hazardous condition for a number of reasons, including but not limited to the fact it was unsecured and fell on Plaintiff's head, was the proximate cause of Plaintiff's severe injuries and damages set forth herein.

14. At all times relevant herein, the premises and light were in the direct operation and control of the Defendant.

15. At all times relevant herein, Defendant, and its agents, servants, employees, administrators, managers, partners, joint ventures, alter-egos, representatives, parents/subsidiaries and/or successor corporations for whose acts and conduct Defendant is responsible and liable (hereinabove and hereafter referred to as "Defendant"), knew or should have known of the dangerous, unsafe, defective and hazardous condition and that it constituted a danger to members of the public who were present on the premises.

16. At all times relevant times, Defendant owed a duty to business invitees and guests and other persons lawfully on the property, including Plaintiff, of due care to own, maintain, operate, and/or manage the premises, including the subject light, in a way that was not dangerous, unsafe, defective and/or hazardous, conduct proper and thorough safety and other inspections of the premises, including the subject light, in order to determine whether the premises and light were safe and properly maintained and secured, discover and identify risks, dangerous, unsafe, defective and/or hazardous conditions, take safety precautions to warn of or eliminate unreasonable risks of harm, repair and/or make safe such dangerous, unsafe, defective and/or hazardous condition, and otherwise act appropriately so as to not cause injury and damage to business invitees and guests and other persons lawfully on the premises, including Plaintiff.

17. Defendant breached these duties, knew, or in the exercise of ordinary care, should have known, that an environment free of dangerous, unsafe, defective and/or hazardous conditions was not being provided, the safety of persons was not being attained and maintained, the premises was not being kept in a safe and reasonable condition, and dangerous, unsafe, defective and/or hazardous conditions existed, and otherwise failed to own, maintain, operate, and/or manage the premises, including the subject light, in a way that was not dangerous, unsafe, defective and/or hazardous, conduct proper and thorough safety and other inspections of the premises, including the subject light, in order to determine whether the premises and light were safe and properly maintained and secured, discover and identify risks, dangerous, unsafe, defective and/or hazardous conditions, take safety precautions to warn of or eliminate unreasonable risks of harm, repair and/or make safe such dangerous, unsafe, defective and/or hazardous conditions, and otherwise act appropriately so as to not cause injury and damage to business invitees and guests and other persons lawfully on the premises, including Plaintiff.

18. Defendant breached the duties set forth herein, and was otherwise negligent, negligent per se, grossly negligent, willful, wanton and reckless, and said breaches and failures were the proximate cause of, and otherwise contributed substantially to, Plaintiff's injuries and the damages set forth herein.

19. Defendant was negligent, negligent per se, grossly negligent, willful, wanton, and reckless and breached the duties owed to Plaintiff in one or more of the following ways:

- a. Creating and/or maintaining dangerous, unsafe, defective and hazardous conditions on the subject property;

- b. Overseeing the creation and/or maintaining of dangerous, unsafe, defective and hazardous conditions on the subject property;
- c. Failing to properly and thoroughly inspect the subject property and light in order to discover and identify risks and dangerous, unsafe, defective and hazardous conditions;
- d. Failing to inspect and discover risks and dangerous, unsafe, defective and hazardous conditions on the subject property;
- e. Failing to take safety precautions to eliminate unreasonable risks of harm and dangerous, unsafe, defective and hazardous conditions on the subject property;
- f. Failing to warn of risks and dangerous, unsafe, defective and hazardous conditions on the subject property;
- g. Failing to properly own, operate, and/or maintain the subject property and light so that it was not a risk and dangerous, unsafe, defective and hazardous condition;
- h. Failing to properly oversee the installation and use of the subject property and light so that it was not a risk and dangerous, unsafe, defective and hazardous condition;
- i. Failing to properly safeguard against the risks and dangerous, unsafe, defective and hazardous conditions of the subject property and light;
- j. Failing to properly hire, train, supervise, manage, and retain Defendant's respective agents, servants, employees and/or representatives;
- k. Failing to properly identify and report risks and dangerous, unsafe, defective and hazardous conditions of the premises;

- l. Failing to follow generally accepted standards, regulations and legal requirements applicable to the operation, management, and/or ownership of such a business and/or property;
- m. Failing to use the degree of care and caution that a reasonably prudent entity would have used under the same or similar circumstances; and
- n. In such other particulars that may be established at the trial of this action.

20. Defendant's negligent, negligent per se, grossly negligent, willful, wanton, and reckless conduct and breach of the duties owed to Plaintiff were the direct and proximate cause of the incident and injuries described herein.

FOR A SECOND CAUSE OF ACTION
(Other Liability)

21. Plaintiff re-alleges and reincorporates the above paragraphs as if fully set forth verbatim herein.

22. Defendant is also liable to Plaintiff as a result of Defendant's participation in various joint ventures, parent/subsidiary relationships, and/or successor corporations.

23. Defendant is also liable to Plaintiff as a result of Defendant's negligent supervision and actual supervision of various joint ventures, parent/subsidiary relationships, and/or successor corporations, and their agents, servants, employees and/or representatives.

24. Defendant is also liable to Plaintiff as a result of the invalidity of any indemnification agreements.

25. Defendant is also liable to Plaintiff as alter ego of Defendant's joint ventures, parent/subsidiary relationships, and/or successor corporations, and their agents, servants, employees and/or representatives.

DAMAGES

26. Plaintiff re-alleges and reincorporates the above paragraphs as if fully set forth verbatim herein.

27. As a direct and proximate cause of Defendant's negligent, negligent per se, grossly negligent, willful, wanton, and reckless conduct and breach of the duties owed to Plaintiff, Plaintiff has suffered damages in the form of personal injuries, bodily harm, disfigurement, physical and mental pain and suffering, emotional distress, interference with normal living, interference with enjoyment of life, impairment of health and vigor, fear of extent of injury, limitation of activities, medical expenses, lost wages, and destruction of power and capacity to labor and earn money, and permanent injuries/impairment, all past, present, and future, and all in sums in excess of the jurisdictional limits of this Court and all state and federal courts.

28. As a direct and proximate result of Defendant's negligent, negligent per se, grossly negligent, willful, wanton and reckless conduct as described herein, Plaintiff is also entitled to punitive damages associated with the claims set forth herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays for Judgment against Defendant as follows:

1. Judgment, including an award for actual, special, consequential, and compensatory damages, and punitive damages in an amount to be determined by the jury at

the trial of this action against the Defendant, as the law may allow, for the injuries, damages, harms and losses incurred by the Plaintiff as set forth herein, in sums in excess of the jurisdictional limits of this Court and all state and federal courts;

2. Pre-judgment and post-judgment interest;
3. For costs herein expended;
4. Trial by jury; and
5. Any and all other proper relief to which the Plaintiff may be entitled.

GARY C. JOHNSON, P.S.C.

/s/ Michael E. Liska
Michael E. Liska
SC Bar No. 102542
2265 Executive Drive
P.O. Box 55106
Lexington, KY 40505
Tel: 859-268-4300
Fax: 859-268-7318
Email: mliska@garycjohnson.com
Co-counsel for Plaintiff

-and-

THE NYE LAW GROUP P.C.

Justin D. Maines
SC Bar No. 76668
2008 Whitaker Street
Savannah, Georgia 31401
Tel: (912) 200-5230
Fax: (912) 335-6553
Email: jd@thenyelawgroup.com
Co-counsel for Plaintiff

September 2, 2020
Charleston, South Carolina

Answer

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	THE NINTH JUDICIAL CIRCUIT
Stefani Eddins,	)	Civil Action No.: 2020CP1002481
	)	
	)	
Plaintiff,	)	
	)	DEFENDANT'S
v.	)	ANSWER
	)	
Tall Sam I Am, LLC d/b/a Tabbuli,	)	
	)	(JURY TRIAL DEMANDED)
	)	
Defendant.	)	

COMES NOW, the Defendant, Tall Sam I Am, LLC d/b/a Tabbuli, by and through its undersigned attorneys, answering the Complaint of the Plaintiff, would allege and show unto the Court:

FOR A FIRST DEFENSE

1. Each and every allegation of the Plaintiff's Complaint not specifically admitted herein is denied.
2. Lacks sufficient knowledge and information to form a belief as to the allegations of paragraph 1, and thereby deny the same.
3. Admits, upon information and belief, the allegations of paragraph 2.
4. Lacks sufficient knowledge and information to form a belief as to the allegations of paragraphs 3, 4, 5, 6, 7, 8, 9, and 10, and thereby deny the same.
5. Denies the allegations of paragraphs 11, 12, 13, 14 and 15, and demands strict proof thereof.

6. The Defendant would show that its duties are prescribed by an in accordance with the laws of South Carolina, and to the extent the allegations of paragraph 16 are inconsistent therewith, hereby deny the same.

7. Denies the allegations of paragraph 17 through paragraph 34, and demands strict proof thereof.

FOR A SECOND DEFENSE

(Failure to State a Claim)

8. The allegations contained in the preceding paragraphs, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

9. The Defendants would show that the Plaintiffs' Complaint fails to state a claim upon which relief can be granted, and, therefore should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE

(Comparative Negligence)

10. The allegations contained in the preceding paragraphs, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

11. The Defendants would show that such injuries or losses that Plaintiffs sustained, if any, was due to and caused by the sole negligence, gross negligence, willfulness, wantonness, carelessness and recklessness of the Plaintiffs, combining, concurring and contributing with the negligence, if any, on the part of these Defendants, to such a degree that Plaintiffs' recovery is barred by the doctrine of comparative negligence in South Carolina.

FOR A FOURTH DEFENSE**(Intervening and Superseding Negligence)**

12. The allegations contained in the preceding paragraphs, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

13. The Defendants would show that such injuries or losses that Plaintiffs sustained, if any, as alleged in Plaintiffs' Complaint, was not due to or caused by any negligence on the part of the Defendants, but was rather due to and caused by the contributing, concurring, intervening or superseding fault, breach of warranty or act or omission of a third party, over which these Defendants had no control.

FOR A FIFTH DEFENSE**(Unavoidable Accident)**

14. The allegations contained in the preceding paragraphs, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

15. The Defendants would show that such injuries or losses that the Plaintiffs sustained, if any, as alleged in Plaintiffs' Complaint, was not due to or caused by the negligence on the part of these Defendants, but was rather due to and caused by an unavoidable accident, thereby barring any claim whatsoever.

FOR A SIXTH DEFENSE**(Waiver and Estoppel)**

16. The allegations contained in the preceding paragraphs, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

17. The Defendant would show that Plaintiff's Complaint is barred by the doctrine of waiver and estoppel.

FOR A SEVENTH DEFENSE**(Improper Venue)**

18. The allegations contained in the preceding paragraphs, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

19. Defendant pleads the defense of improper venue in the County of Charleston, State of South Carolina.

FOR AN EIGHTH DEFENSE**(Punitive Damages)**

20. The allegations contained in the preceding paragraphs, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

21. The Defendants allege that the Plaintiffs' claim for punitive damages violates both the Fourteenth Amendment to the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that the jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of any meaningful standard and is inconsistent with due process guarantees.

22. The Defendants allege that the Plaintiffs' claim for punitive damages violates the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article I, Section 3 of the South Carolina Constitution because, even if it could be argued the standard governing the imposition of punitive damages exists, the standard would be void due to vagueness.

23. The Defendants allege that the Plaintiffs' claim for punitive damages violates the equal protection clause of the Fourteenth Amendment to the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that the amount of punitive damages is based upon the wealth of these Defendants.

24. The Defendants allege that the Plaintiffs' claim of punitive damages violates the doctrine of separation of powers and Article I, Section 3 of the South Carolina Constitution because punitive damages are a creation of the Judicial Branch of government which invades the province of the Legislative Branch of government.

25. Defendants would show, upon information and belief, that the Plaintiffs' claim for punitive Damages violates the Fifth, Sixth, Seventh, Eighth and Fourteenth Amendments to the Constitution of the United States of America in that it violates the double jeopardy clause in that Defendants could be subjected to multiple awards of punitive damages for the same set of facts; the self-incrimination clause is being violated because Defendants can be compelled to give testimony against itself in a penalty situation such as punitive damages; the assessment of punitive damages by a burden of proof less than beyond a reasonable doubt is violative of the Sixth and Fourteenth Amendments in that punitive damages are a fine or penalty and are, therefore, quasi-criminal in nature; Plaintiffs' claim for punitive damages violates Defendants' right to access the courts as guaranteed by the Seventh and Fourteenth Amendments because the threat of an award of punitive damages chills this Defendants' exercise of that right; the Plaintiffs' claim for punitive damages violates the Eighth Amendment's guarantee that excessive fines shall not be imposed; the Plaintiffs' claim for punitive damages violates both the due process and equal protection clauses of the Fourteenth Amendment in that the standard for awarding either punitive damages is unduly vague and, therefore, violates both procedural and substantive due process safeguards; therefore, the Plaintiffs' claim for punitive damages should be dismissed.

26. Defendants plead all applicable statutory caps on punitive damages, including but not limited to the caps described in S.C. Code Ann. § 15-32-530, *et seq.*, as amended.

WHEREFORE, having fully answered, the Defendants pray that the Plaintiffs' Complaint be dismissed with costs, for attorneys' fees and such other and further relief this Court deems just and proper.

The Defendants demand a jury trial.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.

s/ Mark S. Barrow

Mark S. Barrow, Esquire, SC Bar No.: 7821

William A. Neinast, Esquire, SC Bar No.: 104218

1515 Lady Street

Post Office Box 12129

Columbia, South Carolina 29211

(803) 256-2233

ATTORNEYS FOR THE DEFENDANT

Columbia, South Carolina

June 26, 2020

Plaintiff's Expert Disclosures

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
THE NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2020CP1002481

STEFANI EDDINS,)
)
Plaintiff,)
)
v.)
)
TALL SAM I AM, LLC d/b/a TABBULI)
)
Defendant.)
_____)

PLAINTIFF'S EXPERT DISCLOSURES¹

Comes the Plaintiff, Stefani Eddins, by and through counsel, pursuant to the June 10, 2021 Consent Scheduling Order previously entered herein, and identifies the following potential expert witnesses who may testify at the trial of this matter, along with a summary of their opinions. These disclosures are designed to advise the Defendant of the issues that may be addressed by each witness. Defendant may obtain further information from the witnesses at their depositions. All of the witnesses may be asked questions and opinions at trial based upon the traditional method of evoking expert witness testimony in response to hypothetical questions which assume, as their basis, the facts and evidence proven or that is expected to be proven at trial. Further, each expert will be provided with the opinions, disclosures, and depositions of other expert witnesses and will be prepared to opine on such witnesses and opinions at trial.

Plaintiff's Retained Experts

Mark E. Williams, AIA, NCARB

¹ Plaintiff's Expert Disclosures also serves to supplement any related discovery requests and responses. These disclosures may need to be supplemented because discovery is still ongoing.

A. Mark E. Williams, AIA, NCARB, Robson Forensic, Inc., 215 East Bay Street, Suite 400, Charleston, SC 29401, whose C.V. is attached hereto;

B. The negligence of Defendant and injuries and damages caused by same are the subject matters or areas on which Mr. Williams is expected to testify; and

C. Based upon his education, training and experience in becoming and in practicing as an architect as highlighted in his C.V., his review of documentation produced and/or obtained herein including that noted below, and his review of and familiarity with applicable laws, codes, authorities, literature, and/or other learned publications, Mr. Williams is expected to testify to a reasonable degree of architectural certainty as noted below including that Defendant breached its duties with respect to keeping its premises safe resulting in harm and injuries to Plaintiff, and otherwise as set forth below and in accordance with any deposition provided by him herein. Mr. Williams may utilize the documents noted above, and also various diagrams, charts, and pictures produced and/or obtained herein, including any attached hereto. Mr. Williams is further expected to testify to a reasonable degree of architectural certainty as follows.

1. Mark E. Williams, AIA, NCARB is a registered architect in 12 states, including South Carolina, and is certified by the National Council of Architectural Registration Boards (NCARB). Mr. Williams is employed as a forensic architect by Robson Forensic, Inc. and provides investigations, analysis, reports, and testimony toward the resolution of litigation involving personal injury (slip, trip and fall incidents), construction claims, and other architectural issues.

2. Mr. Williams is familiar with the practice of architecture and premises safety. He will testify concerning the standard of care for the operation and maintenance of commercial buildings, including restaurant facilities used as a place of assembly.

3. A copy of Mr. Williams' *curriculum vitae* listing some of his education, training, experience, and qualifications is attached hereto and incorporated herein by reference.

4. Mr. Williams has reviewed a number of documents produced and/or obtained herein, including but not limited to the Amended Complaint, Accident/Incident Report Form, Lease Agreement, Entertainment Sign-in Sheet, Surveillance Video, Defendant Tall Sam I Am, LLC d/b/a Tabbuli's Answers to Plaintiff's Interrogatories, Defendant Tall Sam I Am, LLC d/b/a Tabbuli's Responses to Plaintiff's Requests for Production of Documents, Charleston Hospitality Group Employment Handbook, Deposition of Cait Chapin taken March 25, 2021, Deposition of Jeff Diehl taken July 27, 2021, and various photographs.

5. Mr. Williams is informed that on Thursday, July 20, 2017, Stefani Eddins was at Tabbuli in downtown historic Charleston, South Carolina. At about 10:20 p.m., while she was seated observing a night-time fashion show, a light fixture fell from above and struck her on the head. Eddins was injured as a result of the incident.

6. Mr. Williams understands that Tabbuli is a tapas and raw bar restaurant with Mediterranean influences located at 541 King Street. Tabbuli is owned by Tall Sam I Am, LLC.

7. Mr. Williams has learned that in 2017, Tabbuli organized and conducted weekly entertainment events on its outside patio. "Taboo Tuesday" was a drag show and on Thursdays there was a fashion show known as White Haute Nights. Internet postings of both events contain numerous images of the outdoor patio where Eddins was seated.

8. Mr. Williams has learned that Tabbuli seems to claim the unsecured light fixture that fell and struck Eddins was placed on top of an audio speaker that was attached to a wood column supporting the roof structure.

9. Mr. Williams has determined that the incident light fixture is a parabolic aluminized reflector (PAR) lamp. A PAR is a type of electric lamp that is widely used in commercial and residential illumination. It produces a highly directional beam. Usage includes theatrical lighting, and residential and commercial recessed can lights.

10. A post-incident photograph (Bates no. SWB 000066) shows the PAR light fixture situated upside-down with the power cord extending out of the top and its yoke resting on the audio speaker. A yoke is a U-shaped metal bracket intended for mounting fixtures to various objects.

11. Mr. Williams will explain that photogrammetry is defined as the art, science, and technology of obtaining reliable information about physical objects and the environment through processes of recording, measuring and interpreting photographic images. Photogramatic analysis using simple ratio proportion is helpful to compare measurements of known physical conditions with various points of view to apply a scale to certain features in the built environment.

12. Three independent sources of facts and data were available to reliably estimate the height of the audio speaker above the floor. The partial surveillance video, one post-incident photograph (Bates no. SWB 000066), and internet postings from August 7, 2016, establish that the unsecured light fixture was situated more than 8 ft. above the outdoor patio when it fell off the audio speaker. Eddins is 5'-11" tall. When seated, her head would have been about 4 ft. above the floor.

13. Mr. Williams has observed that the size, shape, and style of the incident light fixture is consistent with a multi-purpose PAR 64 constructed of sheet steel, similar to that manufactured by Altman Lighting. The 10-inch diameter fixture was about 16-inches long and weighed approximately 10 lbs.

14. Mr. Williams has reviewed the deposition of Tabbuli Manager Cait Chapin regarding the incident that injured Eddins. Along with a number of other statements the significance of which Mr. Williams will discuss at trial, Ms. Chapin testified that a patron put the light fixture back up on top of the audio speaker after it fell off.

Q. Did you look that night to see where the light was after it fell on Stefani's head?

A. I believe we took it down. Because I'm sure they didn't want that to happen again, the DJ and the people doing the event.

15. Mr. Williams has reviewed the CHG Employment Handbook (Edition 2-21-17). Along with a number of other provisions the significance of which Mr. Williams will discuss at trial, Section 3.9 acknowledges that the restaurant "makes every effort to comply with all federal and state workplace safety requirements."

16. Mr. Williams has reviewed the deposition of Jeff Diehl, Director of Operations for CHG. Diehl has a Bachelor's Degree in hotel restaurant management but no training related to premises safety. Along with a number of other statements the significance of which Mr. Williams will discuss at trial, Mr. Diehl incorrectly testified that Tabbuli has absolutely no duty to make sure a light does not fall on a patron's head if they don't own the light.

17. Mr. Williams will testify that legacy building codes have classified buildings according to occupancy use groups for many years. Assembly occupancies are classified as Group A. Group A occupancy includes amusement park buildings, auditoriums, churches, dance halls, motion picture theaters, museums, passenger depots, public assembly halls, gymnasiums, restaurants, recreation halls, stadiums and grandstands, tents for assembly, and theaters for stage productions.

18. The 2015 International Building Code (IBC) defined Group A occupancy as:

303.1 Assembly Group A occupancy includes, among others, the use of a building or structure, or a portion thereof, for the gathering of persons for purposes such as civic, social or religious functions; recreation, food or drink consumption or awaiting transportation.

19. The Commentary to the Code identified that:

Darkened spaces in theaters, nightclubs and similar spaces serve to increase hazards. In sudden emergencies, the congestion caused by large numbers of people rushing to exits can cause panic conditions. For these and many other reasons, there is a relatively high degree of hazard to life safety in assembly facilities.

20. Mr. Williams will note that the Commentary provides a concise explanation of assembly group classifications. Group A-2 includes occupancies in which people congregate in high densities for social entertainment, such as drinking and dancing or food and drink consumption (*e.g.*, restaurants). These occupancies may be characterized by one or more of the following:

- Tables and seating arranged or positioned so as to create ill-defined aisles.
- Entertainment by a band or recorded music generating above-normal sound levels.
- Low lighting levels.
- Later-than-average operating hours.
- Service facilities for alcoholic beverages and food.
- High occupant load density.

21. In addition to relying upon the available discovery in this matter, Mr. Williams will rely on his education, training, and experience in the practice of architecture and premises safety

relative to the operation and maintenance of commercial buildings used as a place of assembly. Mr. Williams will cite codes, manufacturer's recommendations, industry standards, and best practices applicable to the safe temporary installation of PAR light fixtures.

22. The following discussion concerning patron safety and nationally recognized standards for proper temporary use of outdoor lighting fixtures was composed by Mr. Williams for this disclosure and is included herein as a technical basis for his subsequent opinions.

23. A 10 lb. unsecured object (such as the PAR) positioned four-to-five feet above seated spectators at an outdoor fashion show is hazardous. The risk of harm (likelihood) it would fall and strike someone on the head causing injury, made it dangerous.

24. Newton's law of universal gravitation explains that when objects fall to the ground, gravity causes them to accelerate. Acceleration is a change in velocity, which is a measure of the speed and direction of motion. Gravity causes an object to fall toward the ground at a faster and faster velocity the longer the object falls.

25. Gravitational potential energy is energy an object possesses because of its position in a gravitational field. As an object falls from rest, its gravitational potential energy is converted to kinetic energy.

26. The formula for velocity of an object just before impact is $\overline{v} = \sqrt{2gh}$. Using the metric conversion for 8 feet: $\overline{v} = \sqrt{2 (9.8 \text{ m/s}^2) (2.44 \text{ m})} = 7 \text{ m/s}^2$, which is approximately **16 mph**. Given Eddins' height while seated results in: $\overline{v} = \sqrt{2 (9.8 \text{ m/s}^2) (1.4 \text{ m})} = 5.2 \text{ m/s}^2$, or **12 mph**.

27. The unsecured light that unexpectedly fell and struck Eddins on her head, regardless of who owned or installed the light, was dangerous because the mass of its weight and height above the outside patio posed a foreseeable risk of harm to restaurant patrons. PAR light fixtures are not

manufactured or intended to be placed unsecured on a ledge or shelf above where spectators are seated during performances.

28. NFPA 70 National Electrical Code (NEC) is a national code for the practical safeguarding of persons and property from hazards arising from the use of electricity. Article 520 provides criteria and considerations for “buildings or that part of a building or structure, indoor or outdoor, designed or used for presentation, dramatic, musical, motion picture projection or similar purposes and in specific audience seating areas...”

29. NEC defines portable equipment as “Equipment fed with portable cords or cables intended to be moved from one place to another.” For portable equipment used outdoors the Code required:

Portable stage and studio lighting equipment...not identified for outdoor use shall be permitted for temporary use outdoors, provided the equipment is supervised by qualified personnel while energized and barriered from the general public.

30. Safety is of paramount importance in stage performances. General Guidance on Stage Lighting Safety is a 1992 Fact Sheet published by Strand Lighting. Regarding safe installation of stage lights, the guide required:

Always fit a safety chain directly between the luminaire and the bar or suspension point. Never rely on just a hook clamp or bolt. Also ensure that accessories such as barn doors, colour frames and colour changers are secure and cannot fall out of the guides.

31. Handbook for One-Act Play is a 2009 publication by Kim Wheetley of guidelines for theatre safety. Recommended procedures for safety include:

Provision should be made for regular inspection and maintenance of equipment and facilities. Special attention should be given to stage rigging, electrical wiring, and lighting apparatus.

32. The section on causes of accidents identifies that:

Safety in the theatre means safeguarding crews, casts, and audiences from all foreseeable hazards and emergencies. Learning to work safely is a vital aspect of educational theatre. Most accidents can be avoided by replacing unsafe habits with safe practice.

The main causes of accidents include:

- Failure to safeguard hazardous equipment
- Carelessness
- Taking unnecessary risks

33. Building codes and property maintenance codes identify the business owner as the party responsible for ensuring that permanent and temporary building elements comply with minimum code requirements. It is the business owner's responsibility to maintain safe premises at all times.

34. The standard of care for business owners of commercial restaurants requires maintaining a reasonably safe premises for patrons. It includes ensuring compliance with reasonable standards for property maintenance, and correcting hazards in a prompt manner. When unreasonably dangerous conditions exist, such as the unsecured light fixture above patron seating, regardless of who owned or installed the light, reasonable efforts should be made by the business owner to remove them or prevent them from being encountered in a manner that could cause harm.

35. Inspections are the hallmark of accident prevention. Effective accident prevention includes preemptive action by those with proper education, training, and experience. A competent inspection is not wandering around an outdoor restaurant patio casually looking at things; it requires looking for hazards in a *knowledgeable manner* and implementing proactive measures for safety.

36. The International Property Maintenance Code (IPMC) is a nationally recognized and accepted code that provides minimum safety standards for the maintenance of existing premises in a manner that protects the public health, safety, and welfare.

37. Regarding Electrical Equipment, Section 605.1 of the 2015 IPMC required:
Electrical equipment, wiring and appliances shall be properly installed and maintained in a safe and approved manner.

38. The Commentary to the 2015 IPMC explained that:
It is the responsibility of the building owner or operator to provide and safely maintain the electrical facilities required herein.

39. Section 604.3 addresses electrical system hazards. The Commentary required that any electrical system deficiency or condition that is deemed hazardous to the occupants or to the structure must be abated to eliminate the hazard. Electrical system hazards include:

- Inadequately supported devices, wiring or equipment.

40. Mr. Williams will offer expert opinions relating to the hazardous unsecured light fixture placed above where patrons were seated. Mr. Williams is expected to testify, to a reasonable degree of architectural and technical certainty, and subject to change if additional information becomes available, that:

a. The unsecured light fixture that fell off the audio speaker, regardless of who owned or installed the light, was dangerous in a manner that caused Eddins to be struck and injured. This should have been inspected, discovered and properly secured by the restaurant thereby eliminating the risk before inviting patrons onto the premises and seating them below the unsecured light. A restaurant exercising reasonable or ordinary care for its patrons' safety would have done so. Had Tabbuli done so, the light would not have fallen and Ms. Eddins would not have been injured.

b. A properly secured light fixture would not have fallen. The unsecured light fixture that fell off the pole mounted audio speaker, regardless of who owned or installed the light, was dangerous because it was not properly secured and the mass of its weight and height above the patio posed a foreseeable risk of harm to spectators seated underneath the speaker.

c. Allowing a 10 lb. light fixture to sit unsecured on top of an audio speaker 8 ft. above patrons, regardless of who owned or installed the light, made it foreseeable that patrons seated below the speaker would be struck and injured if it fell off.

d. The failure of Tabbuli to thoroughly observe and monitor the temporary installation of light fixtures on its premises, regardless of who owned or installed the light, allowed the presence of an unsecured light fixture more than 8 ft. above seated patrons.

e. The failure of Tabbuli to take reasonable safety precautions to properly identify and eliminate temporary hazards, regardless of who owned or

installed the light, was a departure from standard practice and exposed patrons on the outdoor patio to a risk of harm.

f. The failure of Tabbuli to provide a safe premises, regardless of who owned or installed the light fixture, violated the standard of care for property maintenance, and created the dangerous condition that caused Eddins to be struck and injured.

James Rivenbark

A. James Rivenbark, 948 Pecan Tree Lane, Fort Mill, SC 29715, whose C.V. is attached hereto;

B. The negligence of Defendant and injuries and damages caused by same are the subject matters or areas on which Mr. Rivenbark is expected to testify; and

C. Based upon his education, training and experience in becoming and in practicing in operations and in other positions in the restaurant industry as highlighted in his C.V., his review of documentation produced and/or obtained herein including that noted below, and his review of and familiarity with applicable industry standards, laws, codes, authorities, literature, and/or other learned publications, Mr. Rivenbark is expected to testify to a reasonable degree of professional certainty as noted below including that Defendant breached its duties with respect to keeping its premises safe resulting in harm and injuries to Plaintiff, and otherwise as set forth below and in accordance with any deposition provided by him herein. Mr. Rivenbark may utilize the documents noted above, and also various diagrams, charts, and pictures produced and/or obtained herein, including any attached hereto. Mr. Rivenbark is further expected to testify to a reasonable degree of professional certainty as follows.

1. Mr. Rivenbark is experienced in commercial hospitality operations, including restaurant enterprises. His employment requires expertise in maintaining commercial premises in a safe condition in order to protect patrons from harm and a restaurant's duties with respect to same. He is experienced in hospitality and restaurant operations, designing restaurant layouts, architectural design, premises safety, premises maintenance, project management, creation of systems, interviewing, hiring, training and managing personnel, creating, implementing, and training on operational policies, procedures, and employee handbooks, including those concerning premises and patron safety, vendor relationships, insurance coverages, licensing, and working with contractors.

2. Mr. Rivenbark will testify concerning the duties required of commercial hospitality businesses and restaurants concerning those items listed above, and Defendant's breaches of those duties in this case.

3. A copy of Mr. Rivenbark's *curriculum vitae* listing some of his education, training, experience, and qualifications is attached hereto and incorporated herein by reference.

4. Mr. Rivenbark has reviewed a number of documents produced and/or obtained herein, including but not limited to the Amended Complaint, Accident/Incident Report Form, Lease Agreement, Entertainment Sign-in Sheet, Surveillance Video, Defendant Tall Sam I Am, LLC d/b/a Tabbuli's Answers to Plaintiff's Interrogatories, Defendant Tall Sam I Am, LLC d/b/a Tabbuli's Responses to Plaintiff's Requests for Production of Documents, Charleston Hospitality Group Employment Handbook, Deposition of Cait Chapin taken March 25, 2021, Deposition of Jeff Diehl taken July 27, 2021, and various photographs.

5. Mr. Rivenbark is informed that on Thursday, July 20, 2017, Stefani Eddins was at Tabbuli in downtown historic Charleston, South Carolina. At about 10:20 p.m., while she was

seated observing a night-time fashion show, a light fixture fell from above and struck her on the head. Ms. Eddins was injured as a result of the incident.

6. Mr. Rivenbark understands that Tabbuli is a restaurant and bar owned by Tall Sam I Am, LLC.

7. Mr. Rivenbark has learned that in 2017, Tabbuli organized and conducted weekly entertainment events on its outside patio. “Taboo Tuesday” was a drag show and on Thursdays there was a fashion show known as White Haute Nights. Internet postings of both events contain numerous images of the outdoor patio where Ms. Eddins was seated.

8. Mr. Rivenbark has learned that Tabbuli seems to claim that the unsecured light fixture that fell and struck Ms. Eddins was placed on top of an audio speaker that was attached to a wood column supporting the roof structure.

9. Mr. Rivenbark has reviewed the deposition of Tabbuli Manager Cait Chapin regarding the incident that injured Ms. Eddins. Along with a number of other statements the significance of which Mr. Rivenbark will discuss at trial, Mr. Rivenbark notes that Ms. Chapin testified that Tabbuli exercised control over the light, and even took it down after a patron put the light fixture back up on top of the audio speaker after it fell off.

Q. Did you look that night to see where the light was after it fell on Stefani’s head?

A. I believe we took it down. Because I’m sure they didn’t want that to happen again, the DJ and the people doing the event.

10. Mr. Rivenbark has reviewed Tabbuli’s applicable Employment Handbook (Edition 2-21-17). Along with a number of other provisions the significance of which Mr. Rivenbark will discuss at trial, Section 3.9 which acknowledges that Tabbuli is supposed to make every effort to comply with all federal and state workplace safety requirements.

11. Mr. Rivenbark has reviewed the deposition of Jeff Diehl, Director of Operations. Mr. Diehl has a bachelor's degree in hotel restaurant management but no training related to premises safety. Along with a number of other statements the significance of which Mr. Rivenbark will discuss at trial, Mr. Rivenbark notes that Mr. Diehl surprisingly incorrectly testified that Tabbuli has absolutely no duty to make sure a light does not fall on a patron's head if they don't own the light. A restaurant controls and is in charge of who and what comes onto its premises, including light fixtures, and what is done by and with same.

12. In addition to relying upon the available discovery in this matter, Mr. Rivenbark will rely on his education, training, and experience as highlighted in his CV, including but not limited to that involving restaurant operations and premises safety. Mr. Rivenbark will cite recommendations, industry standards, and best practices applicable to restaurant operations and premises safety.

13. The unsecured light that fell and struck Ms. Eddins on her head, regardless of who owned or installed the light, was a dangerous condition and posed a foreseeable risk of harm to restaurant patrons. Mr. Rivenbark is familiar with such fixtures in the industry and they are not manufactured or intended to be placed unsecured on a ledge or shelf above where patrons and spectators are seated.

14. The standard of care for business owners of commercial restaurants requires maintaining a reasonably safe premises for patrons. It includes ensuring compliance with reasonable standards for property maintenance, and correcting hazards in a prompt manner. When unreasonably dangerous conditions exist, such as the unsecured light fixture above patron seating, regardless of who owned or installed the light, reasonable efforts should be made by the business owner to remove them or prevent them from being encountered in a manner that could cause harm.

15. Inspections are the hallmark of accident prevention. Effective accident prevention includes preemptive action by those with proper education, training, and experience. A competent inspection is not wandering around a restaurant casually looking at things; it requires looking for hazards in a knowledgeable manner and implementing proactive measures for safety.

16. Mr. Rivenbark will offer expert opinions relating to the hazardous unsecured light fixture placed above where patrons were seated. Mr. Rivenbark is expected to testify, to a reasonable degree of professional certainty, and subject to change if additional information becomes available, that:

a. A restaurant has a duty to exercise reasonable or ordinary care to keep its premises and patrons safe. This duty includes discovering risks and taking safety precautions to eliminate or warn of those risks.

b. The unsecured light fixture, regardless of who owned or installed the light fixture, which fell off the audio speaker was a dangerous condition and risk that should have been discovered and eliminated. This should have been inspected, discovered and properly secured by the restaurant thereby eliminating the risk before inviting patrons onto the premises and seating them below the unsecured light. A restaurant exercising reasonable or ordinary care for its patrons' safety would have done so. Had Tabbuli done so, the light would not have fallen and Ms. Eddins would not have been injured.

c. Restaurants and bars have a duty to inspect the premises for safety and hazardous conditions in order to prevent exposing patrons to hazardous conditions and keep them safe. This includes during and after any permanent or temporary lighting is placed in the premises and before exposing patrons to same.

The light that fell in this case would not have passed even a brief inspection that should have been conducted by Tabbuli before then seating patrons underneath same. Tabbuli even states in its applicable Handbook under 3.9 Safety that "each employee is expected to obey safety rules and exercise caution and use common sense." This would include staff and management using "common sense" and objecting to dangerous lights, permanent, temporary or otherwise, being installed or placed directly above tables where they are going to seat patrons.

d. A properly secured light fixture would not have fallen. The unsecured light fixture, regardless of who owned or installed the light fixture, which fell off the audio speaker, was dangerous because it was not properly secured and posed a foreseeable risk of harm to spectators seated underneath the speaker.

e. Allowing the light fixture, regardless of who owned or installed the light fixture, to sit unsecured on top of an audio speaker above patrons made it foreseeable that patrons seated below the speaker would be struck and injured if it fell off.

f. The failure of Tabbuli to thoroughly observe and monitor the temporary installation of light fixtures on its premises, regardless of who owned or installed the light fixture, allowed the presence of an unsecured light fixture above seated patrons on the patio.

g. The failure of Tabbuli to take reasonable safety precautions to properly identify and eliminate temporary hazards regardless of who owned or installed the light fixture was a departure from standard practice and a breach of duties owed by Tabbuli to its patrons and exposed patrons to a risk of harm.

h. The failure of Tabbuli to provide a safe premises, regardless of who owned or installed the light fixture, violated the standard of care and breached the duties owed for property maintenance and safety, and created the dangerous condition that caused Ms. Eddins to be struck and injured.

Plaintiff's Non-Retained Experts, Including Treating Medical and Care Providers

To the extent Defendant interprets the duty to disclose 'experts' in this matter to go beyond the requirements of Rule 26(b)(4) of the South Carolina Rules of Civil Procedure relative to the discovery of facts known and opinions held by experts acquired or developed in anticipation of litigation or for trial, and to thus include disclosure of facts known and opinions held by Plaintiff's treating medical and care providers where those persons are fact witnesses who, by virtue of their education, training and experience are permitted to testify in the form of an opinion in accordance with Rule 702 of the South Carolina Rules of Evidence, then the Plaintiff objects on the basis that such an interpretation is contrary to South Carolina law.

Subject to and without waiving the above objection, Plaintiff expressly identifies as potential fact witnesses who are qualified under Rule 702 of the South Carolina Rules of Evidence to give testimony in the form of opinions Plaintiff's treating medical and care providers with respect to the subject matters or areas noted below. These treating medical and care providers include but are not limited to: Trident Health Medical Center and Michael W. Boone, II, MD, Centre Pointe Emergency, 5249 Emmett Davis Jr. Ave, North Charleston, SC 29418; Novant Health Randolph Family Medicine and Karan P. Shukla, MD, 1918 Randolph Road, #275, Charlotte, NC 28207; Queen City Chiropractic and Chad Robertson, DC, 10616 Metromont Pkwy, #104-B, Charlotte, NC 28269; Carolinas Healthcare Rehabilitation and Melissa A. Davis, PT, 1100 Blythe Blvd, Charlotte, NC 28203; Huntersville Ophthalmology/Charlotte Eye and Michael J.

Spicola, OD and Britney Kanupp, COA, 8510 McAlpine Park Drive, Ste 101, Charlotte, NC 28211; Carolina Neuroservices/The Head Injury Center and P. Jeffrey Ewert, Ph.D, A.B.P.P., 6853 Fairview Rd, Unit B, Charlotte, NC 28210; Novant Health Neurology and Sleep and Charles Gordon, MD, 1918 Randolph Road, #400, Charlotte, NC 28207; Charlotte Eye, Ear, Nose and Throat Associates and Michael Spicola, OD, 10305 Hamptons Park Drive, #201, Huntersville, NC 28078; Novant Health Huntersville Medical Center ROI and James Philip Battista, MD and Vivian Kim Forbes, CCC-SLP, 200 Hawthorne Lane, Charlotte, NC 28204; Phoenix Rehabilitation and Health Services, Inc. and Matthew Turner, PT, DPT, 10616 Metromont Parkway, Suite 104A, Charlotte, NC 28269; CMC Rehab, 1100 Blythe Blvd., Charlotte, NC 28203; Charleston Radiology, P.O. Box 781299, Sebastian, FL 32978; Mecklenburg Radiology, P.O. Box 221249, Charlotte, NC 28222; Trident Medical Center, 930 Medical Plaza, North Charleston, SC 29406; All Pro Sport Therapy, 6041 Windjammer Drive, Fort Mill, SC 29708; ACS Primary Care Physicians Center, P.O. Box 635003, Cincinnati, OH 45263-5003; and Nathan S. Louie, OD, Bay Area Eye Care, Inc. 1390 Fitzgerald Drive, Pinole, CA 94564;

Based upon their education, training and experience in becoming and in practicing as medical and care providers, their scientific knowledge, their review of Plaintiff's medical and care records, diagnostic studies, medical expenses, and other documentation produced and/or obtained herein, and their review of and familiarity with applicable authorities, literature, and/or other learned treatises and publications, these treating medical and care providers will testify to a reasonable degree of medical or professional certainty:

(1) that the subject July 20, 2017 incident caused Plaintiff to suffer a number of injuries and conditions, including but not limited to the injuries to her head, neck, shoulder and other parts of her body, including but not limited to a traumatic brain injury, neurocognitive disorder,

persistent post-concussion syndrome, concussion, chronic post-traumatic headache, memory problems, cervicalgia, muscle spasms, muscle strain, tendon strain, cervical, thoracic and lumbar spine problems, vision changes, diminished acuity, cognitive changes, speech difficulties, cognitive-linguistic problems, dizziness, physiologic cupping of optic disc of both eyes, myopia of both eyes, light sensitivity, noise sensitivity, exacerbation and aggravation of ADHD, and right shoulder pain, as identified by Plaintiff's treating medical and care providers in Plaintiff's medical records and reports at any time produced and/or obtained herein the contents of which are also incorporated herein by reference as if fully set forth;

(2) that these injuries and conditions caused, cause and will continue to cause physical, mental and emotional pain and suffering;

(3) that these injuries and conditions caused, cause and will continued to cause restrictions and limitations;

(4) that these injuries and conditions interfered, interfere, and will continue to interfere with Plaintiff's activities of daily and normal living and enjoyment of life;

(5) that these injuries and conditions impaired, impair and will continue to impair Plaintiff's health and vigor and caused loss of dignity;

(6) that the treatment provided for these injuries and conditions as identified in Plaintiff's medical records and bills, including but not limited to emergency care, office and clinic visits, therapy, chiropractic care, massage, medications, and diagnostic testing, has been fair, reasonable and necessary;

(7) that these injuries and conditions will require fair, reasonable and necessary treatment in the future, including but not limited to office and clinic visits, therapy, chiropractic care, massage, medications, and diagnostic testing;

(8) that these injuries are permanent;

(9) that Plaintiff is now at an increased likelihood of future harm as a result of the injuries and problems caused by the incident; and

(10) otherwise in accordance with their medical and care records and any reports and depositions provided by them at any time herein.

Plaintiff expressly reserves the right to question said witnesses regarding their care and treatment of Plaintiff, and their opinions regarding the cause of her injuries, the mechanics of the injuries, consequences and manifestations of the injuries, the reasonableness and necessity of medical treatment, future medical needs of Plaintiff, the physiologic sequelae of the injuries, appropriate restrictions given the injuries, the nature of the permanent impairment, and all of the items listed above. These medical and care providers are not retained expert witnesses, but instead, rendered healthcare services to Plaintiff and, as such, have acquired knowledge and/or formed opinions regarding their care, treatment and injuries because they witnessed or participated in the transactions or events that are part of the subject matter of the litigation. As such, Plaintiff will offer the opinion testimony of these witnesses as to causation, prognosis, damages, and all of the items listed above, and insofar as their testimony may constitute 'expert' testimony, Plaintiff designates said healthcare providers as expert witnesses.

The treating providers may utilize the documents noted above, and also various diagrams, charts, and pictures produced and/or obtained herein, including any attached hereto.

Discovery and expert depositions in this matter are continuing, and Plaintiff may change, add to or subtract from the opinions set forth in this designation and the basis for those opinions. The aforementioned witnesses may also have other opinions related to those summarized herein, but which are not specifically stated in this designation. These witnesses may also express

opinions not summarized herein in response to specific questions asked at trial or based upon specific evidence presented at trial.

Plaintiff reserves the right to modify and/or supplement this designation if they are in receipt of additional medical records or other documents or expert reports which have not yet been provided to the Plaintiff in this case.

Plaintiff further designates as potential experts, all of the experts designated by the Defendant.

Plaintiff reserves the right to call any and all healthcare providers who treated the Plaintiff whether or not specifically identified herein.

Plaintiff asserts that this representation of the experts' anticipated testimony is a summary of the facts and opinions of which they are expected to testify by counsel for Plaintiff and is not, nor should it be, construed as a limitation on said experts' testimony.

Other

1. Any expert witness necessary for impeachment, rebuttal or the exigencies of trial;
2. Plaintiff reserves the right to supplement and/or amend this expert witness disclosure.

GARY C. JOHNSON, PSC



Michael E. Liska
 NC Bar # 53343
 2265 Executive Drive
 P.O. Box 55106
 Lexington, KY 40505
 Fax: 859-268-7318
 Email: mliska@garycjohnson.com
Co-Counsel for Plaintiff

-and-

Justin D. Maines
SC Bar No. 76668
2008 Whitaker Street
Savannah, Georgia 31401
Tel: (912) 200-5230
Fax: (912) 335-6553
Email: jd@thenyelawgroup.com
Co-Counsel for Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served on the following parties to this action by: () Federal Express () hand delivery () facsimile (x) electronic mail and/or (x) by depositing a copy of the same in the United States Mail postage prepaid and addressed to:

Mark S. Barrow, Esq.
William A. Neinast, Esq.
SWEENY, WINGATE & BARROW, P.A.
1515 Lady Street
Post Office Box 12129
Columbia, South Carolina, 29211
Counsel for Defendant

This the 28th day of December, 2021.



Co-Counsel for Plaintiff

PROFESSIONAL EXPERIENCE

2002 to present **Robson Forensic, Inc.**
Associate

Provide technical investigations, analysis, reports, and testimony for failure analysis, and towards the resolution of commercial and personal injury litigation involving slip, trip, and fall injuries, code compliance, accessibility, construction claims and disputes, aspects of property management, construction materials, and architectural professional liability. Areas of expertise include:

Premises Liability: Walkway construction and safety; slip resistance, effectiveness of warnings, efficacy of illumination, delineation of hazards in parking lots, stairs, single-rise steps, ramps, corridors; platforms and level changes; walk-off mats; low energy power-assisted doors and adaptive-reuse of historic buildings.

Building Design and Planning: Building codes and standards; transient lodging; means of egress; exterior stairs; unprotected floor openings, open-sided drop-offs, graspable handrails, guardrails, glass and glazing.

Site Design and Planning: Site planning; PUD submittals for zoning; grading and drainage; control of storm water; traffic calming measures; parking lot design.

Accessibility: Standards for barrier-free design; Americans with Disabilities Act (ADA); ANSI A117.1; accessible routes; accessible building components, including ramps, entrances, toilet rooms, protruding objects, walking surfaces, curb ramps, signage, and detectable warnings.

Construction Defect Claims: Construction defects and delay claims, contractual obligations and disputes under various types of project delivery methods; adequacy of construction documents, standards and quality issues.

Construction Materials Failures: Water intrusion related issues; brick, stone, and concrete; gutter and flashing system failures; roofing system failures; parapet wall copings; expansion joint failures; sealant and caulk system failures, window and curtainwall system failures.

Premises Security: Site and facility planning; Defensible Space, Crime Prevention Through Environmental Design (CPTED), lighting to deter trespass, CCTV, door hardware, territoriality and surveillance, landscaping, and perimeter fencing.

Conspicuousness of Hazards: Placement, effectiveness, and illumination of warnings; signage; dark adaption; color and contrast of adjacent materials.

Retail Store Safety: falling merchandise, unstable shelving and product display, improper material stacking and storage, palletized product, display base hazards.

MARK E. WILLIAMS, AIA, NCARB
Architect

Architectural Practice: Standard of Care, Owner-Architect Agreements, General Conditions, Construction Management, errors and omissions, owner betterment, change order analysis, construction phasing, punch lists, and interpreting contract performance, enforcement of contract provisions, and closeout procedures.

2002 to
present

Fournier, Robson & Associates, LLC
Architect

Provide specialized architectural services for the evaluation and analysis of building envelope performance and periodic façade inspections including documentation for critical observation reports, local law requirements, historic tax-credit certification, and pre-purchase assessment. Perform arms-length tactile inspections of high-rise building cladding materials, curtain wall systems, and related appurtenances.

2000 to
2002

Mark E. Williams, Architect, Columbus, Ohio
Sole Proprietor

Architectural practice with emphasis on commercial and institutional renovation projects involving adaptive reuse. Specialized inspection services included evaluation and analysis of high-rise building façades from suspended scaffolding.

- Liberty Tower Critical Observation Report, Dayton, Ohio - Exterior survey and critical observation of historic 20-story office building. Scope of work involved façade inspection and documentation of conditions requiring repair of masonry and stone, replacement of control joints, caulking failure, mortar replacement, and water intrusion at window systems.
- LeVeque Tower Critical Observation Report, Columbus, Ohio - Exterior survey and critical observation of historic 44-story office building. Scope of work included emergency repairs to exterior terracotta façade and documentation of masonry repair, control joints, caulking failure, mortar replacement, and water intrusion at window systems.
- Highland Headstart, Community Action Organization of Scioto County, Portsmouth, Ohio - Renovation of 25,000 SF elementary school building constructed in 1956 for the City of Portsmouth school system. Scope of work included complete replacement of HVAC system, electric lighting and power distribution, plumbing fixtures and equipment, exterior aluminum windows, new interior doors and hardware, new interior finishes, new commercial kitchen, new fire alarm system, evaluation of existing stairs, parking lot design and landscaping, ADA compliance and playground equipment.
- Freedom Center Renovation, Ohio Department of Youth Services, Delaware, Ohio - Renovation of existing 12,000 SF pre-release center for juvenile girls located at Scioto Juvenile Correctional Center. Scope of work included complete replacement of HVAC system, electric lighting and power distribution, plumbing fixtures and equipment, new interior doors and hardware, new interior finishes, ADA compliance and mold remediation.

MARK E. WILLIAMS, AIA, NCARB
Architect

- Automobile Sales Building, Kelly BMW, Columbus, Ohio – Programming, schematic planning, design development, construction documents, and construction administration for new 5,000 SF pre-owned BMW vehicle showroom and offices. Scope of work included demolition of existing structure, site preparation, concrete foundations, steel frame structure, metal studs, EPDM roof, doors and hardware, aluminum storefront system, EIFS cladding, interior finishes, bathrooms, HVAC system, plumbing fixtures and equipment, electrical lighting and power distribution.
- North Worthington Pet Clinic, Columbus, Ohio - Design and planning for new 5,000 SF veterinarian pet care facility. Scope of work included schematic design of building systems and construction methods, site planning, new topographic survey, zoning application, and evaluation of future growth potential.
- D & J Auto Service, Columbus, Ohio – New 5,000 SF pre-engineered metal building for secure storage of restored antique automobiles, race cars, and rare motorcycles by private collector. Scope of work included concrete foundations, pre-engineered metal building, hydraulic automobile racking system, overhead doors, interior casework and finishes, HVAC system, plumbing fixtures and equipment, electrical lighting and power distribution, and security perimeter fencing.
- Office Building, Scioto County Children's Services, Portsmouth, Ohio – Site planning, schematic design, and feasibility study for new 10,000 SF service facility and administrative headquarters. Scope of work included programming requirements, code analysis, zoning research, site development, preliminary floor plans, exterior elevations, and building sections.

1987 to
2001

Short North Development Company, Columbus, Ohio
Property Manager

Resident property manager for three-story, 26,000 square foot historic masonry building with 16 residential units and first floor commercial retail space, including secure underground vehicle garage, and exterior parking area.

Responsible for maintaining the premises in a safe condition, enforcing tenant rules and regulations to ensure resident compliance with lease agreement, and coordination with vendors and contractors performing scheduled maintenance or minor property improvements.

Duties included: periodic inspection and routine maintenance, 24-hour assistance for lockouts, towing of unauthorized vehicles, delivery of late notices from property owner, responding to resident complaints and disturbances, minor repairs of building hardware, replacement of interior and exterior fluorescent lighting, monitoring security doors for proper operation, inspection of vacated apartments, and coordination with county sheriff's office for evictions proceedings.

MARK E. WILLIAMS, AIA, NCARB
Architect

1993 to
2000

McKay Williams Architects, Ltd., Columbus, Ohio

Principal Partner

Eight-person architectural firm; two registered architects, administrative, marketing, and production staff. Project types included correctional, multi-family residential, healthcare, commercial, and special investigation. Specific areas of professional practice included office QA policy and procedure, code research, construction drawings and specifications, cost estimating, project scheduling, coordination with consulting engineers, and construction administration. Personal focus was construction documents and construction contract administration.

- Franklin County Courthouse, Exterior Analysis and Repairs, Columbus, Ohio - Exterior survey and critical observation report of 28-story high-rise government office building. Scope of work involved façade inspection and photographic documentation to determine conditions of pre-cast concrete panels, aluminum windows, and sealant joints between dissimilar cladding materials.
- Franklin County Courthouse Annex, Exterior Analysis and Repairs, Columbus, Ohio - Exterior survey and critical observation report of historic 5-story office building. Scope of work involved façade inspection and photographic documentation to determine conditions of limestone and marble panels, aluminum windows, and sealant joints between dissimilar cladding materials.
- Garden Manor Nursing Home, Middletown; Tri-County Nursing Home, Hamilton; Oak Creek Terrace Nursing Home, Kettering; Livingston Care Nursing Home, Dayton - Investigation of four Ohio skilled care nursing home facilities to conduct interior survey and code research in response to citation issued by the Office of State Fire Marshal regarding special locking arrangements for Alzheimer's patients. Scope of work included interviews with Ohio Department of Health supervisors, meetings with local fire department officials, collection of historical fire data, and probability analysis of fatal injury.
- Best Western Hotel & Conference Center, Springdale, Ohio - Exterior survey and analysis of EIFS façade failure due to water intrusion resulting in extensive interior property damage and mold growth. Scope of work included technical research and preparation of critical observation report for use in litigation.
- Lorain/Medina (50 bed) Community Based Correctional Facility, Elyria, Ohio; West Central (90 bed) Community Based Correctional Facility, Marysville, Ohio; Northwest (50 bed) Community Based Correctional Facility, Bowling Green, Ohio; Stark Regional (88 bed) Community Based Correctional Facility, Canton, Ohio; Eastern Ohio (20 bed) Community Based Correctional Facility, Lisbon, Ohio; STAR (120 bed) Community Justice Center, Franklin Furnace, Ohio. Scope of work included full architectural services and coordination with Ohio Department of Corrections and Judicial Corrections Board for each facility.
- Thomas Hall Renovation for Mount Carmel Hospital, Columbus, Ohio; New Care Net Medical Offices for St. Ann's Hospital, Westerville, Ohio; Health Styles Medical Office for Mount Carmel Hospital, Columbus, Ohio; Golden Lifestyles Medical Office for Mount Carmel Hospital, Columbus, Ohio.

MARK E. WILLIAMS, AIA, NCARB
Architect

- Canterbury Commons (90 unit) multi-family apartments, Middletown, Ohio; Jefferson Crossing (90 unit) multi-family apartments, Kokomo, Indiana; Chase Crossing (90 unit) multi-family apartments, Logansport, Indiana; Pine Crossing (68 unit) multi-family apartments, Decatur, Indiana; Cambridge Commons (40 unit) multi-family apartments, Cambridge, Ohio.
- New porte-cochere and multi-purpose wing with administration offices and library, Haven Heights Baptist Church, Wauseon, Ohio; Master Plan for 10,000 SF family life center and 1,000-seat worship auditorium with connecting breezeways, Heath, Ohio.
- Muncie 202 (3-story) elderly apartment building, Muncie, Indiana; Downtown Housing Building (5-story), Athens, Ohio; Riverby Condominiums (48-unit), Delaware, Ohio.
- New BMW showroom and sales offices for Kelly Motors, New Albany, Ohio; New home office building for Shared Resources, Columbus, Ohio; Hubbard Building renovation and adaptive-reuse, Sandusky, Ohio.
- Hillandale Care (100 bed) skilled care nursing home, Middletown, Ohio; The Meadows (100 bed) skilled care nursing home, Forest Park, Ohio; Meadow Wood (86 bed) skilled care nursing home, Georgetown, Ohio; Livingston Care (90 bed) skilled care nursing home, Dayton, Ohio.
- Pharmacy and Medical Clinic, Ohio Department of Youth Services, Delaware, Ohio – Renovation of existing classroom and office space to new pharmacy and medical clinic for juvenile boys located at Riverview Juvenile Correctional Center.
- Security Fence and Perimeter Lighting, Ohio Department of Youth Services, Delaware, Ohio – New security fence with proprietary First Defense system, perimeter access road and lighting, and CCTV equipment at Riverview Juvenile Correctional Center.

1989 to
1993

URS Consultants, Inc., Columbus, Ohio

Project Architect

Large Architectural/Engineering firm serving both corporate and government clients on various high profile project types. Supervised multi-disciplined team during production of construction documents and coordinated related activities throughout construction administration phase. Developed and implemented new company spreadsheets to streamline manpower forecasting, labor hour budget tracking, cost estimating and change order analysis.

- 100,000 gallon salt water aquarium and coral reef for the Columbus Zoo.
- \$3.2 million 35,000 SF medical office building for Grady Memorial Hospital.
- \$4.5 million 45,000 SF assisted living facility for Friendship Village of Dublin.
- Renovation of Scioto Juvenile Correctional Center for Ohio Department of Youth Services.

MARK E. WILLIAMS, AIA, NCARB
Architect

- 1986 to 1989 **John McKay & Associates**, Columbus, Ohio
Project Architect
Medium size architectural firm with offices located in Columbus, Ohio and Louisville, Kentucky focusing on lakefront resort condominium design and the healthcare market. Responsible for overall project management including production of construction drawings and specifications, technical product literature, code research, quality control review of office standards, and construction administration phase.
- \$15 million, 195,000 SF lakefront resort hotel complex located in Sandusky.
 - 45-unit, 5 story luxury condominium building for *The Harbour* development; 15-unit, 3 story luxury condominium building for *The Harbour* development; 6-unit luxury condominium building for *The Harbour* development.
 - 50-room lakefront resort hotel for private development at Catawba Island.
 - 60-unit retirement housing and assisted living for private development.
- 1985 to 1986 **Hughes Associated Architects**, Louisville, Kentucky
Project Architect
Small boutique firm located in historic carriage house renovated by principal owner. Supervised production of construction documents on multi-unit residential developments and various commercial buildings for local private clients. Directed submission of completed plans to state and local code agencies in permitting phase.
- Renovation and new addition for Home of the Innocents, Louisville, Kentucky
 - Numerous multi-family apartment buildings for U.S. Farmers Home Administration constructed across the Midwest and Southeast.
- 1982 to 1985 **U.S. Postal Service, Design & Construction Division**, Louisville, Kentucky
Architectural Project Coordinator
Regional Field Real Estate and Building Office (FREBO) responsible for owned and leased facilities throughout Kentucky, Ohio, and Indiana. Performed architectural services as a contract employee for CDI Corporation based in Philadelphia, PA. Prepared construction documents for repairs, improvements, and modifications to existing WPA era buildings. Responsible to secure field measurements and document as-built conditions for preparation of working drawings, written specifications, and cost estimates. Performed management of construction administration phase.
- Overall redesign and production of base NCL documents, Chicago, Illinois.
 - Prepared project investigations and site evaluation reports for construction of new owned facilities (NCO), including functional design floor plans and site utilization drawings.
 - Design of new leased facilities (NCL) including preparation of working drawings from standard building plans, compiling written specifications, shop drawing review, and administration of the contract for construction.
 - New flashings and roof replacement for main post office, Columbus, Ohio.

MARK E. WILLIAMS, AIA, NCARB
Architect

- Design of freestanding self-service postal centers and detached post office box units for use in shopping malls. Prepared working drawings for fabrication, specifications, cost estimates, and coordinated work in field for delivery and installation.

1981 to **Godsey Associates Architects**, Louisville, Kentucky

1982 *Architectural Draftsman*

Small architectural firm concentrating on healthcare related projects and corporate restaurant clients. Provided architectural drafting and detailing, code research, and technical product specifications related to numerous light commercial projects.

- Renovation of Kentucky Fried Chicken Restaurant in Times Square, New York.

1976 to **Virginia Polytechnic Institute Learning Resource Center**, Blacksburg, Virginia

1981 *Intern*

College work-study program conducted through the Instructional Development Division of the University Learning Resource Center. Assisted with graphic design, layout and production of audio visual instructional materials for classroom presentation, including 35mm color slides, 16mm film, video/audio cassettes and visual transparencies.

- Cataloged and organized over 3,000 TV commercials for faculty thesis.

1972 to **Bechtel Petroleum Corporation**, Louisville, Kentucky

1976 *Assistant Draftsman*

Large worldwide engineering and architecture firm, preparing details for working drawings in various locations on multi-discipline assignments including architectural, civil, structural, HVAC, instrumentation, mechanical piping, and electrical power and lighting.

- Performed extensive field research, as-built documentation of structures and equipment, and drafting for B.F. Goodrich Plant in Louisville, Kentucky.
- Performed multi-discipline drafting for construction documents on numerous manufacturing plants and factories including Proctor & Gamble.

PROFESSIONAL CREDENTIALS

Registered Architect: Ohio, Indiana, Kentucky (inactive), West Virginia (inactive), Michigan, New York (inactive), New Jersey (inactive), North Carolina, South Carolina, Georgia, New Hampshire, Alabama, Tennessee, Louisiana, Virginia, Mississippi

Certified by the National Council of Architectural Registration Boards (NCARB)

Certified Operator of the English XL Variable Incidence Tribometer (2015-2018)

MARK E. WILLIAMS, AIA, NCARB
Architect

EDUCATION

Bachelor of Architecture (5 year degree), Virginia Polytechnic Institute & State University,
Blacksburg, Virginia, 1981

CONTINUING EDUCATION

"Tort Liability and Risk Management-Bicycle and Pedestrian Design," Red Vector Continuing Education, 2019
"Accessible Parking," Red Vector Continuing Education, 2019
"Anatomy of Construction Defects," Red Vector Continuing Education, 2019
"Ethics for Professional Architects Part I and II," Red Vector Continuing Education, 2019
"Impacts of the 2010 ADA Guidelines," Red Vector Continuing Education, 2019
"Leak Detection for Roofs," Red Vector Continuing Education, 2019
"Psychology of Color," Red Vector Continuing Education, 2018
"Bollard Boot Camp - How to Protect Places and People from Vehicle Incursions," Red Vector Continuing Education, 2018
"Selection, Specification and Installation of Safety and Security Barriers and Bollards," Red Vector Continuing Education, 2018
"Professional Liability: Contract Performance Considerations," Red Vector Continuing Education, 2018
"Architect and Engineer Design Coordination," Red Vector Continuing Education, 2018
"Designing for Accessibility under ADA Standards and IBC," HalfMoon Education, 2017
"Construction Contract Law," Red Vector Continuing Education, 2015
"Site Planning and Design," Red Vector Continuing Education, 2015
"Crime Prevention Through Environmental Design: Surveys and Floor Plan Reviews," Red Vector Continuing Education, 2015
"Historic Preservation: Roofing for Historic Buildings," Red Vector Continuing Education, 2015
"Parking Lots: Lighting," Red Vector Continuing Education, 2015
"Parking Lots: Traffic Impact and Site Access," Red Vector Continuing Education, 2015
"Historic Preservation: Rehabilitating Interiors," Red Vector Continuing Education, 2014
"Historic Preservation: Accessibility," Red Vector Continuing Education, 2014
"Fair Housing: Accessibility," Red Vector Continuing Education, 2014
"International Building Code & More: Means of Egress," Red Vector Continuing Education, 2014
"Traffic Calming," Red Vector Continuing Education, 2014
"Professional Standard of Care: Proof & Defense," Red Vector Continuing Education, 2014
"Biomechanics: Understanding Barrier-Free Design," Red Vector Continuing Education, 2013
"Residential Construction for Coastal Areas," Red Vector Continuing Education, 2013
"Contractor Lawsuits Against Design Professionals," RedVector Continuing Education, 2013
"Facilities Management," RedVector Continuing Education, 2013

MARK E. WILLIAMS, AIA, NCARB
Architect

"Building for Colleges & Universities: Housing," RedVector Continuing Education, 2013
"Contract Dispute Management," Titan Continuing Education, 2013
"Introduction to Domestic Wastewater Treatment," Titan Continuing Education, 2012
"Understanding the Tacoma Narrows Bridge Collapse," Titan Continuing Education, 2012
"Reliability & Durability of Building/Site Components," Titan Continuing Education, 2012
"Safety Considerations in Coating and Painting," Titan Continuing Education, 2012
"AIA Contracts," Lorman Education Services, 2011
"Moisture Infiltration," Titan Continuing Education, 2011
"Risk Management," Titan Continuing Education, 2011
"Chinese Drywall," Titan Continuing Education, 2011
"Change Orders," Titan Continuing Education, 2011
"ADA Course III: Common Errors and Omissions," Titan Continuing Education, 2011
"Professional Ethics in Design and Building," Clemson University, Rutland Institute, 2011
"Building Codes in South Carolina," Lorman Education Services, 2010
"Fundamentals of Construction Contracts: Understanding the Issues," Lorman Education Services, 2010
"Building Envelope Performance," Lorman Education Services, 2009
"Construction Law," Defense Research Institute, 2009
"Building Codes," Lorman Education Services, 2009
"CPM in Construction Management: Preventing and Measuring Delays," Lorman Education Services, 2009
"Construction Law Fundamentals," National Business Institute, 2009
"The Winds of Change? The ConsensusDOCS," American Bar Association Forum on the Construction Industry, 2008
"Nursing Home/ALF Litigation Seminar," Defense Research Institute, 2008
"Avoiding Building Code Violations," National Business Institute, 2008
"Construction Project Management," National Business Institute, 2008
"4TH Annual Top Gun Construction Claims Program," Bricker & Eckler LLP, 2007
"Practicing Architecture in Ohio," HMS Continuing Education, 2007

TRAINING

CXLT Certification Program, Excel Tribometers, LLC, May 2015
Safety Training for Suspended Scaffold Fall Protection, Eagle Scaffold Consultants, Inc., 2004

CONFERENCES

Symposium on Performance and Durability of the Window-Wall Interface, American Society for Testing and Materials, 2004

MARK E. WILLIAMS, AIA, NCARB
Architect

MEMBERSHIPS and AFFILIATIONS

American Bar Association Forum on the Construction Industry
American Institute of Architects (AIA)
 AIA South Carolina
 AIA Charleston
American Society for Testing and Materials (ASTM)
 Committee E06: Performance of Buildings
 Subcommittee E06.55: Exterior Building Wall Systems
 Task Group E06.55.05: Façade Inspection
 Committee F12: Security Systems and Equipment
 Subcommittee F12.10: Systems Products and Services
 Committee F13: Pedestrian Walkway Safety and Footwear
 Subcommittee F13.50: Walkway Surfaces
Defense Research Institute (DRI) Construction Law Committee
Human Factors and Ergonomics Society Technical Groups:
 Environmental Design; Safety; and, Visual Performance
International Code Council (ICC) *formerly known as* Building Officials and Code
 Administrators International (BOCA)
Community Associations Institute (CAI) – Robson Forensic corporate membership
National Safety Council – Robson Forensic corporate membership
Past Member, Building Owners & Managers Association International (BOMA)
Past Member, Construction Specifications Institute (CSI)

GOVERNMENT TESTIMONY

Ohio Board of Building Standards: Expert testimony at public hearing to appeal citation issued by Office of State Fire Marshal prohibiting special locking devices for Alzheimer's patients at four skilled care nursing homes in Ohio, 1997.

Scope of work included interior survey and code research, interviews with Ohio Department of Health supervisors, meetings with local fire department officials, and collection of historical fire data. Facilities cited: Garden Manor Nursing Home, Middletown; Tri-County Nursing Home, Hamilton; Oak Creek Nursing Home, Kettering; Livingston Care Nursing Home, Dayton.

PUBLICATIONS

Mark E. Williams, AIA, NCARB, "Architect's Report on the Jane Smith Injury," Published in *The Law of Slip & Fall in South Carolina*, Daniel R. Denton, Esq. (Columbia, SC: South Carolina Bar, Continuing Legal Education, 2014).

"Building Envelope Performance," Lorman Education Services, March 2009

INVITED PRESENTATIONS

"What Experts are Looking for in Premises Liability Cases," Tennessee Defense Lawyers Association Annual Conference, Chattanooga, TN, October 2018.

"Two Engineers and an Architect-Use of Reconstructionist on Premises Liability Cases." Tampa Bay Trial Lawyers Association, Tampa, FL, August 2018.

"Identifying Construction Defect Claims," North Carolina Advocates for Justice Annual Convention, Sunset Beach, NC, June 2017.

"Issue Spotting for Architect Errors & Omissions on Premises Liability Cases," Treasure Coast Justice Association, Stuart, FL, August 2017.

"Building Envelope Performance & Construction Claims," Legal Support Staff of North Carolina, Asheville, NC, September 2011.

"Understanding and Getting the Most from Your Expert," Legal Support Staff of North Carolina, Asheville, NC, April 2010.

"Forensic Investigations," Charleston ASME Chapter Meeting, Charleston, SC, January 2010.

"Forensic Investigations for Litigation Professionals," Legal Staff Professionals of South Carolina, Myrtle Beach, SC, April 2009.

"Building Envelope Performance," Lorman Education Services, Akron, OH, March 2009.

"Construction Claim Situations-How to Avoid Them," Jack Miller Network, Orlando, FL, January 2008.

"Using the Architectural Expert in Premises Liability Cases," Cleveland Academy of Trial Attorneys, Cleveland, OH, February 2007.

"Defensible Space: Crime Prevention Through Environmental Design," Rotary Club of Weirton, WV, April 2006.

"Forensic Architecture," NCARB Joint Regional Meeting, Milwaukee, WI, October 2005

"Façade Ordinances & Inspections," Construction Specifications Institute Chapter Meeting, Columbus, OH, October 2004.

James A. Rivenbark

Mobile: 704.877.0820 jamrivenbark@gmail.com

948 Pecan Tree Lane

Fort Mill, SC 29715

SUMMARY

- Highly knowledgeable professional experienced in operations, customer service and high-volume environments.
- Experience in designing restaurant layouts, project management, and creation of systems for hospitality groups
- Proven track record of managing people and challenging situations for a broad customer base.
- Experience in stream-lining processes
- Ability to make difficult decisions in a timely manner to meet specific needs of a guest or customer
- Effective multi-tasker, capable of handling multiple issues simultaneously
- Flexible, highly motivated leader with transferable skills including:
- Relationship Management, Change Implementation, Operations, Extensive experience with Craft Beer and Craft Cocktails

PROFESSIONAL EXPERIENCE:**CEO/Owner Jars Hospitality, LLC**

October 2016- Present

- Restaurant Management Company
- Currently manages financials and operations for TWF Burgers LLC, The Office CBK, and Blue Smokehouse & Bar.

Founder TWF Burgers, LLC

Expected to open January 2022.

Operations Consultant 800 Degrees Phillips Place

January 2021-Present

- Assist in all operational aspects of restaurant opening. Includes but not limited to architectural design, vendor relationships, insurance coverages, interviewing of management team and licensing.

The Office Craft Bar and Kitchen and Blue Smokehouse

December 2018-Present

Co-Founder/Owner/Managing Partner of both concepts

- Designed layout including kitchen, bar, dining, patio with architect for a 5500 square foot restaurant.
- Led project management with general contractor during build out of restaurant.

- Signed and agreed to all vendor relationships including but not limited to architect, general contractor, property manager, food and alcohol suppliers, insurance, and payroll.
- Completed all documentation for alcohol licensing.
- Hired and trained staff of 70.
- Created all operational policies and procedures including but not limited to P&L, Health Policy, and Employee Handbook.
- Handles all bank and credit accounts and responsible for all accounting entries into Xero software. Responsible for all accounts payable and receivable.
- Design underway on second concept slated to open in September of 2020.

LEROY FOX Charlotte, NC

December 2017-Novemeber 2018

General Manager/Training for director role

- Implemented new comp procedure to assist in tracking wasted funds and improve net profit.
- Created profit and loss statement to improve cost of goods accuracy for all of our restaurants.
- Currently putting new inventory systems into place to update less efficient models.
- Full day to day control of original Leroy Fox establishment.
- Improving vendor relations.
- Implemented new system to track labor more efficiently.

MAC'S SPEEDSHOP/SouthBound Charlotte, NC

February 2016 –November 2017 /June 2014 – May 2015

General Manager

- Total responsibility for the overall operations for a \$5.6 million a year unit.
- Full P&L accountability
- Oversaw the complete renovation of our patio, including the installation of a new full bar and beer cooler.
- Responsible for managing the operation while a new food cooler and smoker were being installed. Operations never ceased during the construction.
- Responsible for training and guiding five assistant managers.
- Responsible for training of all new managers for all locations.
- Point of contact for project manager and all inspectors for a new 16000 square foot facility.
- Created training schedule for a new concept.
- Created steps of service for a new concept.
- Responsible for onboarding an estimated 100 employees for a new concept.

All American Pub Charlotte, NC

May 2015 - February 2016

General Manager

- Total responsibility for the overall operations for a projected \$4.5 million a year unit.

- Full P&L Accountability
- Responsible for logistics, set up and staffing for game day events.
- Increased sales by 8% over prior year.
- Helped assistant general manager get promoted to general manager of another location within the company.
- Responsible for the implementation and costing of all new bar products and specials.

Tavern on The Tracks Charlotte, NC

January 2012- January 2015

Manager

- Responsible for scheduling and training front of house staff.
- Daily shift supervision

The Clock Restaurant Charlotte, NC

June 2010 - June 2011

Business Owner

- Responsible for all financial management operations including cash flow, bookkeeping, accounting for expenditures and employee salaries. Compared invoices of suppliers to determine where cost could be cut without sacrificing quality.
- Oversaw staff management by hiring, terminating, creating moral and implementing policies among the employees.
- Ensured building repairs and maintenance were conducted in a timely fashion.
- Established a customer-friendly atmosphere by driving the importance of hospitality and customer satisfaction across the staff.
- Assisted employees in food preparation and cleaning routines to make certain the kitchen was operated efficiently and effectively.
- Collaborated closely with accountant, merchant service provider and payroll companies to ensure tax and legal documents were maintained accurately.
- Developed and implementing new branding and signage for the restaurant as well as marketing and catering opportunities and strategies.
- Supported all office management routines and day to day operation needs such as phones, calendaring, team meetings, customer service and vendor relationship management.

Bank of America Charlotte, NC

March 2008 - July 2010 Investment Specialist

- Responsible for placing trades for clients in their brokerage accounts including but not limited to stocks, bonds, mutual funds, fixed income products and options.
- Successfully completed an advanced trade training program that focused on margin accounts, day trading, and advanced option trades.
- Ranked number four out of approximately seventy employees in production during the first quarter of employment.

- Consistently ranked in the top of Charlotte Investment Center in production, and quality.

Drake Financial Charlotte, NC

June

2006 - January 2008

Director of Operations/Registered Representative

- Guided existing clients in selecting appropriate insurance and investment vehicles for their assets including but not
- limited to life insurance, IRA's, stocks, and mutual funds.
- Prospected to bring in new clients and assets.
- Created seminars that included PowerPoint presentations to use by the firm.
- Managed 10 advisors assistants.
- Created and implemented new processes for the entire firm. Specifically processes related to underwriting and communications between advisor assistants, advisors, and clients.
- Oversaw every aspect of a merger between Drake Financial and Greater Carolina Group. This includes the combined company's website, email, stationery, office space, communication systems, and lease arrangements.
- Used QuickBooks to reconcile accounts for the firm.

Foresters Charlotte, NC

February 2005 - May 2006

Insurance Agent/Registered Representative

- Guided clients in selecting appropriate insurance and investment vehicles for their assets including but not
- limited to life insurance, IRA's, stocks, and mutual funds.
- Prospected to bring in new clients and assets.
- Created basic financial plans based on client's investment objectives and goals.
- Sent direct mailings to a targeted market.

EDUCATION:

University of North Carolina at Charlotte Charlotte, NC

August 2001- May 2005

Bachelor of Science in Business Administration in Finance

Concentration in Commercial Bank Management

Six Sigma Green Belt 4/23/18

M.B.A. University of North Carolina at Charlotte 2020

Serv Safe Certified

TIPS Certified

Spirit of Excellence Award

Honored for contributions toward the Preferred Services Group (Bank of America)

2009 Circle of Excellence Award (Bank of America)

Former Series 7 (left the securities industry in good standing)

Defendant's Motion for Summary Judgment

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	THE NINTH JUDICIAL CIRCUIT
Stefani Eddins	)	Civil Action No.: 2020CP1002481
	)	
	)	
Plaintiff,	)	
	)	
v.	)	DEFENDANT TALL SAM I AM, LLC'S
	)	MOTION FOR SUMMARY JUDGMENT
Tall Sam I Am, LLC d/b/a Tabbuli	)	
	)	
	)	
Defendant.	)	

**TO: MICHAEL E. LISKA, ESQUIRE, AND JUSTIN D. MAINES, ESQUIRE,
ATTORNEYS FOR THE PLAINTIFF AND TO THE PLAINTIFF ABOVE-
NAMED:**

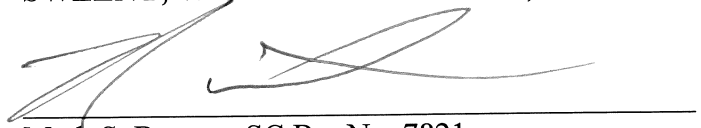
PLEASE TAKE NOTICE THAT Defendant Tall Sam I Am, LLC d/b/a Tabbuli, by and through its undersigned counsel, will move before a presiding judge for the Charleston County Court of Common Pleas on the tenth (10th) day after service thereof, or as soon thereafter as may be heard, for an Order granting Defendant summary judgment in accordance with Rule 56 of the South Carolina Rules of Civil Procedure.

As grounds for said motion, Defendant contends that there is no genuine issue of material fact established with respect to causation and, in the alternative, submit that it is not vicariously liable for the torts of its independent contractor(s), as well as any other applicable grounds. *See Duane v. Presley Constr. Co., Inc.*, 270 S.C. 682, 683, 244 S.E.2d 509, 510 (1978). Therefore, Defendant is entitled to judgment as a matter of law.

This motion will be supported a memorandum of law that may include deposition transcripts, affidavits, and other evidentiary material which discovery has revealed in this matter.

Respectfully submitted,

SWEENY, WINGATE & BARROW, P.A.

A handwritten signature in black ink, appearing to read 'Mark S. Barrow', is written over a horizontal line.

Mark S. Barrow, SC Bar No. 7821
William A. Neinast, SC Bar No. 104218
Sweeny, Wingate & Barrow, P.A.
Post Office Box 12129
Columbia, SC 29211
(803) 256-2233

ATTORNEYS FOR DEFENDANT

Columbia, South Carolina

March 21, 2022

Defendant's Memorandum in Support of Motion for Summary Judgment

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) THE NINTH JUDICIAL CIRCUIT

Stefani Eddins) Civil Action No.: 2020CP1002481

Plaintiff,

v.

Tall Sam I Am, LLC d/b/a Tabbuli

Defendant.

MEMORANDUM IN SUPPORT OF
DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT

COMES NOW Defendant Tall Sam I Am, LLC d/b/a Tabbuli (hereinafter "Defendant"), by and through its undersigned counsel, to hereby submit this Memorandum in Support of its Motion for Summary Judgment. The Motion is made according to Rule 56, SCRPC, and is based on deposition testimony and other evidence that show there is no genuine issue of material fact that the Defendants did not breach any legal duty owed to the Plaintiff, in the alternative that any alleged negligent acts or omissions were solely committed by non-parties, and that Defendant is therefore entitled to judgment as a matter of law. Defendant respectfully requests that this Court grant its Motion on those grounds as set forth below.

FACTUAL BACKGROUND

This is a premises liability case, originally filed in this Court on June 5, 2020. Plaintiff Stefani Eddins has alleged that on July 20, 2017, she suffered injuries when a stage lightbulb housing fell onto her head while seated on a couch at Defendant's restaurant, Tabbuli. Plaintiff testified that she and her fiancée Ashley Haynes were on vacation in Charleston at the time, and first arrived at Tabbuli around 9:00 PM (Pl. Dep. 23:1-17). The pair were initially seated in the front of the restaurant (*Id.*). Plaintiff testified that waitstaff then informed the two of a fashion

show that was to occur shortly on the restaurant's back patio, and the two moved to a couch facing a stage in the back of the restaurant (*Id.*).

The couch was located adjacent to a structural roof pillar, onto which a large concert speaker had been attached. The light in question was possibly placed on top of this speaker (*see* Photograph SWB 000066, attached hereto as "Exhibit 1." depicting a possibly similar arrangement). Plaintiff estimated that approximately forty-five minutes elapsed prior to the light falling onto her head (Pl. Dep. 27:12-13). Plaintiff admitted that she has no knowledge of why the light fell, how it was attached, whether it was secured, who owned the light, or who installed the light (*id.* at 27:20 – 28:6). Plaintiff further admitted that she did not see the light at any point before it fell (*id.* at 14-16). Haynes testified identically (Haynes Dep. 17:5-14).

There is no evidence in the record that any of Defendant's employees installed the light. There is no evidence in the record that Defendant in any way directed the manner in which the light was to be installed. There is no evidence that Defendant even owned, rented, or controlled the light in question in any way. There is absolutely no evidence in the record that the light was installed in a dangerous or defective condition prior to it falling. Rather, the evidence proves that Defendant hired a DJ through an independent contractual relationship to provide music and lighting for the fashion show, and that the light fixture in question was provided and installed by the DJ (Jeff Diehl Dep. 77:22 – 78:2; 86:13 - 18; 87:9 – 18).

Defendant's manager at the time, Cait Chapin, testified that the typical practice of DJs hired to perform at these fashion shows was to bring their own lights, and that these DJs had discretion to place the lights where they wanted (Chapin Dep. 23:3 – 25:2). Chapin further testified both that it was the responsibility of the DJs to place their own lighting in a safe and secure manner, and that she told the DJ to "make sure things are, you know, secured and safe" (*id.* at 71:8 – 22).

Defendant's Rule 30(b)(6) corporate designee likewise testified that the light was the "duty and responsibility of the DJ that was there that night," and that Defendant does not employ any DJs. (Jeff Diehl Dep. 61:1-8; 87:15-18).

In light of this lack of evidence, Plaintiff retained two expert witnesses. The first, Mark Williams, is a forensic architect. Mr. Williams admitted at deposition that he does not know the manufacturer of the light in question, whether it was included with any safety devices designed to secure it to a base, what installation or usage instructions were included with this particular light, the weight of the light, what kind of lightbulb was installed, or whether music was playing through the speaker (Williams Dep. 39:13 – 40:10; 42:13-18; 48:18 – 24; 52:18 – 21; 74:1-2). Williams was likewise unsure of the industry standard regarding the usage of these types of lights by DJs:

20	Q.	Actually, we can agree on that. I'm right there
21		with you. Do you know if any other DJs in the
22		Charleston area use these same kind of lights?
23	A.	I don't have any knowledge about other DJs.

(*Id.* at 75:20 – 23). Williams further admitted that he has no knowledge of how several of his cited sources pertain to the industry standard for temporary restaurant lighting in Charleston:

14	Q.	Do you know of any restaurant in Charleston that
15		has researched lighting facts sheets from
16		lighting manufacturers from the United Kingdom
17		from 30 years ago prior to bringing in temporary
18		lighting?
19	A.	I do not.

(*E.g., id.* at 103:14 – 19). Williams went on to admit that he was unable to vouch for the scholarly nature of at least one of his cited sources:

1 Q. What do you know about the backgrounds of the
 2 authors of this handbook?
 3 A. I don't.
 4 Q. Do you know if they were safety professionals?
 5 A. I don't know about the backgrounds.
 6 Q. What research was this based on?
 7 A. Can't answer that.
 8 Q. Do you know if it's even peer -- sorry. Go
 9 ahead.
 10 A. I don't know the answer to that.
 11 Q. Do you know if this publication's been peer
 12 reviewed? Do you know if this publication is
 13 generally accepted in the industry?
 14 A. I can't say yes or no.

(*id.* at 105:1 – 14).

Williams was also unable to point to a building, fire, or electrical code section applicable and binding in Charleston, South Carolina that Defendant violated, and admitted that it would be “preposterous” to get a code inspector to review the temporary lighting in question (*id.* at 80:22 – 81:6). Indeed, Williams did not even know whether the various code sections included in his file materials were the most recent adopted versions – or whether Charleston County had adopted one cited body of code at all (*id.* at 64: 1-3; 96:24 – 97:1; 75:24 – 76:3) (“Q: Do you know if Charleston County has adopted the 2015 IPMC [International Property Maintenance Code]? A: I don't know, but I doubt it.”) Williams was also unable to “remember” whether he has ever previously been retained in a case dealing with how a lighting fixture was secured (*id.* at 119:10 – 13).

Despite this lack of evidence, Mr. Williams has opined that the light fell because it was not “properly” attached (Williams Dep. 79:1-4). Mr. Williams’ answer when questioned specifically as to his opinion on the cause of the light’s fall, however, was nothing more than “it fell because gravity exists” (*Id.* at 92:7 – 93:6). Williams went on to admit that there is no evidence to “point to” regarding the root cause of the light falling:

7 **Q. How is the wire a potential probable cause of the**
8 **light falling? What evidence do you see in this**
9 **case that indicates that the wire in any way**
10 **contributed to the light falling?**

11 A. I didn’t say I saw evidence. I said in the
12 absence of evidence, the way that you would
13 approach this is to analyze the probable causes
14 of something happening, a differential diagnosis.
15 So, why the -- if you ask me why did it fall, I
16 would say it fell because gravity exists. So,
17 the real pertinent question is what made it
18 unstable? Because you used the word stationary
19 earlier, so I mean, I could give you examples off
20 the top of my head that are rationale and I could
21 give you some that are kind of absurd. I could
22 say that maybe a bird landed on it or there was
23 an earthquake, or I could say that someone in
24 some way interacted with the cable or the cord or
25 someone interacted with the actual light fixture

1 itself and touched it in a manner to cause it to
 2 become unstable. Neither of us has any evidence
 3 to point to, to say that's what happened. All I
 4 can do is say here's a list of probable events,
 5 and then rank them according to what's most
 6 probable or most improbable.

7 **Q. Right. Right. And so, as far as the wiring**
 8 **itself though, the cord of the light, do you have**
 9 **any opinions on whether that existed in a**
 10 **hazardous condition?**

11 **A.** I don't have any information to say yes or no. I
 12 only see a picture of it. If the cable was
 13 draped in a manner where it came down next to
 14 somebody who walked by and they could have
 15 brushed against it, then that's not safe. But,
 16 you know, we don't -- you and I don't have the
 17 level of information and facts here that we'd
 18 like to have that we normally get in other types
 19 of cases. So, we have --

(*Id.* at 92:7 – 93:19).

Plaintiff's second retained expert witness, Mr. James Rivenbark, owns several restaurants and runs a restaurant operation consulting business (Rivenbark Dep. 14: 3 – 12). He had never previously consulted in litigation or testified as a retained expert (*id.* at 108:18-20). He has no background in engineering, lighting design, installation, or maintenance:

2 Q. As far as lighting design, the installation,
3 maintenance, you don't know anything about that, right?

4 A. Huh-uh. When somebody walks in with lights,
5 things like that, I'm concerned about, you know,
6 "Where's your GFI outlet?" things like that.

(*id.* at 56:2 – 6). He admitted that he knows “very little” about stage lighting (*id.* at 55:15 – 17).

Rivenbark testified that in his capacity as a restaurant owner and manager, he has hired musical acts and DJs to play for events, and that he was unable to recall a single instance on which he had requested such a contractor to install their lighting in a different way (*id.* at 56: 14 – 19). Moreover, Rivenbark testified that he has never heard of this ever happening in the restaurant industry (*id.* at 133:3-7). Rivenbark further admitted that the procedure he would follow to render the premises in his restaurants safe in a situation like this would be to keep a lookout for obvious hazards in equipment set up by independent contractors, discuss that situation with the contractor in question, and expect them to remedy the situation – not his restaurant personnel (*id.* at 54:13 – 55:2; *see also* 67:1 “No, I’m not going to touch their stuff.”). Rivenbark concurred that he had no knowledge of how the light was secured prior to falling. (*Id.* at 69:13). Finally, Rivenbark was unable to point to any alleged actions of Defendant or its personnel that violated an industry standard, regulation, or code in any way causally related to the light falling:

8 Q. One based on that. What safety rules did the
 9 placement of this light prior to it falling violate?
 10 What specific rules did it violate?
 11 A. What's the list of rules? I mean, I don't --
 12 you're asking me to create a rule. The light was
 13 placed above a table, so that table -- it's a temporary
 14 light above the table. I don't have a list of safety
 15 rules, per se, but --
 16 MR. NEINAST: All right. That's all I
 17 got.

(*id.* at 136:8 – 19).

LEGAL STANDARD

A motion for summary judgment shall be granted “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c), SCRPC. “When a motion for summary judgment is made and supported by such facts as would be admissible in evidence at trial, the adverse party may not rest upon the mere allegations of his pleadings. Instead his response to the motion must set forth specific facts, admissible in evidence, showing there is a genuine issue for trial. If he does not so respond, summary judgment should be entered against him.” *Moody v. McLellan*, 295 S.C. 157, 163, 367 S.E.2d 449, 452-53 (Ct. App. 1988) (citing Rule 56(e), SCRPC)).

ARGUMENT

Summary judgment is proper in this case for three reasons. First, Plaintiff cannot prove by any scintilla of evidence in the record that the light existed in a dangerous or defective condition

prior to it falling on Plaintiff. Second, Plaintiff can put forth no evidence whatsoever proving what caused the light to fall. Third, in the alternative, any allegedly negligent acts or omissions would have solely been the actions or omissions of the DJ, an independent contractor, for whom Defendant is not liable as a matter of law.

I. PLAINTIFF CAN PRESENT NO PROOF THAT THE LIGHT WAS IN A DEFECTIVE OR DANGEROUS CONDITION PRIOR TO ITS FALL.

Put simply, Defendant is entitled to summary judgment because there is no evidence that there was anything defective or dangerous about the light. An action for premises liability lies in negligence. *See Singleton v. Sherer*, 377 S.C. 185, 200, 659 S.E.2d 196, 204 (Ct. App. 2008). As such, the plaintiff must show that (1) the defendant owed a duty; (2) the defendant breached its duty; and (3) as a direct and proximate result of that breach, the plaintiff sustained injuries and damages. *Nelson v. Piggly Wiggly Central, Inc.*, 390 S.C. 382, 391, 701 S.E.2d 776, 780 (Ct. App. 2010) (citing *Bloom v. Ravoir*, 339 S.C. 417 (2000)).

South Carolina courts have consistently held “a merchant is not an insurer of the safety of a customer in his store. His duty is to exercise due care to keep his premises in reasonably safe condition.” *Anderson v. Winn-Dixie Greenville, Inc.*, 257 S.C. 75, 77, 184 S.E.2d 77, 77 (1971); *see also Hunter v. Dixie Home Stores*, 232 S.C. 139, 143, 101 S.E.2d 262, 264 (1957); *Pennington v. Zayre Corp.*, 252 S.C. 176, 178, 165 S.E.2d 695, 696 (1969); *Wintersteen v. Food Lion, Inc.*, 336 S.C. 132, 135-136, 516 S.E.2d 828, 829 (1999); *Cook v. Food Lion, Inc.*, 328 S.C. 324, 327, 491 S.E.2d 690, 691 (Ct. App. 1997). South Carolina law requires proof of a dangerous or defective condition as a prerequisite for the imposition of premises liability upon a business owner, and Plaintiff has failed to provide such proof. *E.g., Shain v. Leiserv, Inc.*, 328 S.C. 574, 576, 493 S.E.2d 111, 112 (Ct. App. 1997); *Scott v. Cedar Fair Entm’t Co.*, No. Civ. A 0:11-00910, 2012 WL 5306222, at *6 (D.S.C. Oct. 26, 2012). Therefore, to succeed on her negligence claim, Plaintiff

bears the burden of proving: (1) Defendant placed the light in a dangerous or defective condition itself, or (2) that Defendant had actual or constructive notice of the presence of the light in a dangerous or defective condition and failed to remove it. *Pennington*, 252 S.C. at 178, 165 S.E.2d at 696.

The South Carolina Supreme Court upheld summary judgment in favor of Bi-Lo under similar facts to those of the case at bar in *Garvin v. Bi-Lo, Inc.*, 343 S.C. 625, 541 S.E.2d 831 (2001). In *Garvin*, the plaintiff alleged that she was injured when, after reaching to grab a box of canned items from the top of a stack taller than her, several cans fell and hit her face. Critically similar to this case, the plaintiff in *Garvin* presented no actual evidence of “some defective manner of stacking the boxes, or that Bi-Lo was on notice that the stacked cans had become rickety,” and merely claimed that the stack of cans was dangerous. *Garvin*, 343 S.C. at 628–29, 541 S.E.2d at 833; *see also id.*, 343 S.C. at 628, 541 S.E.2d at 833 (“This evidence is insufficient, as a matter of law, to demonstrate the store created a dangerous condition.”). Because the plaintiff failed to present such evidence, the Supreme Court held that “there [was] simply no evidence from which a jury could find a dangerous condition was created by Bi-Lo.” *Id.*

Without such evidence here, Plaintiff has not met her burden of establishing constructive knowledge and her claim must fail as a matter of law. *See, e.g., Norris v. Wal-Mart Stores E., L.P.*, 2014 WL 496010 (D.S.C. Feb. 6, 2014) (holding that without evidence proving spill on ground for specific length of time, plaintiff cannot establish constructive knowledge). A stationary, inanimate object on top of another stationary, inanimate object is not inherently a hazard. Despite the lengthy testimony of Plaintiff’s experts, there is no evidence that Defendant installed the light in a manner which violated a binding and applicable code, regulation, industry standard, or policy

and caused the light to fall.¹ Plaintiff has thus failed to meet her burden, and Defendant is entitled to judgment as a matter of law. *Bloom*, 339 S.C. at 417.

II. PLAINTIFF CAN PUT FORTH NO PROOF OF WHY THE LIGHT FELL.

Moreover, the mere fact that the light fell is not sufficient in itself to prove Defendant acted negligently. *Gillespie*, 302 S.C. at 91, 394 S.E.2d at 25. “Injuries have countless causes, and not all should give rise to legal liability.” *CSX Transp., Inc. v. McBride*, 564 U.S. 685, 692, 131 S. Ct. 2630, 2637, 180 L. Ed. 2d 637 (2011). Plaintiff can put forth no evidence that any act or omission of Defendants caused or contributed to the light falling, and therefore summary judgment is mandated for Defendant. *Pennington*, 252 S.C. at 178, 165 S.E.2d at 696. As discussed above, despite the extensive discovery in this case, no deponent has testified that they know why this light fell – with the apparent exception of Plaintiff’s retained expert, Mark Williams, who blames the existence of gravity. Plaintiff herself admitted that she does not have any idea why it fell. (Pl. Dep. at 27:20 – 28:6). Plaintiff has failed to meet her burden of proving a breach of duty causing the fall of the light and must therefore impermissibly rely on the doctrine of *res ipsa loquitur*.

South Carolina courts have consistently and steadfastly rejected the doctrine of *res ipsa loquitur*. See, e.g., *Watson v. Ford Motor Co.*, 389 S.C. 434, 452-53, 699 S.E.2d 169, 179 (2010) (“We also note that Respondents may not rely solely on the fact that an accident occurred to prove their products liability case under a negligence theory since South Carolina does not follow the doctrine of *res ipsa loquitur*.”). In a negligence case in South Carolina, *actori incumbit onus probatio*: the plaintiff always bears the burden of affirmatively proving a failure to exercise reasonable care by a preponderance of the evidence, and “this burden of proof cannot be met by

¹ Defendant has also filed a Motion to Exclude Plaintiff’s Retained Experts, respectfully request that the Court read that Motion in conjunction with the instant one, and hereby incorporate their arguments made in that Motion herein by reference.

relying on the theory that the thing speaks for itself or that the very fact of injury indicates a failure to exercise reasonable care.” *Snow v. City of Columbia*, 305 S.C. 544, 409 S.E.2d 797 (Ct. App.1991) (citing *King v. J.C. Penney Co.*, 238 S.C. 336, 120 S.E.2d 229 (1961); *Gilland v. Peter's Dry Cleaning Co.*, 195 S.C. 417, 11 S.E.2d 857 (1940)). “No inference of negligence arises from the mere fact of injury.” *Id.* (citing *Covington v. Atlantic Coast Line Railway Co.*, 158 S.C. 194, 155 S.E. 438 (1930), *cert. denied*, 282 U.S. 858, 51 S.Ct. 33, 75 L.Ed. 759 (1930)). In essence, a South Carolina plaintiff *must* prove by direct or circumstantial evidence that the defendant specifically breached a duty of care, not merely point to an injury and claim that someone must have been negligent. *Id.* at FN 7.

Here, Plaintiff has merely done the latter. Instead of identifying a duty and presenting admissible evidence as to how Defendant breached that duty, as South Carolina law requires, Plaintiff has worked his case in reverse by claiming injuries and speculating that those injuries must have been Defendants’ fault. Foundation for Plaintiff’s *a posteriori* assumption simply does not exist. Not one of the deponents provided anything more than mere speculative conjecture as to how this accident occurred. There is no evidence that any negligent act or omission or Defendant’s with respect to premises maintenance, safety, staff training, policies, or procedures caused the light to fall.

Furthermore, Plaintiff’s experts have been unable to present any evidence whatsoever regarding the manner in which the light was installed prior to its fall or how that manner may have violated any manufacturer’s recommendations, codes, regulations, or industry standards. Thus, no one can say what caused this accident. Even if this conjecture is to be believed, Plaintiff’s burden is not to prove how this accident *might* have occurred, or what preventative measures may have *prevented* it, but how it *did* occur.

No evidence of a failure to exercise reasonable care exists in this matter. In fact, Plaintiff's own expert James Rivenbark testified that he would have approached this situation in much the same way as a restaurant manager (Rivenbark Dep. at 54:13 – 55:2; *see also* 67:1) The lack of any evidence proving causation forces Plaintiff to rely on *res ipsa loquitur* through alleging that Defendant somehow caused this light to fall through a mechanism apparently unknown and unobservable to all parties. This is neither an accurate statement of the duty of reasonable care nor a supportable theory of recovery under South Carolina law. Therefore, Defendant is entitled to summary judgment because Plaintiff cannot present any admissible evidence proving that any negligent act or omission on Defendant's behalf caused this light to fall and any jury considering this case would have to impermissibly rely on *res ipsa loquitur*.

III. IN THE ALTERNATIVE, ANY NEGLIGENT ACTS OR OMISSIONS WERE THOSE OF AN INDEPENDENT CONTRACTOR, AND THUS NOT ATTRIBUTABLE TO DEFENDANT.

In the alternative, Defendant is entitled to summary judgment because any supposedly negligent acts or omissions were solely those of the DJ as an independent contractor. An independent contractor is one who, exercising an independent employment, contracts to do a piece of work according to his own methods, without being subject to the control of his employer except as to the result of the work. *Chavis v. Watkins*, 256 S. C. 30, 180 S. E. 2d 648 (1971). Generally under South Carolina law, a principal is not responsible for the negligence of an independent contractor. *See, e.g., Duane v. Pressley Construction Co.*, 270 S.C. 682, 244 S.E.2d 509 (1978). Under these circumstances, the principal is shielded from liability because he has no control over the manner in which the contractor performs the work. *See id.* The only exceptions are 1) in the case of inherently dangerous work, 2) if the principal sees and realizes that the contractor is performing the work in a dangerous manner, 3) if the contractor is known to be unworthy of trust,

4) in the case of a nondelegable duty, or 5) when the principal has hired the contractor for the purpose of performing a wrongful act. See *Blue Ridge Rural Electric Co-op, Inc. v. Byrd*, 238 F. 2d 346 (4th Cir. 1956), rev'd on other grounds, 356 U. S. 525 (1958); *Alexander v. Seaboard Air Line R. Co.*, 221 S. C. 477, 71 S. E. 2d 299 (1952); *Simmons v. Robinson*, 303 S. C. 201, 399 S. E. 2d 605 (Ct. App. 1990), rev'd on other grounds, 305 S. C. 428, 409 S. E. 2d 381 (1991); *Colin v. City Council of Charleston*, 49 S. C. L. (15 Rich.) 201 (1868).

None of these exceptions apply to this case. Assuming *arguendo* that the light was installed in a dangerous or defective condition, there is no evidence that anyone other than the DJ created this condition. The indisputable evidence in this case proves that the DJ solely owned, controlled, maintained, and installed the light. The indisputable evidence in this case likewise proves that the DJ was an independent contractor. There is no evidence that Nothing about this case concerns inherently dangerous work or presents a nondelegable duty. There is no evidence that Defendant Therefore, Defendant is not liable for the torts of the DJ.

CONCLUSION

On the foregoing grounds, Defendant respectfully requests that this Court grant its Motion for Summary Judgment as to all of Plaintiff's claims.

Signature Page to Follow

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.

s/William A. Neinast

Mark S. Barrow

William A. Neinast

Sweeny, Wingate & Barrow, P.A.

Post Office Box 12129

Columbia, SC 29211

(803) 256-2233

ATTORNEYS FOR DEFENDANT

Columbia, South Carolina

April 20, 2022

Plaintiff's Response to Defendant's Motion for Summary Judgement

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

STEFANI EDDINS

Plaintiff

v.

TALL SAM I AM, LLC d/b/a TABBULI

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CIVIL CASE NO.:2020-CP-1002481

**PLAINTIFF'S RESPONSE TO
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

Comes the Plaintiff, Stefani Eddins, by counsel, and for Plaintiff's Response to Defendant's Motion for Summary Judgment, states as follows.

Statement of Facts

This is a case about Defendant's own separate independent duty that it owed to exercise ordinary care for its patron's safety, Defendant's breach of that duty on July 20, 2017, and the injuries and damages caused by Defendant's breach. This is the true regardless of what Defendant claims any alleged third-party allegedly did or did not do.

On July 20, 2017, a temporary portable stage light fell on Plaintiff's head while a patron at Defendant's restaurant. (See Complaint.) Defendant was holding a Thursday night fashion show and had arranged its floor and seating plan accordingly. Defendant placed one of its seats under the temporary light. Defendant told Plaintiff to sit below the light. Thereafter, the light fell on Plaintiff's head causing serious injuries. Plaintiff requested Defendant to produce photos of the light with a formal written Rule 34 request for production. In response, Defendant produced the photo showing the light unsecured and upside down attached as **Exhibit A**. A photo taken that

night of the seating area below the light where Defendant seated Plaintiff also produced in discovery is attached as **Exhibit B**.

As discussed further below, discovery, disclosures, and testimony to date in this case establish that it is the business owner's responsibility to maintain a safe premises for its patrons at all times. Industry and code safety standards require a restaurant owner to supervise the installation of a temporary portable stage light to make sure it is secure, which includes the use of a bracket, bolt and an additional safety chain, and then keep the light barriered from patrons so it will not strike anyone on the head if it happens to fall. This is true regardless of who owns or installs the light. A restaurant also has a duty to never put a patron in harm's way. These were Defendant's own separate independent duties regardless of what Defendant may try to claim any alleged third-party did or did not do. Defendant breached these duties. These breaches caused Plaintiff's injuries and damages. *See generally* Plaintiff's Expert Disclosures (**Exhibit C**), Deposition of Mark E. Williams (**Exhibit D**), Deposition of James Rivenbark (**Exhibit E**), Deposition of Cait Chapin (**Exhibit F**), Incident Report (**Exhibit G**), Deposition of Jeff Deihl (**Exhibit H**), Deposition of Stefani Eddins (**Exhibit I**), Deposition of Ashley Haynes (Exhibit J), and Tabbuli marketing (**Exhibits K and L**), which are attached hereto and cited and discussed in more detail below.

In this case, a restaurant corporation in Charleston, South Carolina, Defendant Tall Sam I Am, LLC d/b/a/ Tabbuli (Tabbuli), held special events to attract patrons. See Tabbuli marketing attached as Exhibit K. One of these events was called White Haute Nights that Tabbuli staged each Thursday night. See Tabbuli marketing attached as Exhibit L. Tabbuli allegedly had DJs emcee the events. Defendant's manager, Cait Chapin, testified under oath that the purpose of these events "was to draw in customers to the restaurant." Exhibit F, Chapin Depo., p. 11. "Thursday

nights were, our fashion show, White Haute Nights.” Chapin Depo., p. 20. Defendant would “arrange chairs and couches” “according to whatever event is taking place.” Chapin Depo., p. 19. “We had a stage that we would set up.” If they had a DJ come in, the DJ would set up “according to our floor plan” over which Tabulli had control. Chapin Depo., pp. 23-4. The DJs “would arrive probably 4:00 p.m., maybe 3:00 p.m.” “and they would set up whatever they need set up.” Chapin Depo., p. 37. “If Tabulli saw something with the setup that they did not like and told the DJ to not do that, the DJ would have to comply.” Chapin Depo., p. 26. However, on July 20, 2017, “nobody (Tabbuli) was monitoring what they (DJs) were doing.” Chapin Depo., p. 37. “[O]ne of the duties [Tabbuli] had was making sure that anything that was a danger be taken care of.” Chapin Depo., p. 30. “The reason for that rule is to keep everybody safe.” Chapin Depo., p. 30. “If that rule was not followed, somebody could get hurt.” Chapin Depo., p. 30.

“Lighting [has] to be safe.” Chapin Depo., p. 33. However, on July 20, 2017, “no one from Tabulli was monitoring the light setup.” Chapin Depo., p. 60. “No one was standing there watching it being installed.” Chapin Depo. p. 60. “No one from Tabbuli checked for any safety hazards that might be presented by the hanging light setup.” Chapin Depo., p. 61. “Nobody from Tabbuli told the DJ not to put the light where it was before it fell, if the DJ did put the light there.” Chapin Depo., p. 61. More importantly, “nobody from Tabbuli did a safety inspection with respect to the lighting to make sure lights were safe for the patrons before it fell on Ms. Eddin’s head.” Chapin Depo., p. 62.

Plaintiff, Stefani Eddins, a tourist in Charleston, saw Tabbuli’s marketing while visiting Charleston and thought she’d give it a try. Exhibit I, Eddins Depo., p. 29. When she got to the restaurant later that night, she sat at a table to eat. Eddins Depo., pp. 20-3. Tabbuli’s server told Stefani she should stay for the White Haute Nights event. Eddins Depo., 20-3. The server told

Stefani to move closer to the stage, and then seated her under the unsecured and upside down light, the photo of which provided by Defendant in discovery is attached as Exhibit A. Eddins Depo., pp. 20-3, 67. A picture of the location under the light where Tabbuli's server sat Stefani which also actually shows Stefani's knee, is attached as Exhibit B. After the show started, at 10:20 p.m., the light fell and struck Stefani on the head causing serious injuries. (See Eddins Depo., pp. 20-3; Complaint; and Incident Report produced by Defendant in discovery attached hereto as Exhibit G.)

Defendant, via its Rule 30(b)(6) representative and Operations Manager, Jeff Deihl, whose sworn testimony is attached hereto as Exhibit H and is discussed in more detail below, testified Defendant's Incident Reports are kept in case "we ever needed to go back and find out what happened on a particular day or a particular event" and "to help determine a root cause of what caused that incident." Deihl Depo., p. 94. He said Defendant investigates incidents because they want "to see if it is something that we could have been prevented and how do we prevent it in the future." Deihl Depo., p. 120.

In this case, Cait Chapin, Defendant's manager, testified that she investigated the incident and is the one who completed the Incident Report attached as Exhibit G. Ms. Chapin "went over to talk to whoever was setting up lighting where this happened," "looked at what happened, how it had fallen [and] what we could have done to prevent it, why it happened." Chapin Depo., p. 58. Ms. Chapin stated "we all spoke about it together upon [Stefani's] exiting" and then Ms. Chapin spoke to "corporate," which had the video from that day, about what happened. Chapin Depo., pp. 68-9. After speaking with those involved and completing her official investigation of the incident, Ms. Chapin concluded that the light fell because "[i]t was not secured properly." Chapin Depo., p. 92.

After the incident, the manager also told the “DJs to make sure that they are setting things up properly and things are secured and not setting things up over people and things like that.” Chapin Depo., p. 71. She looked at the light after it fell on Stefani and “[she] told everyone to make sure that things like this are secured, especially that are hanging overhead.” Chapin Depo., p. 73. The manager testified that they took down the light after it was put back from where it fell because “they didn’t want that to happen again.” Chapin Depo., p. 74.

Ms. Chapin further testified that Tabbuli and its employees have to “make every effort to comply with all federal and state workplace safety requirements,” “obey safety rules and exercise caution and common sense,” and “report any potential accidents.” Chapin Depo., pp. 81-2. Ms. Chapin said “you better be making sure that your t’s are crossed and your i’s are dotted in the restaurant because you want to make sure everyone is safe all around.” Chapin Depo., p. 83. “Negligence that could lead to a safety violation or cause injuries to guests or employees [is] prohibited.” Chapin Depo., p. 83. “Violation of any federal, state or local law or failure to follow prescribed rules or regulations, which could result in potential legal action” is also prohibited. Chapin Depo., p. 84.

The manager testified that if staff told her there was a problem with one of the lights the DJs were using, “[she] would have gone out there and [she] would have investigated the entire situation. If [she] had known about this prior to this happening, [she] would have asked them to take it down or secure it somewhere that it couldn’t potentially hurt somebody.” Chapin Depo., pp. 90-1. She said the “staff is kind of constantly looking for safety issues” “just by being observant, by being observant of the surroundings, the situations, the people.” Chapin Depo., pp. 97-8.

Defendant itself, via its Rule 30(b)(6) corporate representative Operations Manager, Jeff Diehl, testified that Defendant had a general manager “who directed or supervised discovering (and inspecting) hazardous, dangerous and defective conditions on the premises on July 20, 2017.” Deihl Depo., p. 37. The general manager would have directed “premises safety, inspecting for hazards, discovering hazards, preventing hazards, correcting hazards, [and] warning about hazards.” Deihl Depo., pp. 37-8. Mr. Deihl testified that Defendant had a “duty” to “keep the premises in first class condition in accordance with the highest standards of operation of similar businesses.” Deihl, Depo., pp. 43-5. Mr. Deihl explained “at Tabbuli our employees go through training at orientation where we describe and show them how to watch out for things that would potentially be dangerous as far as their safety is concerned as an employee or as a guest.” Deihl Depo., pp. 50-1. Mr. Deihl testified:

Q. What does Tall Sam I Am, LLC do to inspect, discover, correct, remedy, remove, and warn about any hazardous, dangerous or defective conditions at its premises in general, and on the date of the incident that we are here about today?

A. Sure. So our general manager, all of our employees have a responsibility to look out for hazards. Our general manager would be tasked with probably more responsibility than a server or a dishwasher. But they do constant circles through the restaurant. They open up the restaurant. They get it ready for service. They close the restaurant throughout the day if they observe something that they would deem potentially hazardous, then they would address it and call for help to remedy or address it.

Deihl Depo. pp. 58-9. “Of course it is our job to make sure our premises is safe for our guests coming into our restaurants, of course it is” added Mr. Deihl. Deihl Depo., p. 66. Mr. Deihl also confirmed that “if there is a code or regulation dealing with lighting, [Tabbuli] would have to comply with that.” Deihl Depo., p. 76.

Defendant has “just to be always on the lookout for general potentially hazardous conditions to be familiar with.” Deihl Depo., p. 107. “If an employee (including managers, general

managers, and operations managers) encountered a hazardous condition or something that had the potential to become a hazardous issue, they would take what immediate action they could to either fix it or prevent it from becoming a problem.” Deihl Depo., p. 107.

If one of the employees viewed equipment of an independent contractor that was hazardous “they would – if they could do anything about it, they would. If they could not do anything about it, then they would report it to their manager.” Deihl Depo., p. 109. “If someone had informed him that there was any other hazardous condition whatsoever with this particular light” they would have “taken whatever steps necessary to fix it.” Deihl Depo., p. 123.

Defendant controls what DJs come onto the premises and where they put any of their equipment and what they do with it. Deihl Depo., p. 127. This includes “if they didn’t want the DJ to put a piece of equipment in any particular spot, they could tell that DJ not to do it.” Deihl Depo., p. 127.

Defendant also “controls where tables and chairs where patrons sit are located in proximity to the DJ’s equipment.” Deihl Depo., p. 127. According to Defendant “we would control tables and chairs as located to any equipment in the building.” Deihl Depo., pp. 127-8. Most importantly, Defendant testified that “when [Defendant] tells a patron where to sit, [defendant has] a duty to make sure it is safe for that patron to sit there.” Deihl Depo., p. 129.

Defendant raises an affirmative defense and wants to blame an alleged third-party DJ for what happened. However, Defendant, via its Rule 30(b)(6) representative, cannot say Defendant itself did not own the light, who the alleged DJ was, whether the alleged DJ was a man or a woman, whether there was even a DJ there that night, whether a DJ brought the light into the restaurant, or whether the alleged DJ took the light with him or her when he or she left. Deihl Depo., pp. 78, 90,

112-3, 129-30. (“I don’t have any proof as of this moment that there was a DJ on our premises on that day.”) Defendant is bound by this Rule 30(b)(6) representative testimony.

Defendant has also engaged in spoliation of evidence. Defendant’s manager, Cait Chapin, testified that Plaintiff told her Plaintiff was going to sue Defendant that night immediately after the light struck Plaintiff on the head. Chapin Depo., p. 50. In addition to the camera pointing at the light and the area where Defendant told Plaintiff to sit underneath the light, there is also a camera pointing at the front door that recorded the people and anything that came into the restaurant that day. Deihl Depo., p. 82. “The camera system is always on. It is always recording, and then anything that it captures it saves for about 14 days.” Deihl Depo., pp. 80-1. Security camera footage is kept at the corporate office. Chapin Depo., p. 49. When asked why “only about 20 seconds” of the video from that day was provided to Plaintiff pursuant to Plaintiff’s discovery request for video of the premises and location where the incident occurred that day,¹ all Defendant could say is “I don’t know.” Deihl Depo., p. 81.

Plaintiff’s Expert Disclosures previously filed herein are attached as Exhibit C. These are discussed below. Both of Plaintiff’s retained liability experts, architect and safety expert Mark E. Williams, AIA, NCARB, and operations and safety expert James Rivenbark, confirmed under oath in their depositions that the opinions contained in Plaintiff’s Expert Disclosures are still their opinions to a reasonable degree of architectural and professional certainty and are those to which they will testify at the trial herein. (See Exhibit D, Deposition of Mark Williams, pp. 15, 43, 84, 111-12 and Exhibit E, Deposition of James Rivenbark, pp. 110-11.)

¹ See Plaintiff’s Request for Production of Document Nos. 3, 24, and 25 which requested Defendant to “Please produce any and all video surveillance of the area and light in question recorded on the date of the subject incident where the incident took place.”

Mark E. Williams, AIA, NCARB

Mark Williams, AIA, NCARB is a registered architect in 12 states, including South Carolina, and is certified by the National Council of Architectural Registration Boards (NCARB). He is charged by the licensing bureau in those states as well as building codes to protect the health, safety and welfare of the general public. He has experience designing lighting systems, mechanical systems, and hiring people as consulting engineers. The architectural curriculum includes lighting and mechanical systems in buildings. Mr. Williams is employed as a forensic architect by Robson Forensic, Inc. and provides investigations, analysis, reports, and testimony concerning the standard of care for the operation and maintenance of commercial buildings, including restaurant facilities, and premises safety. Mr. Williams has been qualified as an expert to provide opinion testimony in a number of cases throughout the United States, including South Carolina. (Plaintiff's Expert Disclosures; Williams Depo., pp. 20-3.) To a reasonable degree of architectural and technical certainty, as set forth in Plaintiff's Expert Disclosures and confirmed by Mr. Williams during his deposition, Mr. Williams opinions and testimony include the following.

1. Defendant breached its duties with respect to keeping its premises safe resulting in harm and injuries to Plaintiff.

2. Mr. Williams has learned that Tabbuli seems to claim the unsecured light fixture that fell and struck Eddins was placed on top of an audio speaker that was attached to a wood column supporting the roof structure.

3. Mr. Williams has determined that the incident light fixture is a parabolic aluminized reflector (PAR) lamp. A PAR is a type of electric lamp that is widely used in commercial and residential illumination. It produces a highly directional beam. Usage includes theatrical lighting, and residential and commercial recessed can lights.

4. A photograph depicting the light produced by Defendant in response to a formal request for production of photos of the subject light (Bates No. SWB 000066) attached hereto as Exhibit A shows the PAR light fixture situated upside-down with the power cord extending out of the top and its yoke resting on the audio speaker. A yoke is a U-shaped metal bracket intended for mounting fixtures to various objects.

5. Three independent sources of facts and data were available to reliably estimate the height of the audio speaker above the floor. The partial surveillance video, one post-incident photograph (Bates no. SWB 000066), and internet postings from August 7, 2016, establish that the unsecured light fixture was situated about 8 ft. above the outdoor patio when it fell off the audio speaker. Eddins is 5'-11" tall. When seated, her head would have been about 4 ft. above the floor.

6. Mr. Williams has observed that the size, shape, and style of the incident light fixture is consistent with a multi-purpose PAR 64 constructed of sheet steel, similar to that manufactured by Altman Lighting. The 10-inch diameter fixture was about 16-inches long and weighed approximately 10 lbs.

7. Mr. Williams has reviewed the deposition of Tabbuli Manager Cait Chapin regarding the incident that injured Eddins. Along with a number of other statements the significance of which Mr. Williams will discuss at trial, Ms. Chapin testified that a patron put the light fixture back up on top of the audio speaker after it fell off.

Q. Did you look that night to see where the light was after it fell on Stefani's head?

A. I believe we took it down. Because I'm sure they didn't want that to happen again, the DJ and the people doing the event.

8. Mr. Williams has reviewed the CHG Employment Handbook (Edition 2-21-17). Along with a number of other provisions the significance of which Mr. Williams will discuss at trial, Section 3.9 acknowledges that the restaurant "makes every effort to comply with all federal and state workplace safety requirements."

9. Mr. Williams has reviewed the deposition of Jeff Diehl, Director of Operations for CHG. Diehl has a Bachelor's Degree in hotel restaurant management but no training related to premises safety. Along with a number of other statements the significance of which Mr. Williams will discuss at trial, Mr. Diehl incorrectly testified that Tabbuli has absolutely no duty to make sure a light does not fall on a patron's head if they don't own the light.

10. Mr. Williams will testify that legacy building codes have classified buildings according to occupancy use groups for many years. Assembly occupancies are classified as Group A. Group A occupancy includes amusement park buildings, auditoriums, churches, dance halls, motion picture theaters, museums, passenger depots, public assembly halls, gymnasiums, restaurants, recreation halls, stadiums and grandstands, tents for assembly, and theaters for stage productions.

11. The 2015 International Building Code (IBC) defined Group A occupancy as: 303.1 Assembly Group A occupancy includes, among others, the use of a building or structure, or a portion thereof, for the gathering of persons for purposes such as civic, social or religious functions; recreation, food or drink consumption or awaiting transportation.

12. The Commentary to the Code identified that:

Darkened spaces in theaters, nightclubs and similar spaces serve to increase hazards. In sudden emergencies, the congestion caused by large numbers of people rushing to exits can cause panic conditions. For these and many other reasons, there is a relatively high degree of hazard to life safety in assembly facilities.

13. Mr. Williams will note that the Commentary provides a concise explanation of assembly group classifications. Group A-2 includes occupancies in which people congregate in high densities for social entertainment, such as drinking and dancing or food and drink consumption (*e.g.*, restaurants). These occupancies may be characterized by one or more of the following:

- Tables and seating arranged or positioned so as to create ill-defined aisles.
- Entertainment by a band or recorded music generating above-normal sound levels.
- Low lighting levels.
- Later-than-average operating hours.
- Service facilities for alcoholic beverages and food.
- High occupant load density.

14. In addition to relying upon the available discovery in this matter, Mr. Williams will rely on his education, training, and experience in the practice of architecture and premises safety relative to the operation and maintenance of commercial buildings used as a place of assembly. Mr. Williams will cite codes, manufacturer's recommendations, industry standards, and best practices applicable to the safe temporary installation of PAR light fixtures.

15. The following discussion concerning patron safety and nationally recognized standards for proper temporary use of outdoor lighting fixtures was composed by Mr. Williams for this disclosure and is included herein as a technical basis for his subsequent opinions.

16. A 10 lb. unsecured object (such as the PAR) positioned four-to-five feet above seated spectators at an outdoor fashion show is hazardous. The risk of harm (likelihood) it would fall and strike someone on the head causing injury, made it dangerous.

17. Newton's law of universal gravitation explains that when objects fall to the ground, gravity causes them to accelerate. Acceleration is a change in velocity, which is a measure of the speed and direction of motion. Gravity causes an object to fall toward the ground at a faster and faster velocity the longer the object falls.

18. Gravitational potential energy is energy an object possesses because of its position in a gravitational field. As an object falls from rest, its gravitational potential energy is converted to kinetic energy.

19. The formula for velocity of an object just before impact is $\overline{v} = \sqrt{2gh}$. Using the metric conversion for 8 feet: $v = \sqrt{2 (9.8 \text{ m/s}^2) (2.44 \text{ m})} = 7 \text{ m/s}^2$, which is approximately **16 mph**. Given Eddins' height while seated results in: $v = \sqrt{2 (9.8 \text{ m/s}^2) (1.4 \text{ m})} = 5.2 \text{ m/s}^2$, or **12 mph**.

20. The unsecured light that fell and struck Eddins on her head, regardless of who owned or installed the light, was dangerous because the mass of its weight and height above the outside patio posed a foreseeable risk of harm to restaurant patrons. PAR light fixtures are not manufactured or intended to be placed unsecured on a ledge or shelf above where spectators are seated during performances.

21. NFPA 70 National Electrical Code (NEC) is a national code for the practical safeguarding of persons and property from hazards arising from the use of electricity. Article 520 provides criteria and considerations for “buildings or that part of a building or structure, indoor or outdoor, designed or used for presentation, dramatic, musical, motion picture projection or similar purposes and in specific audience seating areas...”

22. NEC defines portable equipment as “Equipment fed with portable cords or cables intended to be moved from one place to another.” For portable equipment used outdoors the Code required:

Portable stage and studio lighting equipment...not identified for outdoor use shall be permitted for temporary use outdoors, provided the equipment is supervised by qualified personnel while energized and barriered from the general public.

23. Safety is of paramount importance in stage performances. General Guidance on Stage Lighting Safety is a 1992 Fact Sheet published by Strand Lighting. Regarding safe installation of stage lights, the guide required:

Always fit a safety chain directly between the luminaire and the bar or suspension point. Never rely on just a hook clamp or bolt. Also ensure that accessories such as barn doors, colour frames and colour changers are secure and cannot fall out of the guides.

24. Handbook for One-Act Play is a 2009 publication by Kim Wheetley of guidelines for theatre safety. Recommended procedures for safety include:

Provision should be made for regular inspection and maintenance of equipment and facilities. Special attention should be given to stage rigging, electrical wiring, and lighting apparatus.

25. The section on causes of accidents identifies that:

Safety in the theatre means safeguarding crews, casts, and audiences from all foreseeable hazards and emergencies. Learning to work safely is a vital aspect of educational theatre. Most accidents can be avoided by replacing unsafe habits with safe practice.

The main causes of accidents include:

- Failure to safeguard hazardous equipment
- Carelessness

- Taking unnecessary risks

26. Building codes and property maintenance codes identify the business owner as the party responsible for ensuring that permanent and temporary building elements comply with minimum code requirements. It is the business owner's responsibility to maintain safe premises at all times.

27. The standard of care for business owners of commercial restaurants requires maintaining a reasonably safe premises for patrons. It includes ensuring compliance with reasonable standards for property maintenance, and correcting hazards in a prompt manner. When unreasonably dangerous conditions exist, such as the unsecured light fixture above patron seating, regardless of who owned or installed the light, reasonable efforts should be made by the business owner to remove them or prevent them from being encountered in a manner that could cause harm.

28. Inspections are the hallmark of accident prevention. Effective accident prevention includes preemptive action by those with proper education, training, and experience. A competent inspection is not wandering around an outdoor restaurant patio casually looking at things; it requires looking for hazards in a *knowledgeable manner* and implementing proactive measures for safety.

29. The International Property Maintenance Code (IPMC) is a nationally recognized and accepted code that provides minimum safety standards for the maintenance of existing premises in a manner that protects the public health, safety, and welfare.

30. Regarding Electrical Equipment, Section 605.1 of the 2015 IPMC required: Electrical equipment, wiring and appliances shall be properly installed and maintained in a safe and approved manner.

31. The Commentary to the 2015 IPMC explained that:

It is the responsibility of the building owner or operator to provide and safely maintain the electrical facilities required herein.

32. Section 604.3 addresses electrical system hazards. The Commentary required that any electrical system deficiency or condition that is deemed hazardous to the occupants or to the structure must be abated to eliminate the hazard. Electrical system hazards include:

- Inadequately supported devices, wiring or equipment.

33. Mr. Williams will offer expert opinions relating to the hazardous unsecured light fixture placed above where patrons were seated. Mr. Williams is expected to testify, to a reasonable degree of architectural and technical certainty, and subject to change if additional information becomes available, that:

- a. The unsecured light fixture that fell off the audio speaker, regardless of who owned or installed the light, was dangerous in a manner that caused Eddins

to be struck and injured. This should have been inspected, discovered and properly secured by the restaurant thereby eliminating the risk before inviting patrons onto the premises and seating them below the unsecured light. A restaurant exercising reasonable or ordinary care for its patrons' safety would have done so. Had Tabbuli done so, the light would not have fallen and Ms. Eddins would not have been injured.

b. A properly secured light fixture would not have fallen. The unsecured light fixture that fell off the pole mounted audio speaker, regardless of who owned or installed the light, was dangerous because it was not properly secured and the mass of its weight and height above the patio posed a foreseeable risk of harm to spectators seated underneath the speaker.

c. Allowing a 10 lb. light fixture to sit unsecured on top of an audio speaker 8 ft. above patrons, regardless of who owned or installed the light, made it foreseeable that patrons seated below the speaker would be struck and injured if it fell off.

d. The failure of Tabbuli to thoroughly observe and monitor the temporary installation of light fixtures on its premises, regardless of who owned or installed the light, allowed the presence of an unsecured light fixture more than 8 ft. above seated patrons.

e. The failure of Tabbuli to take reasonable safety precautions to properly identify and eliminate temporary hazards, regardless of who owned or installed the light, was a departure from standard practice and exposed patrons on the outdoor patio to a risk of harm.

f. The failure of Tabbuli to provide a safe premises, regardless of who owned or installed the light fixture, violated the standard of care for property maintenance, and created the dangerous condition that caused Eddins to be struck and injured.

Mr. Williams was questioned about his disclosures and some of these opinions during his deposition. In short, as explained Mark Williams, it is the business owner's responsibility to maintain a safe premises for its patrons at all times. Industry and code safety standards require a restaurant owner to supervise the installation of a temporary portable stage light to make sure it is secure, which includes the use of a bracket, bolt and an additional safety chain, keep the light barriered from patrons so it will not strike anyone on the head if it happens to fall, and not seat patrons under the light in harm's way. This is true regardless of who owns or installs the light. A

restaurant also has a duty to never put a patron in harm's way. These were Defendant's own separate independent duties regardless of what Defendant may try to claim any alleged third-party did or did not do. Defendant breached these duties. These breaches caused Plaintiff's injuries and damages. Mr. Williams explained as follows.

It's a case about putting a 10-pound object over somebody that's seated on a couch and not being involved during the setup to where you could ensure that it's safe. [. . .] The point here that we're missing is that it's a 10-pound object purposely positioned eight feet above the floor. It's not properly secure, and then the business purposely seated people underneath it in the dark.

Exhibit D, Williams Depo., pp. 34, 39-40.

A business owner with this occupancy should have a heightened sense of concern and awareness about placing people in the dark that they're serving food and beverages, and sometimes alcoholic beverages, and that they're putting on a presentation that has noise and activity. So, it's a visually rich environment in the dark, and it's intended to capture your attention. So, having understood all those things, surely you wouldn't purposely sit somebody underneath a 10-pound object that you haven't been involved with and expect this not to happen.

Even though in spite of the fact that they didn't own it, they still had to make sure it was safe. [. . .] I'm saying that it's the business owner's responsibility, just like it was when they rented a tent, to be involved in what goes on in the building. To be involved in the set up and involved in the supervision and the knowledge. They had plenty of time to find it, and to say that we're not responsible because we don't own it is preposterous. So -- and Chapin testified after the fact that if she'd have known that, she would have made them take it off.

Williams Depo., pp. 66-7, 81.

The hazards is the mass and weight when you evaluate in the context of the height. [. . .] Setting a 10-pound object eight foot off the floor creates a hazard because of its mass and weight. If you had barricaded it and you hadn't invited people to sit right underneath it, then it would have just fallen on the cushions. [. . .] If it was adequately secure, then the hazard of it falling is not present. You can't take away gravity. If you take a 10-pound object and place it eight foot over someone's head and you ensure that it's adequately secure and you have a redundant chain or cable in case it fails, then that's called hazard mitigation.

Williams Depo., pp.82-3.

Section 520.10 requires the light installation to be “supervised” and the light “barriered from the general public. Haven’t seen any evidence that there was any supervision. In fact, the testimony is actually that they just show up, and we let them do whatever they want. I think that was a direct quote. So, there wasn’t any level of supervision and then in terms of barrier, when I talked about earlier . . . it’s above where people might be sitting, you could mitigate the hazard by simply barricading the area. If a 10-pound light is sitting eight feet off the floor and it’s not attached in any manner and you barricade it, the hazard is still there because it -- there’s still something likely to promote harm, but it’s not dangerous because you can’t encounter it. That’s the whole point of design, guard, warn. If you guard people, you barricade them away from something and if it were to fall then it’s not going to strike them. [. . .] What I’m saying is, if you take a portable light and you put it – temporarily place it like they did without any supervision and you let people sit underneath it, then the outcome shouldn’t come as a surprise to anyone.

Williams Depo., pp. 86-7, 87-8.

The intent [of Section 520.63] is that fixtures shall be securely fastened in place. It’s one short sentence. It seems self-evident to me what that means. If it had been secured in place, then it wouldn’t have fallen and struck her in the head.” Williams Depo., p. 97. “It fell because it wasn’t properly attached. [. . .] You can ask me how do I know it wasn’t properly secured, and I said I’m familiar with the technical data sheets and I’m familiar with what it takes to anchor it and make it safe and the redundant system with the cable (chain). So, if you take all that action and you do all of that, then this wouldn’t have happened. So, if you allow someone to come into your business and you know they’re bringing things in and you take a position that they can do – and I quote, do pretty much whatever they want, then you’re discharging or you’re not looking at your responsibility as a business owner to observe and be involved in what they’re doing. And now that we have someone who’s been knocked on the head with a 10-pound object, we have the general manager of the business saying in hindsight if I’d have known it was like that, I would have told them to take it down. [. . .] Keep people from sitting underneath it. Don’t put a couch underneath the 10-pound object. It doesn’t matter if it’s a light or a bowling ball. Don’t put somebody under something that could fall and hit their head.

Williams Depo., pp. 79, 95-6, 97, 122.

James Rivenbark

Mr. Rivenbark’s CV is attached to Exhibit C, Plaintiff’s Expert Disclosures. Mr. Rivenbark is experienced in commercial hospitality operations, including restaurant enterprises. His employment requires expertise in maintaining commercial premises in in a safe condition in order to protect patrons from harm and a restaurant’s duties with respect to same. He is experienced in

hospitality and restaurant operations, designing restaurant layouts, architectural design, premises safety, premises maintenance, project management, creation of systems, interviewing, hiring, training and managing personnel, creating, implementing, and training on operational policies, procedures, and employee handbooks, including those concerning premises and patron safety, vendor relationships, insurance coverages, licensing, and working with contractors. Exhibit C. His opinions in Plaintiff's Expert Disclosures are similar to those of Mr. Williams but through the view of an expert restaurant operations manager and owner. Those can be seen in Exhibit C rather than repeating them here.

Like Mr. Williams, Mr. Rivenbark was also asked about some of his disclosures and opinions during his deposition. Mr. Rivenbark testified to a reasonable degree of professional certainty as follows.

Q. Is it your opinion that that temporary light should not have been placed above a patron's head where they were going to seat a patron?

A. Yes.

Q. Was it the restaurant's duty to make sure that that light was not put there?

A. Yes.

Q. Was it the restaurant's duty to go through and inspect the premises to discover that that light had been put above the seating area?

A. Yes.

Q. And had they inspected that area and seen that light, should they have taken that light down so it would not be above a patron's head?

A. Yes.

Q. And had they done that, would you agree that that light would not have fallen on Stefani's head?

A. Yes.

Q. Should that light have been discovered and taken down before it fell on Stefani's head by the restaurant?

A. Yes.

Q. Does a restaurant have control over everything in the restaurant, regardless of who brings it in?

A. Yeah.

Q. Does a restaurant have a duty to make sure that whatever is brought into its restaurant is safe and not injurious to patrons?

A. Yes.

Q. Does a restaurant have a duty to make sure they don't seat patrons in an area of danger?

A. Yes.

Q. Would an area of danger be seating a patron below a light that's been set there temporarily?

A. Yes.

Q. Ms. Chapin testified in her deposition that a DJ came in around 3 or 4 in the afternoon, and the incident report indicates that the incident where the light fell on Stefani's head occurred about 10:20 p.m. that evening. Would that have been plenty of time for Ms. Chapin or any other manager or any other staff member to notice that the light was sitting above a patron seating area where it should not have been?

A. Yes.

Q. Would that have been plenty of time for them to take that light down?

A. Yes.

Q. Should the restaurant have had a plan in place to go around and inspect for hazards like a temporary light being placed above a patron's head?

A. Yes. When they have an independent contractor in bringing in stuff that's not normally there, yes, they should have been checking.

Q. And all of these duties we've mentioned, is it your opinion that the defendant breached these duties?

A. Yes.

Q. And is it your opinion that those breaches caused Stefani to have this light fall on her head?

A. Yes.

Q. Would you expect a restaurant to tell the DJ, if in fact the DJ in this case put the light where it was, to not put a light above where a patron is going to be seated?

A. Yes. If they walked in with lights, I would expect that.

Q. Would putting a light above someone's head be outside the bounds of what a restaurant should allow a DJ to do?

A. Yes.

Q. If you were going to put a light above a patron's head and where you were going to seat patrons, would you need to have that inspected to make sure it was safe?

A. Yeah, yeah.

Q. And that's what a restaurant should do?

A. Yeah.

Q. Would you expect a restaurant's manager to inspect the lighting being placed by someone else that comes into the restaurant?

A. Yes. That's a big red flag, yes.

Q. Would you expect the manager to not let a temporary light be placed above a patron's head?

A. Yes.

Q. Would you expect a manager to remove a light or have a person remove the light if they did place it above a patron's head?

A. Yes.

Q. Would you expect a manager not to allow patrons to be seated below a temporary light?

A. Yes.

Q. And if managers are not doing that, can you infer that managers are not being properly trained?

A. Yes.

Q. And if the staff is not doing that, can you infer that the staff is not being properly trained?

A. Yes.

Q. Mark Williams is an expert architect who is going to be testifying in this case, as well. Mr. Williams' disclosures are in there, as well, in Plaintiff's Exhibit A. In paragraphs 29 and 30, he says, "Temporary lights, like stage lights, need to be properly supervised by qualified personnel and barriered from patrons." Do you agree with that as a restaurant operator?

A. Yes.

Rivenbark Depo., pp. 120-5.

Q. [In your disclosures you state] "The light that fell in this case would not have passed even a brief inspection that should have been conducted by Tabbuli before then seating patrons underneath same."

A. Uh-huh.

Q. [In your disclosures you state] "Tabbuli even states in its applicable handbook under 3.9, "Safety," that, "Each employee is expected to obey safety rules and exercise caution and use common sense."

A. Uh-huh.

Q. "This would include staff and management using 'common sense' and objecting to dangerous lights, permanent, temporary, or otherwise, being installed or placed directly above tables where they are going to seat patrons." Do you see all of that?

A. Yes, sir.

Q. And is that still your opinion today?

A. Yes.

Rivenbark Depo., pp. 135-6.

Argument

Defendant's burden for summary judgment

"The non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." *Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). "In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party." *Brockbank v. Best Capital Corp.*, 341 S.C. 372, 378-79, 534 S.E.2d 688, 692 (2000). "Only in rare or exceptional cases may the question of proximate cause be decided as a matter of law." *Ballou v. Sigma Nu Gen. Fraternity*, 291 S.C. 140, 147, 352 S.E.2d 488, 493 (Ct. App. 1986)). "Only when the evidence is susceptible to only one inference does [causation] become a matter of law for the court." *Small v. Pioneer Mach., Inc.*, 329 S.C. 448, 464, 494 S.E.2d 835, 843 (Ct. App. 1997). Since summary judgment is a drastic remedy, it should be cautiously invoked so no person will be improperly deprived of a trial of the disputed issues. *Murphy v. Tyndall*, 384 S.C. SO, 681 S.E. 2d 28 (S.C. App. 2009).

Defendant's duty to keep its premises safe

“The owner of property owes to an invitee or business visitor the duty of exercising reasonable or ordinary care for his safety, and is liable for injuries resulting from the breach of such duty.” *Sims v. Giles*, 343 S.C. 708, 718, 541 S.E.2d 857, 863 (Ct. App. 2001) (citing *Larimore v. Carolina Power & Light*, 340 S.C. 438, 531 S.E.2d 535 (Ct. App. 2000)). Like a landowner, a merchant also owes its customers “the duty to exercise ordinary care to keep his premises in a reasonably safe condition.” *Young v. Meeting St. Piggly Wiggly*, 288 S.C. 508, 510, 343 S.E.2d 636, 637 (Ct. App. 1986). “A business owner owes an invitee a duty of due care to discover risks and to warn of or eliminate foreseeable unreasonable risks.” *Landry v. Hilton Head Plantation Prop. Owners Ass’n*, 452 S.E.2d 619, 620-1 (S.C.App. 1994). “Unlike a licensee, an invitee enters the premises with the implied assurance of preparation and reasonable care for his protection and safety while he is there.” *Bryant v. City of North Charleston*, 403 S.E.2d 159, 161 (S.C.App. 1991) (citing RESTATEMENT (SECOND) OF TORTS § 341A cmt. a (1965)). “The general rule is that evidence of industry safety standards is relevant to establishing the standard of care in a negligence case.” *Elledge v. Richland/Lexington Sch. Dist. Five*, 352 S.C. 179, 186, 573 S.E.2d 789, 793 (2002). “This kind of evidence is admitted not because it has ‘the force of law,’ but rather as ‘illustrative evidence of safety practices or rules generally prevailing in the industry.’” *Id.* (quoting *McComish v. DeSoi*, 42 N.J. 274, 200 A.2d 116, 121 (N.J. 1964)).

Defendant created the dangerous condition

This case is about Defendant’s own failure to supervise the installation of and otherwise keep a temporary portable stage light properly secured and then barriered from its patrons and instead seating a patron underneath the light in harm’s way. This is true regardless of any alleged

negligence on the part of any alleged unknown third-party about which Defendant wants to raise as an affirmative defense and try to prove at trial.²

According to Plaintiff's experts, a restaurant exercising ordinary care with respect to the temporary portable stage light at issue owed Plaintiff the duties to supervise the installation, make sure the light was properly secured with a bolt and bracket, make sure a backup safety chain was used, and, most importantly, barrier the light from patrons and not seat them underneath the light in case it fell, in accordance with industry and code safety standards. Defendant had these duties. Defendant breached these duties. Defendant's breach of these duties caused Plaintiff's injuries and damages.

Again, Defendant created the dangerous condition in this case. This is not a foreign substance notice case. The specific acts that created the dangerous condition and caused the injury in this case were Defendant failing to supervise the installation of the temporary portable stage light, failing to make sure it was properly secured with a bolt and bracket, failing to make sure a backup safety chain was utilized, failing to barrier the light from patrons, putting a couch underneath the light, and seating Stefani on the couch under the light, all in violation of industry and code safety standards. Defendant's alleged ignorance of code violations is not a defense.

Plaintiff is not sure why, but Defendant cited *Duane v. Presley Constr. Co., Inc.*, 270 S.C. 682, 683, 244 S.E.2d 509, 510 (1978) in its Motion for Summary Judgment in support of its claim that it cannot be held liable for the torts of the unknown alleged DJ. *Duane* actually supports Plaintiff's case and arguments herein. *Duane* overruled the Defendant's Motion for Summary Judgment in that case and, more importantly, specifically held that Defendant "is responsible if the injury is caused by his own negligence in failing to take preventive measures." *Id.* at 683. That

² Defendant alleges as its Fourth affirmative defense that Plaintiff's injury was caused by an act of a third-party over which Defendant had no control. See Answer, p. 3.

is exactly what happened in this case. Defendant is responsible because Stefani's injury was caused by Defendant's own negligence in failing to take preventive measures. *Duane* also cites several cases in support of this law including *Davis v. Summerfield*, 133 N.C. 325 (1903) (the rule exempting an employer from liability for negligence of an independent contractor does not apply to an act to be performed on the premises that would probably be injurious to third persons if reasonable care was not used in performing the act); *Allison v. Ideal Laundry & Cleaners*, 215 S.C. 344 (1949) (the rule exempting an employer from liability for negligence of an independent contractor does not apply where employer knows or should know of inherent danger); *Alexander v. Seaboard Air Line R.R. Co.*, 221 S.C. 477 (1952) ("there is a well-established exception to the general rule of non-liability where injury results and the means or manner of the activity of the owner, whether done by independent contractor or not, may be found to be inherently or intrinsically dangerous to others").

Alexander held:

Liability cannot be evaded by employing an independent contractor to do work which is inherently or intrinsically dangerous unless proper precautions are taken. This exception to the general rule was noticed in *Allison v. Ideal Laundry & Cleaners*, 215 S.C. 344, 55 S.E.2d 281, 282, and we quote from the opinion in that case:

"However, there is a well-established exception to the general rule of non-liability where injury results and the means or manner of the activity of the owner, whether done by independent contractor or not, may be found to be inherently or intrinsically dangerous to others."

Alexander at 487-8.

In this case, even if Defendant was not guilty of its own independent breaches and negligence separate and apart from any it alleges on the part of the alleged third-party DJ, Defendant cannot evade liability because failing to supervise the installation of the temporary portable stage light, failing to make sure it was properly secured with a bolt and bracket, failing to make sure a

backup safety chain was utilized, failing to barrier the light from patrons, putting a couch underneath the light, and seating a patron on the couch under the light, all in violation of industry and code safety standards, may be found to be inherently or intrinsically dangerous to others.

Defendant's spoliation of evidence

When evidence is lost or destroyed by a party, regardless of the motivation or intent of the party for losing or destroying the evidence, an inference may be drawn by the jury that the evidence which was lost or destroyed by that party would have been adverse to that party. *Kershaw County Board of Education v. U.S. Gypsum Co.*, 396 S.E.2d 369 (S.C. 1990) (allowing adverse instruction even though “there was no evidence of any intentional misconduct on the part of Defendant or its counsel”); *Welch v. Gibbons*, 211 S.C. 516, 46 S.E. (2d) 147 (1948); *Stokes v. Spartanburg Reg’l Med. Ctr.*, 368 S.C. 515, 522, 629 S.E.2d 675, 679 (Ct. App. 2006) (holding spoliation instruction was warranted in medical malpractice action where two pieces of evidence initially collected by hospital were missing).

Additionally, the jury is entitled to consider whether Defendants have adequately preserved evidence. “When a party fails to preserve material evidence for trial, it is for [the jury] to determine whether the party has offered a satisfactory explanation for that failure. If [the jury] find[s] the explanation unsatisfactory, [it is] permitted – but not required – to draw the inference that the evidence would have been unfavorable to the party’s claim.” *Stokes v Spartanburg Regional Medical Center*, 368 S.C. 515, 629 S.E. 2nd 675 (Ct. App. 2006); *see also Kershaw County Board of Education v. U.S. Gypsum Co.*, 302 S.C. 390, 394, 396 S.E.2d 369, 372 (1990) (“[W]hen evidence is lost or destroyed by a party an inference may be drawn by the jury that the evidence which was lost or destroyed by that party would have been adverse to that party.”)

As set forth above, the dangerous condition in this case was created by Defendant, and this is not a foreign substance notice case. However, the destruction of the video evidence from the day the incident occurred is particularly important in this case because it is anticipated that Defendant is still going to argue that this is not an independent negligence case on the part of Defendant, but is rather a notice case and it did not have actual or constructive knowledge of the dangerous condition. The destruction of the video evidence from the day the incident occurred is particularly important in this case because it is anticipated that Defendant is also going to argue there are alleged unknown facts such as exactly when the light was installed, how long the light was there before it fell, who installed the light, who owned the light, etcetera³ that prevent the Plaintiff from proving negligence on the part of Defendant. However, those alleged unknown facts even if they were unknown (see f.n. #3 below) are not relevant to Plaintiff's claim against Defendant and Defendant's own independent separate negligence in this case.

Regardless, the video of the premises, the front door, who came in the restaurant, what they brought with them into the restaurant, the light being set on the speaker, Defendant setting up the seating, the area under the light, the light itself, Defendant seating Plaintiff under the unsecured light, and all of the facts being alleged as unknown by Defendant, would have shown what Defendant saw and knew or should have seen and known if Defendant wants to try to argue this is a foreign substance notice case rather than a negligence on its own part case. Defendant's manager testified that Plaintiff threatened to sue Defendant immediately after the incident on the night that it happened even before the manager called "corporate" which had the video of the entire day.

³ As noted above, the light fell because it was not properly secured. Defendant's manager concluded in her investigation that the light fell because it was not properly secured. Mark Williams also testified that the light was not properly secured based on his knowledge of using a bolt, bracket and safety chain to properly secure the light. Defendant's manager also said the DJ would have gotten to the restaurant at 3:00 or 4:00 to set up for the 10:00 show. Mr. Williams said even if this were a notice case, seven hours would have been plenty of time for notice.

Because Defendant lost or destroyed this evidence, regardless of the motivation or intent of Defendant for losing or destroying the evidence, an inference may be drawn by the Court for purposes of Defendant's Motion for Summary Judgment and by the jury at trial that the evidence which was lost or destroyed by Defendant would have been adverse to Defendant.

Even if this were a notice case, Defendant at least had constructive notice

As noted above, Defendant created the dangerous conditions and this is not a foreign substance notice case. However, it is anticipated that Defendant will still cite general caselaw that states in order for a Plaintiff to recover, the Plaintiff must show either (1) that the injury was caused by a specific act of the Defendant which created the dangerous condition; or (2) that the defendant had actual or constructive knowledge of the dangerous condition and failed to remedy it. *See e.g. O'Leary-Payne v. R.R. Hilton Head, II, Inc.*, 638 S.E.2d 96 (S.C.App. 2006).

Even if one were to argue Defendant did not create the dangerous condition, Defendant at least had constructive notice. "Constructive notice is a legal inference which substitutes for actual notice. It is notice imputed to a person whose knowledge of facts is sufficient to put him on inquiry; if these facts were pursued with due diligence, they would lead to other undisclosed facts." *O'Leary-Payne v. R.R. Hilton Head, II, Inc.*, 638 S.E.2d 96 (S.C.App. 2006).

O'Leary-Payne is right on point with the facts and Defendant's anticipated arguments in this case. In *O'Leary-Payne*, the Court held that Defendant had constructive notice of the dangerous condition because:

1. Defendant's employees were required to conduct regular inspections of the area where the dangerous condition was found; and
2. Because employees should have observed the dangerous condition during an inspection, Defendant had constructive notice of the dangerous condition.

O'Leary-Payne at 101.

In this case, Defendant's own policies required its employees to conduct regular inspections of the area where the dangerous condition was found. Defendant's manager testified Defendant's protocol is to have its staff "constantly looking for safety issues" "just by being observant, by being observant of the surroundings, the situations, the people," and "making sure that t's are crossed and i's are dotted in the restaurant because you want to make sure everyone is safe all around." Defendant's Rule 30(b)(6) corporate representative added that in order to do this, "they do constant circles through the restaurant" and "close the restaurant throughout the day if they observe something that they would deem potentially hazardous." Defendant trains its employees "how to watch out for things that would potentially be dangerous as far as their safety is concerned as an employee or as a guest." "When [Defendant] tells a patron where to sit, [defendant has] a duty to make sure it is safe for that patron to sit there." Defendant should have observed the dangerous condition and that Defendant was violating the industry and code safety standards. In turn, Tabbuli had constructive notice of the dangerous condition.

Also, the light was there starting as early as 3:00 p.m. for seven (7) hours before it fell on Stefani at 10:20. At the very least, it was there long enough before Defendant seated Stefani underneath it, while Stefani sat there waiting for the show to start, for the first half of the show, for the intermission, and when the second half of the show started. And again, Defendant's alleged ignorance of code violations is not a defense.

The principle of "proof by circumstantial evidence"

A brief discussion of South Carolina's principle of "proof by circumstantial evidence" is also warranted here. A Plaintiff's case can be based on circumstantial evidence. *Leek v. New S. Express Lines*, 7 S.E.2d 459 (S.C. 1940). This is especially true in this case where Defendant did not take measures to secure the light or the video of what transpired throughout that day in the

restaurant despite Plaintiff allegedly threatening to sue the Defendant that night immediately after she was struck on the head.

Plaintiff's case is not based on res ipsa loquitor

Like the defendant tried to do in *O'Leary-Payne*, it is anticipated that Tabbuli in this case will try to argue that Plaintiff relies solely upon the doctrine of *res ipsa loquitor* to prove negligence. In *O'Leary-Payne*, the Court discussed *res ipsa loquitor* and overruled the defendant's motion based on its claim that plaintiff relied solely on *res ipsa loquitor*. *O'Leary-Payne* held:

Charter argues the trial court erred in failing to grant its directed verdict motion because O'Leary-Payne relied on the doctrine of *res ipsa loquitor*. We disagree.

Res ipsa loquitor means "the thing speaks for itself." W. Page Keeton et al., *Prosser and Keeton on Torts* § 39, at 243 (5th ed. 1984). According to the doctrine of *res ipsa loquitor*:

There must be reasonable evidence of negligence; but where the thing is shown to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendants, that the accident arose from lack of care.

Id.at 244.

Charter mischaracterizes O'Leary-Payne's argument as being "the rod speaks for itself." O'Leary-Payne did not attempt to prove Charter's negligence by asserting that simply because she was injured at Charter's Shopping Center, Charter was therefore negligent. Instead, she attempted to prove negligence by introducing details about the rod, such as its height and location, from pictures and testimony. Accordingly, we find the trial court did not err in failing to grant Charter a directed verdict on the grounds that O'Leary-Payne relied on *res ipsa loquitor* to prove negligence.

O'Leary-Payne at 100.

In this case, any attempt by Defendant to claim Plaintiff is relying solely on *res ipsa loquitor* to prove negligence mischaracterizes Plaintiff's argument as being "the [light] speaks for itself." Plaintiff is not attempting to prove Defendant's negligence by asserting that simply because she

was injured at Defendant's restaurant, Defendant was therefore negligent. Instead, she is attempting to prove negligence by introducing details about Defendant's duties, Defendant's violations of industry and code safety standards, Defendant failing to supervise the installation of the temporary portable light, Defendant's failure to properly secure the light with a bracket, bolt and safety chain, the light, such as its height and location, Defendant failing to barrier the light from patrons, Defendant seating Plaintiff beneath the light, and Defendant's own policies of "constantly circling through the restaurant" "looking for safety issues," from pictures and testimony. Also, Defendant's manager concluded in her investigation that the light fell because it was not properly secured. Mark Williams also testified that the light was not properly secured based on his knowledge of using a bolt, bracket and safety chain to properly secure the light. Accordingly, Plaintiff is not relying on *res ipsa loquitur* to prove negligence.

Defendant's alleged unknown third-party liability defense

Defendant is asserting the negligence of an alleged unknown third-party DJ "over which Defendant had no control" as an affirmative defense. See Defendant's Answer, p. 3, and Motion for Summary Judgment. "The defendant asserting an affirmative defense bears the burden of its proof." *Youmans v. S.C. Dep't of Transp.*, 380 S.C. 263, 281-82, 670 S.E.2d 1, 10 (Ct. App. 2008); *Ross v. Paddy*, 340 S.C. 428, 437, 532 S.E.2d 612, 617 (Ct.App. 2000); *Cole v. S.C. Elec. Gas, Inc.*, 362 S.C. 445, 452, 608 S.E.2d 859, 863 (2005); *Sabb v. S.C. State Univ.*, 350 S.C. 416, 428, 567 S.E.2d 231, 237 (2002). The key to that misplaced defense, as noted by Defendant, is Defendant's claim that it had "no control" over the third-party or what the third-party did.

Even if there was a DJ present who was the one who set the light, Defendant's Rule 30(b)(6) corporate representative and its manager both testified Defendant DID have control over any alleged DJ and what the DJ did with, and where he or she otherwise put, his or her equipment,

including the light. Manager Chapin testified that if they had a DJ come in, the DJ would set up “according to our floor plan.” “If Tabulli saw something with the setup that they did not like and told the DJ to not do that, the DJ would have to comply.” Rule 30(b)(6) Corporate Representative Deihl testified that “if someone had informed him that there was any other hazardous condition whatsoever with this particular light” they would have “taken whatever steps necessary to fix it.” Deihl Depo., p. 123. Like Manager Chapin, Mr. Deihl confirmed that Defendant controls what DJs come onto the premises and where they put any of their equipment and what they do with it. Deihl Depo., p. 127. This includes “if they didn’t want the DJ to put a piece of equipment in any particular spot, they could tell that DJ not to do it.” Deihl Depo., p. 127. Likewise, the Manager testified that if staff told her there was a problem with one of the lights the DJs were using, “[she] would have gone out there and [she] would have investigated the entire situation. If [she] had known about this prior to this happening, [she] would have asked them to take it down or secure it somewhere that it couldn’t potentially hurt somebody.” Chapin Depo., pp. 90-1. After the incident, the Manager also told the “DJs to make sure that they are setting things up properly and things are secured and not setting things up over people and things like that.” Chapin Depo., p. 71. She looked at the light after it fell on Stefani and “[she] told everyone to make sure that things like this are secured, especially that are hanging overhead.” Chapin Depo., p. 73. The manager testified that they took down the light after it was put back from where it fell because “they didn’t want that to happen again.” Chapin Depo., p. 74. This is control over the alleged third-party DJ and the light.

Respectfully, Defendant is just wrong about it not having liability for negligence of a third-party. In South Carolina, a business owner can be held liable for the negligence of a third person.

In *Parks v. Characters Night Club*, 345 S.C. 484, 548 S.E.2d 605 (Ct. App. 2001), citing Restatement (Second) of Torts section 344, the Court held:

A possessor of land who holds it open to the public for entry for his business purposes is subject to liability to members of the public while they are upon the land for such a purpose, for physical harm caused by the accidental, negligent, or intentionally harmful acts of third persons or animals, and by the failure of the possessor to exercise reasonable care to (a) discover that such acts are being done or are likely to be done Restatement (Second) of Torts § 344 (1965).

In this case, Defendant is subject to liability to Plaintiff for physical harm caused by both the harmful acts of the alleged third-party DJ, and by the failure of Defendant itself to exercise reasonable care to discover that such acts were being done.

Conclusion

Viewing the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to Plaintiff, Plaintiff has presented at least a mere scintilla of evidence in order to withstand a motion for summary judgment. In turn, Plaintiff respectfully requests the Court to overrule Defendant's Motion for Summary Judgment.

This the 20th day of April, 2022.

GARY C. JOHNSON, P.S.C.

/s/ Michael E. Liska
 Michael E. Liska
 SC Bar No. 102542
 2265 Executive Drive
 P.O. Box 55106
 Lexington, KY 40505
 Tel: 859-268-4300
 Fax: 859-268-7318
 Email: mliska@garycjohnson.com
Counsel for Plaintiff

-and-

THE NYE LAW GROUP P.C.

Justin D. Maines
SC Bar No. 76668
2008 Whitaker Street
Savannah, Georgia 31401
Tel: (912) 200-5230
Fax: (912) 335-6553
Email: jd@thenyelawgroup.com
Counsel for Plaintiff

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing was this 20th day of April, 2022, served via mail and email to the following:

Mark S. Barrow, Esq.
William A. Neinast, Esq.
SWEENY, WINGATE & BARROW, P.A.
1515 Lady Street
Post Office Box 12129
Columbia, South Carolina, 29211
Counsel for Defendant

/s/ Michael E. Liska
Michael E. Liska
SC Bar No.102542
Counsel for Plaintiff

Deposition of Mark E. Williams

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
2 COUNTY OF CHARLESTON) CASE NO.: 2020-CP-10-02481
3

4 Stefani Eddins,)
5 Plaintiff,) VIDEO DEPOSITION OF
6 vs.) MARK WILLIAMS
7 Tall Sam I Am, LLC d/b/a) MARCH 11, 2022
8 Tabbuli,)
9 Defendant.)
10 _____)

11
12 Video conference deposition on oral examination of
13 MARK WILLIAMS, reported by Donna M. Currey, Court Reporter
14 and Notary Public in and for the State of South Carolina;
15 pursuant to Rule 30 of the South Carolina Rules of Civil
16 Procedure; said deposition was taken via Zoom Video
17 Conference, on Friday, the 11th day of March, 2022;
18 scheduled for 11:00 a.m., and commencing at the hour of
19 11:03 a.m.
20
21
22
23
24
25

2	4
1 APPEARANCES:	1 EXHIBIT INDEX (CONT.): PAGE:
2	2 Defendant's Exhibit 6 (42 pages).....101
3 REPRESENTING THE PLAINTIFF:	3 - References
4 MICHAEL E. LISKA, ESQ.	4
5 Gary C. Johnson Law Office	5 * * * * *
6 2007 Deer Island Road	6
7 Hilton Head Island, South Carolina 29928	7 Court Reporter's Legend:
8 (mliska@garycjohnson.com)	8 dashes [--] Intentional or purposeful interruption
9	9 ... Indicates trailing off
10 REPRESENTING THE DEFENDANT:	10 [ph] Denotes phonetically written
11 WILLIAM A. NEINAST, ESQ.	11 [sic] Written as said
12 Sweeny, Wingate & Barrow, P.A.	12
13 Post Office Box 12129	13
14 Columbia, South Carolina 29211	14
15 (wan@swblaw.com)	15
16	16
17 ALSO PRESENT:	17
18 C.C. Barr, Videographer	18
19	19
20	20
21	21
22	22
23	23
24	24
25	25
3	5
1 CONTENTS:	1 STIPULATIONS
2 PAGE:	2 This video conference deposition is taken in
3 Exhibit Index..... 3	3 accordance with the South Carolina Rules of Civil
4 Stipulations..... 5	4 Procedure.
5 Examination by Mr. Neinast..... 6	5 It is agreed and stipulated by the deponent and
6 Examination by Mr. Liska.....111	6 respective counsel that the reading and signing of the
7 Re-examination by Mr. Neinast.....117	7 deposition by the deponent is expressly not waived.
8 Certification of Reporter.....124	8 WHEREUPON:
9 Verification.....125	9 MARK WILLIAMS, being duly sworn and cautioned to
10 Errata.....126	10 speak the truth, the whole truth and nothing but the truth,
11 Index	11 testifies as follows:
12	12 VIDEOGRAPHER: We're going on the record.
13 * * * * *	13 The time is 11:03 a.m. This is the video
14 EXHIBIT INDEX: PAGE:	14 deposition of Mark E. Williams in the matter of
15 (Copies of exhibits attached to transcript.)	15 Stefani Eddins versus Tall Sam I Am, LLC et al.
16 Defendant's Exhibit 1 (23 pages)..... 43	16 under the jurisdiction of the State of South
17 - Expert Disclosures	17 Carolina in the County of Charleston in the Court
18 Defendant's Exhibit 2 (21 pages)..... 43	18 of Common Pleas for the Ninth Judicial Circuit.
19 - CV, Rate Sheet, Invoices, Rule 26(b) Disclosure	19 This is case number 2020-CP-10-02481. This
20 Defendant's Exhibit 3 (4 pages)..... 43	20 deposition is being held via Zoom Video
21 - Data Sheets	21 Conference on March 11, 2022. Counsel will now
22 Defendant's Exhibit 4 (4 pages)..... 52	22 state their appearances for the record and the
23 - Photos	23 court reporter will swear in the witness.
24 Defendant's Exhibit 5 (194 pages)..... 61	24 MR. LISKA: Mike Liska, and I'm from Gary
25 - Building Codes	25 Johnson Law Offices here on behalf of Stefani

6 1 Eddins. 2 MR. NEINAST: Will Neinast here from Sweeny, 3 Wingate and Barrow, and I'm here for Tall Sam I 4 Am, LLC DBA Tabbuli. 5 COURT REPORTER: Mr. Williams, can you 6 please raise your right hand? Do you solemnly 7 swear that the testimony you're about to give 8 today will be the truth, the whole truth and 9 nothing but the truth so help you God? 10 THE WITNESS: I do. 11 COURT REPORTER: Okay. We're on the record. 12 Thank you. 13 EXAMINATION BY MR. NEINAST: 14 Q. Mr. Williams, again my name is Will Neinast. I'm 15 here to take your deposition today. I'm 16 operating under the assumption that you've had 17 your deposition taken many times before. Is that 18 right? 19 A. It is. 20 Q. We'll run real quick through the rules. Is there 21 anything that would prevent you from 22 understanding my questions or providing truthful 23 testimony today? 24 A. No. 25 Q. Okay. And you know we need verbal answers, no	8 1 for the Plaintiff? 2 A. Yes. 3 Q. All right. Did you speak with anyone else? 4 A. No. 5 Q. What documents did you review as you prepared to 6 give this testimony? 7 A. The documents that are on the table in front of 8 me would be a duplicate of the documents that 9 I've linked you to in a Dropbox. 10 Q. Okay. Have you reviewed any other documents 11 other than the ones that were linked in that 12 Dropbox last night? 13 A. I think I provided everything in my file. It 14 wouldn't -- 15 Q. The file -- 16 A. -- it wouldn't be more than a couple of pages if 17 I've overlooked something. 18 Q. Okay. We'll run through that real quick. Again, 19 we got it last night. We haven't really had a 20 chance to fully go over it, but here's the 21 contents as far as I've seen them. Looks like 22 your invoices, the expert disclosure that was 23 filed by Plaintiff's counsel, a Rule 26(b) 24 disclosure, and it looks like you have prepared - 25 - and my understanding is this looks like
7 1 head shakes or nods. Nothing like that. If you 2 answer any of my questions, I'm going to assume 3 that you've understood them. If you don't 4 understand them, just let me know. I'd be more 5 than happy to clarify, okay? 6 A. Okay. 7 Q. Any breaks you need to take today, not a problem, 8 just let me know. If you need to run out and get 9 some coffee, anything like that, just let me know 10 and we will. Now that the deposition's began, as 11 I'm sure you know, any conversations that you 12 have with any individuals regarding your 13 testimony or the case, I'm entitled to ask 14 questions about those conversations. How many 15 times have you been deposed before? Give me a 16 rough estimate if you can. 17 A. I don't know. 18 Q. Okay. More than 100? 19 A. I'd be guessing, but probably. 20 Q. You think more than 200? 21 A. I don't know. 22 Q. Okay. Who'd you speak with to prepare for this 23 deposition? 24 A. I've spoken with my client prior to today. 25 Q. And by your client you mean Mr. Liska, the lawyer	9 1 something that would typically be filed in 2 federal court. It looks like your history of 3 testimony at deposition or trial through February 4 11, 2022, and beginning in March of 2018. Are 5 there any depositions or trials that you need to 6 add to update that testimony list? 7 A. No. I did that this week. 8 Q. And then it looks like there (Technical 9 inaudible) sections (Technical inaudible) -- 10 A. I've lost audio. 11 Q. Can you hear me? 12 A. I have lost audio til now. Are you talking away 13 from the microphone? 14 MR. LISKA: Yeah, Will, I think when you 15 turned away, it lost your voice there a little 16 bit. 17 MR. NEINAST: Gotcha. Okay. I'll project a 18 little bit. How's that? 19 A. I can hear you now for sure. 20 Q. Great. Okay. Mr. Williams, can you hear me 21 okay? 22 A. Yes. 23 Q. Okay. I'm looking at four sections of what 24 appear to be property management building and 25 electrical codes. Have you reviewed any codes

10 1 other than the ones that were linked in that 2 Dropbox folder with respect to this case? 3 A. Not yet. 4 Q. Okay. I see the deposition transcripts of Mr. 5 Jeff Deal and Ms. Kate Chapin as well as the 6 summary. It looks like it was prepared by Robson 7 of Jeff Deal's depo. Have you reviewed any other 8 testimony in this case? 9 A. Let's unpack that a little bit. The depo 10 summaries are prepared by me. 11 Q. Okay. 12 A. Robson appears on the page because that's just a 13 brand. I have been provided with four deposition 14 transcripts; Jeff Deal, Kate Chapin, Stefani 15 Eddins and Ashley Haines. 16 Q. Okay. And I don't see the transcripts of Ms. 17 Eddins or Ms. Haines in that Dropbox folder. 18 Have you prepared summaries for either of those 19 depositions? 20 A. I have not. 21 Q. Okay. Why did you prepare a summary for Mr. 22 Deal, but not for Ms. Chapin or the other two 23 deponents? 24 A. Because I ran out of time. 25 Q. I gotcha. Is that something that you anticipate	12 1 prepare these from? It looks like one of the 2 file names says Facebook on it, but the others do 3 not. Do you know if you got all three of those 4 photographs from Facebook? 5 A. I don't think I did. 6 Q. Okay. And those don't have Bates stamps on them, 7 do they? 8 A. No. 9 Q. Okay. If you didn't get those from Facebook, 10 where do you think you got those images? 11 A. I'd have to go back and research that. I didn't 12 bring that with me. 13 Q. Okay. But somewhere on the internet? 14 A. Yes. 15 Q. Did you reach out to someone to obtain those 16 images, or did you just find those publically 17 available online? 18 A. They were publically available. There are 19 probably dozens and dozens of images of drag 20 shows, fashion shows, events at Tabbuli and I 21 selected the ones that you have. 22 Q. What drew you to select these three images versus 23 any others that you may have seen? 24 A. I think one of them is relevant because it shows 25 a speaker mounted to a column and there were
11 1 doing before the trial of this case? 2 A. Probably would be helpful. 3 Q. I see a subfolder labeled discovery documents 4 that contains it looks like some documents that 5 have been produced in discovery in this case as 6 well as the written discovery responses and it 7 looks like the amended complaint as well. Bear 8 with me for just a second. It's taking a sec to 9 load. Okay. Then there's a subfolder labeled 10 internet images and I see essentially three 11 photographs; two appear to depict the premises at 12 issue in this case and the third looks like a 13 poster for an event. Where did you get these 14 internet photographs? 15 A. I think there's four. One is Bates stamped 16 SWB66. One was provided to me (Technical 17 inaudible) and the speaker. The other images I 18 obtained using various searches on the internet 19 based on the publications and promotions that 20 they share with the general public about the drag 21 show and the fashion show. 22 Q. Okay. Have you communicated directly with anyone 23 at Tabbuli or Charleston Hospitality Group? 24 A. No. 25 Q. Okay. Where did you -- what websites did you	13 1 physical objects in some of the photographs that 2 allowed me to estimate the measurement of 3 physical distances and objects. 4 Q. Okay. And we can get into that in some greater 5 detail later on, once we begin discussing your 6 opinions, but just from a background standpoint, 7 do you know who posted any of these photographs 8 online? 9 A. No. 10 Q. Do you know if they were posted by Tabbuli or 11 posted by some third party? 12 A. I don't know. 13 Q. Do you know when they were posted? 14 A. No. 15 Q. Do you know if they have been edited in any way? 16 A. I haven't touched them. 17 Q. Do you know if they accurately depict the 18 premises as it looked on the date that Ms. Eddins 19 visited Tabbuli, which was July 20, 2017? 20 A. Probably not. There were different people there. 21 Q. Right. Right. And it looks like I'm seeing some 22 dates on these photographs from 2016. So, assume 23 with me that these photographs were taken about a 24 year prior to Ms. Eddins' incident. Do you know 25 of any changes that occurred to the Tabbuli

14 1 premises between 2016 and 2017? 2 A. No. 3 Q. All right. And then I see a subfolder titled 4 references. It looks like there are two -- we'll 5 call them secondary sources; one looks like a 6 handout on stage light and safety, and one is 7 entitled handbook for One Act Play. Have you 8 reviewed any other secondary sources other than 9 those that are listed in that references folder? 10 A. Yes. 11 Q. Okay. What else have you reviewed? 12 A. I don't have them in front of me. I did not put 13 them in the case file at this point, but I have 14 looked at other publications, similar topics. 15 There's a wealth of technical information on the 16 internet about how to safely secure and properly 17 secure these types of lights. I chose the two 18 that are in the file, because I cited them in the 19 disclosure. 20 Q. Okay. Did you draft the disclosure that was sent 21 over to us? 22 A. In part. 23 Q. Okay. Which parts of it do you recall drafting? 24 And we can look at it if you need to. 25 A. Your audio continues to kind of fade in and out.	16 1 A. Because I felt they were the most relevant, and I 2 don't know that it's necessary at this point to 3 bring a banker's box into the discussion. There 4 was adequate authoritative treatises and 5 scholarly articles that would tell a business 6 owner that this is an improper installation. 7 Q. Okay. 8 A. I don't know that -- 9 Q. Have you -- 10 A. -- if redundancy would add anything to the 11 discussion. 12 Q. Right. Other than these two references, you 13 haven't included any of those in your expert file 14 that you produced to us, have you? 15 A. Not yet, no. 16 Q. What scholarly articles or treatises, I think you 17 said authoritative treatises, did you review in 18 coming to your conclusions regarding this case? 19 A. Well, I think all those things that I've provided 20 to you are authoritative as it relates to the 21 facts in this case. 22 Q. Other than what's been provided, what did you 23 review in that vein? 24 A. I don't recall titles off the top of my head. 25 I've given you codes that have been adopted.
15 1 It appears to -- when you turn your head away, I 2 can't hear what you're saying. 3 Q. Gotcha. Let me see if I can move this over to 4 another monitor. That might make it a little 5 simpler. 6 A. What was your question? 7 Q. My question was, which parts of the disclosure, 8 the Plaintiff's expert disclosure, do you recall 9 drafting? 10 A. I drafted a document that consists of background 11 information, facts and then it leads into an 12 analytic process and concludes with expert 13 opinions. That portion would be that that starts 14 with paragraph one and the expert disclosure and 15 ends with paragraph 40, which has A through F and 16 at the end of that you see a name of James 17 Rivenbark. 18 Q. Okay. So, is it fair of me to characterize that 19 as you're drafting everything in this expert 20 disclosure except for the paragraphs lettered A, 21 B and C? 22 A. Yes. 23 Q. Okay. Why did you decide to include these two 24 particular reference materials and not any other 25 materials that you may have looked at?	17 1 I've given you relevant industry standards. I 2 have described the light fixture as close as I 3 can and the manufacturer's technical catalogue 4 cut sheets. So, when you take that collectively, 5 that's the basis for some of the analysis, the 6 facts and the expert disclosure. 7 Q. Right. And I appreciate that. What I want to 8 know is, is it a fair characterization of me to 9 say that there are scholarly articles and 10 authoritative treatises out there that you have 11 reviewed that have impacted the formation of your 12 opinions in this case that you have not produced 13 in this Dropbox folder? 14 A. No, not the way you worded it. No, not -- if you 15 say that were there other things that I reviewed, 16 yes there's a wealth of information. I already 17 knew that laying a 10-pound object eight feet 18 above somebody's head was not safe. I didn't 19 need to go open a book to learn that. 20 Q. Yeah, and I understand your position on that, but 21 my question is, you know, you've said you've gone 22 off and reviewed this other material and I don't 23 have it. So, did it impact the formation of your 24 opinions and if so, why haven't you produced it? 25 A. It did not.

18 1 Q. Okay. Great. Then I see a subfolder entitled 2 research, and it looks like there are two data 3 sheets for -- that appear to have been put out by 4 manufacturers of lighting. Have you reviewed any 5 other manufacturer documentation from lighting 6 other than these two sheets that have been 7 produced? 8 A. Yes, I searched for different manufacturers to 9 find what I thought was the most accurate 10 representation of what you see in the photograph, 11 Bates SB -- SWB66. I didn't think that it was 12 helpful to populate my file with a catalogue of 13 other fixtures. I found the pictures I think 14 most closely resemble the one that was there. 15 Q. Okay. What's your full name for the record? 16 A. Mark Elam Williams. 17 Q. Where are you from originally? 18 A. I grew up in Louisville, Kentucky. 19 Q. Where do you live now? 20 A. Charleston. 21 Q. Do you have any relatives over the age of 18 in 22 Charleston County? 23 A. No. Just my wife. 24 Q. Wife has the same last name? 25 A. She does.	20 1 A. That's what they call people who perform forensic 2 work for plaintiff or defense firms. 3 Q. What professional certification or training do 4 you have that's directly related to stage 5 lighting? 6 A. I'm a licensed architect in 12 states and charged 7 by the licensing bureau in those states as well 8 as building codes to protect the health, safety 9 and welfare of the general public. I have a 10 five-year professional degree in architecture and 11 over 30 years of practice as a licensed 12 architect. I was very blessed to go to 13 vocational high school in the 1970s, when that 14 was still popular, and so I worked in a large 15 engineering firm while I was still in high 16 school. So, I've been working since I was 15 17 years old. 18 Q. Okay. What specific experience or training do 19 you have related to stage lighting, though? 20 A. Well, it's all related to this case because the 21 case is about an object that was unsecure and was 22 sitting above somebody's head. So, to ask such a 23 broad global question and end up with a very 24 specific reference at the end misses the point. 25 I've taken physics and calculus. I'm capable of
19 1 Q. Okay. Are you a member of any clubs, churches or 2 civic organizations? 3 A. I'm a member of a church, but we have not been 4 attending during COVID. I was previously active, 5 as I'm sure you already know, in South Carolina 6 Defense Trial Lawyers and South Carolina 7 Advocates for Justice and the South Carolina Bar 8 Association and spent over a decade traveling 9 with people just like you all over the southeast 10 to conferences. 11 Q. Okay. You ever served in the military? 12 A. No. 13 Q. You ever been arrested or charged with a crime? 14 A. I can't hear you when you -- 15 Q. Have you ever been arrested or charged with a 16 crime? 17 A. No. 18 Q. Tell me about your educational background. I've 19 seen your CV, so just give me the highlights. 20 A. What would you like to know? 21 Q. Well, critically is there anything that needs to 22 be updated that isn't reflected on your CV? It 23 looks like I see most recently you're listed as 24 an associate with Robson. Is that still your job 25 title?	21 1 looking at the dynamics of this fall event. I 2 have experience designing lighting systems, 3 mechanical systems, hiring people as consulting 4 engineers on projects. So, whether it's a stage 5 light or whether it's a large tent, the issue 6 here is the standard of care to secure it 7 properly. 8 Q. Yeah, and I appreciate that. I'll ask it a 9 different way. Have you ever consulted as an 10 expert witness on a case involving stage lighting 11 like this? 12 A. I've never seen anything like this on a case as a 13 forensic architect. It's very unconventional and 14 unusual to do something like this, so I have not 15 come across it. 16 Q. Okay. Have you ever published anything directly 17 related to this kind of lighting system? A stage 18 light? 19 A. No, too busy working for guys like you. 20 Q. Yeah, I sympathize with you. I haven't published 21 anything myself in a long time. I see on your CV 22 that your last presentation is listed as 2018. 23 Is that updated? That's just a -- is that a 24 function of COVID or? 25 A. Where was it?

22 1 Q. Tennessee Defense Lawyers Association -- 2 A. Right. 3 Q. -- Conference in Chattanooga. 4 A. Yeah. I presented at TDLA in Chattanooga, a 5 presentation of premises liability cases. 6 Q. Okay. And you haven't presented since 2018? 7 A. I might have, but I haven't listed it. I'm 8 frequently asked to do that by both plaintiff and 9 defense side. 10 Q. Have you ever given a presentation on stage 11 lighting or temporary lighting? 12 A. Never given any presentation that that's -- is 13 that specific about something. I give 14 presentations about how we come in to the legal 15 environment as architects and engineers, and help 16 our clients either with a theory of liability or 17 a defense. 18 Q. You said you have experience designing lighting 19 systems. Tell me about that. 20 A. Well, the architectural curriculum includes 21 mechanical systems in buildings, structural, 22 civil, lighting, fire protection, food service, 23 elements of landscaping. There's -- the 24 education that we go through is very general in 25 nature because in private practice we hire	24 1 A. It's a bit over simplified. It's not a linear 2 process. It's not a milestone. I think you're 3 on the right direction. The best way I can 4 describe it is that in school I'm tested on 5 things like structure. I took calculus and 6 physics, and so I'm capable of calculating the 7 maximum deflection in a simple support beam or I 8 understand how to determine the slenderness ratio 9 on a column. But when I get licensed and I hire 10 the structural engineer, he's the one that does 11 the calculations. I have to be conversant to be 12 able to understand and I think what you're -- the 13 way you're presenting it is accurate to the 14 extent that we sit down around a table and I give 15 the engineer my form and I say here are the 16 constraints: I want a 10-foot ceiling. I want a 17 span 25 feet. I don't want any columns in the 18 middle of the room because it's a dance floor. 19 And then he tells me, do you want wood, do you 20 want steel, do you want a bar joist. In other 21 words, it's a dialogue because the engineer can 22 make selections and then ultimately at some 23 point, the engineer calculates it for safety with 24 respect to the codes. And that's why typically, 25 the buildings in the United States don't fall
23 1 consulting engineers who focus on each individual 2 discipline. But in order to become licensed, we 3 have to be conversant. So, the architect 4 registration exam has nine divisions, and it 5 requires that you just demonstrate proficiency in 6 all these different tertiary disciplines in 7 engineering. And when you get into practice, 8 then you collaborate with the engineers you hire 9 and you have to be able to check their drawings 10 and understand their specifications. You get -- 11 during construction you get things that we call 12 shop drawings that look like these technical data 13 sheets. So, I've had experience throughout my 14 entire career like most architects who work in 15 private practice in terms of having to understand 16 power and lighting, HVAC, sanitary sewers, storm 17 sewers, site grating. It's all a part of 18 architecture. 19 Q. You used the word conversant and my understanding 20 of that, and correct me if I'm wrong, I'm sure I 21 am, would essentially be that the architect would 22 design a system and then communicate with a 23 specific engineer to figure out how that system 24 is going to be implemented into the building. Is 25 that a fair statement?	25 1 down very often. 2 Q. So with specific respect to lighting design, 3 would you typically be working with an electrical 4 engineer? 5 A. Yes, electrical engineers would be responsible 6 for power and lighting, panel schedules, 7 underground lighting and typically with an 8 architect, you would be working either inside the 9 structure or within five feet of the building. 10 The high voltage electricity is a separate 11 specialty. 12 Q. Okay. So, relate that to the real world for me. 13 What is their side of the Venn diagram with 14 respect to lighting design and what's your side? 15 I mean, is it fair to say that there's overlap, 16 and how exactly do your scopes of practice differ 17 when you're designing a lighting system? 18 A. It's not only fair, it's insightful on your part 19 to say that there's overlap because the process 20 of architecture and engineering has to be 21 collaborative. So, architects are trained in 22 both art and technology, both left and right 23 brain. It's the art and science of building 24 technology. Engineers are trained with respect 25 to systems, structural systems, mechanical,

26 1 electrical, and they're much more right brained. 2 They're very formulaic. So, if I was an 3 architect designing an auditorium or a theater, 4 something that would require these type of light 5 fixtures, then I would collaborate with the 6 client because on a project like that they would 7 probably have an in-house person to contribute to 8 the discussion. The electrical engineer that I 9 would hire would be someone who this was not 10 their first time designing a theater, so they 11 would bring things to the table. And as we 12 refine the design we would reach a point where 13 there's something on the construction documents 14 called a fixture schedule, and that would 15 enumerate each fixture whether it's -- the office 16 you're currently sitting in probably has 17 fluorescent fixtures suspended in a reflected 18 ceiling plan with a suspended grid. So my -- 19 there could have been par fixtures in the ceiling 20 where you are as well. It's a selection, and 21 it's a back and forth between all the parties. 22 Q. Okay. As far as selecting the specific 23 manufacturer of a given light fixture, does that 24 responsibility typically fall under the engineer? 25 A. Unless the architect has something they've used	28 1 secure this to a physical object and there's a 2 safety chain for redundancy, then it would be 3 contrary for me to try to attempt to redesign 4 that. That's -- the whole point of safety in 5 products like this is the person who thought this 6 up -- the people who designed this light fixture 7 have the earliest and first responsibility for 8 safety when they put it in the stream of 9 commerce. You look at these documents I have 10 provided you, you'll see UL on them under 11 writer's laboratory, so they've been tested and 12 certified. 13 Q. Right. Have you ever designed or worked with an 14 electrical engineer to design any kind of stage 15 lighting? 16 A. If you're going to be that narrow and specific, I 17 don't recall a stage. I have designed buildings 18 and hired consultants who have had -- for 19 buildings that had assembly occupancies. By way 20 of example, I did the 10,000 -- 100,000, excuse 21 me, 100,000 gallon salt water aquarium at the 22 Columbus Zoo. So, that's an auditorium that's in 23 the dark for people to sit and look at fish. I 24 could go through my CV and try to recall, but 25 I've had other buildings with similar types of
27 1 on a previous project that they would suggest, 2 then they would probably ask the engineer for 3 suggestions. So, you know, that there's another 4 element we haven't talked about and it's sales. 5 And the offices where architects work and 6 engineers work are visited by sales reps from 7 people like Lithuania and there's a company on 8 here, Altman Lighting, Leviton. All these 9 manufacturers have people who work for them who 10 sell the products and they bring three-ring 11 binders into your office. At least they used to, 12 it might be all electronic now. So, that the 13 engineer would make suggestions to the architect 14 and it's still -- it's an ongoing collaboration. 15 Q. Okay. Okay. Have you ever directed an engineer 16 to use a specific method or material to attach a 17 light fixture to any structure? 18 A. Of course not. That's why we have manufacturers' 19 recommendations. The building code requires a 20 contractor to comply with manufacture's 21 recommendations. The architect and the engineer 22 respect those, and in some way they're embodied 23 in the National Electric Code with respect to 24 lighting. So, if the manufacturer's 25 recommendation is that we provided you a yoke to	29 1 occupancies. Whether it's a theater or 2 restaurant or night club or even a church, it's 3 still the same occupancy. 4 Q. Okay. And the same, I'm assuming, is true for 5 working with a DJ to design any lighting for 6 their show, for their presentation. You've never 7 done that, right? 8 A. Never done what? 9 Q. Worked with a DJ to design lighting. 10 A. No. I think that's contrary to the process I 11 would expect that would take place. A DJ selects 12 from manufactured products that are available in 13 the marketplace. They've already been designed 14 and tested. The DJ has and the business owner 15 has information available to them in terms of 16 what is a proper installation. 17 Q. Okay. Okay. Have you ever been excluded or has 18 your testimony ever been limited in any way? 19 A. Which one? 20 Q. I'm sorry, we'll start with excluding. Has your 21 testimony -- 22 A. You asked -- 23 Q. -- has your testimony ever been excluded? 24 A. I'm sorry, but you asked me two different things. 25 Q. Sure. Has your testimony ever been excluded?

30 1 A. Yes. 2 Q. Okay. Tell me about that. 3 A. It was the case in Georgia and both of the 4 experts in the case were not permitted to testify 5 and the judge had -- I don't recall the exact 6 language, but the judge wrote that I was 7 qualified -- that I was qualified in terms of 8 what I had written and the opinions, but that he 9 didn't think that expert opinions were necessary 10 for the jury. 11 Q. Okay. Something like assisting -- not able to 12 assist the trier of fact? Language somewhere 13 along -- 14 A. Probably. 15 Q. -- that line? 16 A. Probably. 17 Q. Do you know the name of that case? 18 A. Let me make a note. It's not coming to me off 19 the top of my head. 20 Q. Do you recall the year? 21 A. It was a long time ago. 22 Q. 2000s, 1990s? 23 A. Well, I started in 2002, so I think that -- and 24 it was since I moved to Charleston, so it's 25 probably in the last eight to 10 years.	32 1 screwdriver and jammed it into the latch. 2 Q. Right. 3 A. That was too -- I think it was felt that that was 4 too controversial, so I was not allowed to say 5 that. 6 Q. Okay. Do you recall the subject matter of the 7 case in Georgia in which you were excluded? 8 A. Yes. It was a minor child, a young girl, who was 9 profoundly autistic on the spectrum, who had a 10 history of elopement from her residence. Her 11 parents moved into military housing. The lease 12 said that they could not make any modifications 13 of any kind and if they did, they would be 14 terminated. They asked permission to install a 15 simple screen door latch at the top of the 16 outside door because the child couldn't reach it 17 and they were denied that request several times. 18 The girl eventually eloped, found a lake behind 19 their house about 100 yards away and drowned. 20 Q. Gosh. I'm assuming you testified for the 21 plaintiff in that case? 22 A. Yes. 23 Q. What's your breakdown of plaintiff versus defense 24 work? 25 A. It depends on the type of case.
31 1 Q. Do you recall which county in Georgia that case 2 was pending in? 3 A. The site location was Fort Gordon, if that helps 4 you. 5 Q. What about limitations? How has your testimony 6 been limited in the past? 7 A. One time I was testifying, also in Georgia, on 8 behalf of Hall Booth Smith in a trial in DeKalb 9 County, and I had offered five opinions and the - 10 - I was being asked questions on direct by my 11 client, but the plaintiff attorney interrupted 12 the dialogue when I reached the fifth and final 13 opinion. 14 Q. Why was that opinion -- why were you precluded to 15 testifying as to that opinion? 16 A. I don't have personal knowledge of what the judge 17 said to the lawyers. I can offer you my -- a 18 plausible answer based on the facts in the case, 19 that I had offered an opinion of outdoor hardware 20 that if there were -- was any deficiencies in a 21 door -- in a locking device on a door, it was 22 likely the result of intervention by other 23 parties with some type of a blunt instrument. 24 That was a carefully crafted and polite way of 25 saying, I think someone took a flat-bladed	33 1 Q. Okay. From a percentage standpoint, how many 2 cases do you have pending for the plaintiff 3 versus the defense? 4 A. Oh, that's a different question. I don't know 5 the numbers. I thought your were asking me 6 percentages? 7 Q. Sure. I mean, give me your best estimate as to 8 percentages. 9 A. Well, if you look at personal injury, 10 historically for almost 20 years it's been about 11 60 percent plaintiff. If you look at the 12 professional liability cases that I do, which 13 also are connected with construction cases, that 14 -- it's primarily defense. It's probably 95 15 percent defense. I do a lot of cases defending 16 architects and construction claims, and that's 17 almost all defense. 18 Q. Okay. Let's walk through your disclosures and 19 opinions. Beginning of paragraph four there's a 20 list of a variety of documents, that you've 21 reviewed including the Charleston Hospitality 22 Group employment handbook. Do you take any issue 23 with the employee handbook? And what I mean by 24 that specifically is, have you reached any 25 professional opinions regarding the sufficiency

34 1 or insufficiency to that handbook? 2 A. No, that's not the purpose of looking at it. 3 Q. I just want to clarify. Your scope of expertise 4 is in no way related to restaurant operation or 5 management, right? 6 A. No, this is not a restaurant case. It's case 7 about putting a 10-pound object over somebody 8 that's seated on a couch and not being involved 9 during the setup to where you could ensure that 10 it's safe. 11 Q. That's a no to my -- so, that's a no to my 12 question? That's not your scope of expertise, 13 right? 14 A. Well, I wouldn't say safety's outside of my 15 expertise. I'm saying that the operation of a 16 restaurant has a lot of different facets. So, 17 Chapin testified that she was trained on how to 18 count money. I'm not here to talk about how to 19 make sure the drawer balances, but a restaurant 20 is no different than an office building like 21 we're sitting in. It has to be safe. A store, 22 retail store, a medical office building, they all 23 have to be safe for people to go in. 24 Q. Right. And I don't disagree with that 25 contention. My question to you is simple, which	36 1 video of during the incident. I think it was 2 just a few seconds. 3 Q. Okay. Do you know when SWB66, that photograph, 4 do you know when that was taken? 5 A. I don't recall. 6 Q. You don't know whether that was taken before or 7 after the incident? 8 A. I don't recall, but I understood that it was 9 taken with the light up on the speaker. 10 Q. Okay. And I ask because in paragraph 10, you 11 describe SWB66 as a post-incident photograph. 12 A. Yes. So, it must have been after. 13 Q. Okay. And that video that you just discussed, 14 does that show the light prior to it falling? 15 Does it show it in a stationary position? 16 A. I don't think that it's clear enough and long 17 enough to understand enough facts about that 18 issue. Stationary means that it's not in a sense 19 of free fall. Stationary does not imply that 20 it's stable. 21 Q. Right. And I'd agree with you, it's a fairly 22 short video and it looks like the light is out of 23 frame prior to it falling. You'd agree with 24 that, right? 25 A. It's been a while since I looked at it, but I
35 1 was that restaurant operation and management is 2 not within your scope of expertise, correct? 3 A. If you're limiting it to food service and serving 4 people and operation from a restaurant 5 standpoint, you're right. It's such an overly 6 broad question, I'm not going to agree that part 7 of restaurant operation includes safety for 8 people in your building. 9 Q. Okay. Paragraph eight, Mr. Williams has learned 10 that Tabbuli seems to claim the unsecured light 11 fixture that fell and struck Eddins was placed on 12 top of an audio speaker that was attached to a 13 wood column supporting the roof structure. What 14 are you basing your conclusion that the light 15 fixture was unsecured prior to it falling off? 16 A. Well, I know what it takes to install these. I 17 know -- I'm familiar with what proper procedure 18 is with the yoke and the safety chain. And if 19 you do those, if you take those actions and you 20 follow manufacturer's recommendation, it won't 21 fall off. 22 Q. What evidence have you seen that depicts the 23 condition of the light prior to it falling? 24 A. I've seen the same photograph that you have, 25 which is SB -- SWB66. I've seen a very short	37 1 have no reason to argue about that. 2 Q. And that's the easier way to ask it. Do you have 3 any recollection of that video depicting the 4 light on top of the speaker prior to it falling? 5 A. No. 6 Q. Okay. So returning to my question, which was 7 what evidence have you reviewed that depicts the 8 light prior to it falling? The answer's none, 9 right? 10 A. Probably. 11 Q. Okay. And I'm not trying to trap you with that 12 question. We deposed Mr. Rivenbark, the other 13 expert in this case on Friday, and he said the 14 same thing. You know, and I'll represent to you 15 that I haven't seen any either. So, this isn't a 16 trick question. I just want to make sure that 17 you haven't seen anything that I haven't. 18 A. I would like to see more of the video. I think I 19 was curious as to why it was so short and edited, 20 but if there wasn't anything else and the sole 21 photograph I have here, then you're probably 22 correct. 23 Q. Okay. Other than your conclusion that it would 24 not have fallen had it been secured, do you have 25 any direct personal knowledge or have you

38 1 reviewed any evidence that indicates whether or 2 not this light was secured prior to it falling? 3 A. Well, it's -- sure. It's the same analysis. I'm 4 not sure that it's necessarily a conclusion as it 5 is a fact that the light is manufactured with a 6 metal bar called a yoke. The yoke is visible in 7 the photograph. It's sitting upside down. It 8 comes with a way to attach it to a physical 9 object so it will be secure, and it comes with a 10 redundant safety chain so that if that attachment 11 fails, you have something else to keep it from 12 falling. 13 Q. How do you know this specific light came with a 14 redundant safety chain? 15 A. Because that's part of the safety that the 16 manufacturers include when they put something 17 like this in the stream of commerce. That's kind 18 of like asking me how do you know that some type 19 of a press in a machine shop comes with a kill 20 switch or a light curtain, because that's the way 21 they're made and people frequently disarm and 22 disable and alter things like that. But if 23 you're positing that a fixture like this could 24 have come from a manufacturer with a UL 25 certification and not have a proper attachment	40 1 is that it's a 10-pound object purposely 2 positioned eight feet above the floor. It's not 3 properly secure, and then the business purposely 4 seated people underneath it in the dark. 5 Q. Right. And you've mentioned that a couple times. 6 My question to you again was whether you know the 7 manufacturer of this specific light and -- 8 A. Not -- 9 Q. -- what I'm hearing -- 10 A. -- not yet. 11 Q. -- okay. Not yet. Gotcha. Do you know whether 12 this specific light was included with a safety 13 chain or not? 14 A. I can say more likely than not, based on my 15 knowledge about the way the architectural 16 building products are manufactured that yes it 17 would have had that option available and then if 18 it -- they did chose not to use it, then they're 19 defeating the safety mechanism that comes with 20 the product. It goes back to the hierarchy of 21 accident prevention; design, guard and warn. So, 22 if you're going to stick something up above 23 people's heads, you have to design it in a safe 24 way and anticipate a lack of perfection sometimes 25 and have a redundant measure in case it fails.
39 1 ans safety chain, that's just not plausible. 2 Q. When was that -- well first of all, is that a 3 requirement from UL or is that a -- who 4 promulgates the fact that -- the requirement for 5 a redundant safety chain for these kind of light 6 fixtures? 7 A. Manufacturers include that. They're the ones 8 that design the fixture before they sell it, 9 before it goes in the stream of commerce. 10 Q. Do you know when manufacturers began including 11 safety chains on these kind of light fixtures? 12 A. No. 13 Q. Do you know the manufacturer of this specific 14 light? 15 A. I have given you an example of one that most 16 closely resembles it, but if you're asking me do 17 I know absolutely? Probably not, but I'm here as 18 a reasonable degree of certainty and I would say 19 that more likely than not the picture -- the 20 light fixture in the picture that I've been given 21 is substantially similar to the ones that I've 22 given you. So, if you're looking for some 23 variation between manufacturers that would make 24 one safer than the other, I think you're on a 25 rabbit hole. The point here that we're missing	41 1 Q. Do you know when this particular light was 2 manufactured? 3 A. The one that fell? No. 4 Q. Do you have a guess? 5 A. Well, I try not to guess. 6 Q. Do you know whether the DJ in question was the 7 first owner of this light or whether she bought 8 it from somebody else? 9 A. Did you say she? 10 Q. I did. 11 MR. LISKA: Objection. 12 A. I don't have an opinion about that. 13 Q. Okay. SWB66 does not depict a safety chain 14 attached to that light, right? 15 A. Well, I don't see one in the picture, and I think 16 that there's insufficient evidence to support a 17 claim that it didn't exist or didn't come with 18 one. 19 Q. You haven't seen one in this case, have you? 20 A. Not yet. 21 Q. You mentioned that that yoke allows the light to 22 be attached. How exactly does that work? 23 A. Well, it seems self evident that if you look at 24 the diagram, there's a flat metal strap that if 25 you don't turn it upside down you can attach it

42 1 to a structural element or a light bar on that 2 yoke. 3 Q. How specifically would that -- 4 A. It's the whole purpose of it. 5 Q. -- how specifically would that be done? Would it 6 be bolted? Would it be screwed into something? 7 A. Well, it depends on the substrate. Depends on 8 what you're attaching it to, but yeah it would be 9 fastened in a secure manner so that it was 10 stable. 11 Q. Okay. What would suffice to constitute a secure 12 manner of fastening to the speaker at issue in 13 this case to you? 14 A. Stability. 15 Q. Okay. As far as a specific material or method of 16 fastening, though, what would suffice for you? 17 A. An adequate attachment that would prevent it from 18 being unstable. 19 Q. What would that attachment look like to you? 20 A. Well, it could be what you said. 21 Q. Meaning a bolt or a screw? 22 A. It could be. 23 Q. What about adhesive? 24 A. Well, if you have a safety chain and the adhesive 25 fails, then it probably wouldn't fall, but I'm	44 1 light at issue in this case, are you? 2 A. No, I don't think that's even necessary. 3 Q. Why do you think that's unnecessary? 4 A. Because I don't -- did not know that you were 5 going to dispute that there was a stage light 6 sitting on a speaker above patrons heads. 7 Q. Okay. And my question to you is whether this is 8 the exact model of light that's at issue with 9 this case? 10 A. No, it -- I don't know if it's exact model. It 11 didn't fall because it was a particular model. 12 It fell because it was unstable. 13 Q. Different models can have different methods of 14 attachment, isn't that true? 15 A. That's a global statement that really doesn't 16 have any factual basis. The industry standard 17 for this kind of light is a yoke, which is what 18 you see on both of these. If you think it would 19 be helpful, I could overwhelm you with dozens of 20 examples. 21 Q. I don't think that's helpful. Different 22 manufacturers can have -- can design different 23 fitnesses or widths of those yokes, right? 24 A. It's a global statement. I don't know what -- 25 different manufacturers can do whatever you can
43 1 not sure that the adhesive is what's implied or 2 anticipated by the manufacturer. I think the 3 manufacturer expects that fixtures like this will 4 be adequately secure so they're stable. 5 Q. We'll mark your expert disclosures as Exhibit 1. 6 I'm turning over -- actually scratch. We'll mark 7 your expert disclosures as Exhibit 1. We'll mark 8 your CV, your rate sheet and your Rule 26(b) 9 disclosure as well as your invoices as Exhibit 2 10 collectively. 11 (DEFENDANT'S EXHIBIT 1 MARKED FOR IDENTIFICATION 12 PURPOSES (23 pages) - EXPERT DISCLOSURES) 13 (DEFENDANT'S EXHIBIT 2 MARKED FOR IDENTIFICATION 14 PURPOSES (21 pages) - CV, RATE SHEET, INVOICES, AND 15 RULE 26(B) DISCLOSURE) 16 Q. I'm turning now to what we'll mark as Exhibit 3, 17 which is your subfolder entitled research, and 18 these are those data sheets from manufacturers 19 that you mentioned previously. 20 (DEFENDANT'S EXHIBIT 3 MARKED FOR IDENTIFICATION 21 PURPOSES (4 pages) - DATA SHEETS) 22 Q. I want to look first at the one that you've put 23 forward from Leviton. Is it Leviton or Levitron? 24 Looks like Leviton. Okay. Now, you're not 25 representing that this was the specific model of	45 1 imagine, but at the end of the day the product 2 that they put in the stream of commerce has to 3 comply with industry standards and with safety. 4 Q. But you put forward these data sheets. Do you 5 know anything about the widths of the particular 6 yokes on either of these models of lights? The 7 dimensions of those yokes? 8 A. It's on the -- the Altman has a diagram that 9 shows the dimensions. 10 Q. Let me pull that up. I guess for clarity when 11 we're discussing the yoke, we're talking about 12 that kind of U-shaped metal piece that attaches 13 on either the -- sort of towards the rear of the 14 light, right? 15 A. It's a strap for attaching it to a structural 16 object that has a clamp on each side that allows 17 you to take the fixture and do this and turn it 18 because you want to point it at something. You 19 don't just lay it on a ledge upside down. 20 Q. And by do this, you mean you can kind of pivot 21 the light using that yoke, right? 22 A. You can pivot it up and down, and you can point 23 it. Correct. 24 Q. Those yokes have it looks to me like kind of some 25 sort of thumb screw, or I think you called it a

46 1 clamp on either end of it, right? 2 A. Yes. 3 Q. And using that, the user can lock down the yoke 4 to make the light refrain from pivoting or 5 turning back and forth, right? 6 A. Yes. 7 Q. Okay. And you said -- I'm looking at the Altman 8 now. And again we'll mark both of these Exhibit 9 3. And you said that there were dimensions of 10 the yoke. I'm not seeing any other than it looks 11 like a what essentially amounts to the 12 circumference of the light, meaning kind of the 13 length of the yoke. I don't see any measurement 14 of the thickness or of the dimension in the other 15 direction of the yoke that would make contact 16 with the substrate to which the light would be 17 placed or attached, right? Am I missing that 18 somewhere? 19 A. It's a flat steel -- it's described as a rigid 20 flat steel for par 56 and par 64, and it's made 21 out of a aluminum. I don't think that they've 22 given you the gauge of the metal. 23 Q. Nor have they given us the width of that metal on 24 the narrow dimension, right? 25 A. I don't see it.	48 1 you bought a trailer hitch for your truck to pull 2 a boat, it would have a chain on it. The people 3 who build a hitch, they're not going to come and 4 give you instruction on that in person. They're 5 going to give you written instructions. These 6 are just what we call technical data sheets about 7 the product. 8 Q. Right. So -- 9 A. If I bought this fixture, it would have 10 instructions with it. 11 Q. So, that's a no to my question. Nothing on these 12 data sheets pertains to installation or securing 13 these fixtures, right? 14 A. That's a correct statement, but it's misleading 15 because that's not the purpose of technical data 16 sheets. Let's go out and buy one before the 17 trial, and I'll bring the instructions with me. 18 Q. What instructions were included with the light at 19 issue with this case? 20 A. I don't know. 21 Q. The weights of the particular lights that you've 22 presented through these data sheets are 23 different, right? 24 A. Yes, they aren't all the same. That's what I 25 said earlier. You have different sizes,
47 1 Q. I don't see that any -- okay. I don't see that 2 anywhere either. And so, my question to you 3 again is -- was that those could differ between 4 manufacturers, right? The dimensions of those 5 yokes? 6 A. Well, of course if you've got a fixture that's 7 four inches in diameter versus one that's 12-inch 8 in diameter, it'll have to have a heavier yoke. 9 But you keep asking global questions about all 10 fixtures and all manufacturers, and what I take 11 issue with is not the size of the yoke, but that 12 it was sitting upside down unsecured over 13 someone's head. 14 Q. Where on either of these documents do you see any 15 direction from the manufacturers on how these 16 lights are to be installed or whether they're 17 supposed to be secured? 18 A. The manufacturer designs them to be safe. They 19 give you a mounting bracket and they build in 20 redundancy by virtue of the safety cable. It's 21 not their role to look over everyone's shoulder. 22 There's some expectation that people who buy a 23 product like this will be self educated and 24 understand how to use it in a safe manner because 25 these types of things come with instructions. If	49 1 different diameters, different lengths. 2 Q. Slightly different designs, right? 3 A. Yes. 4 Q. That could vary from manufacturer to 5 manufacturer? 6 A. There could be subtleties, but the basic design 7 doesn't vary. 8 Q. In the photographs of these two lights that are 9 included, do you see a safety chain? 10 A. On what photographs? 11 Q. Photographs on these two particular lights that 12 are included on the data sheets? 13 A. Oh, I don't. It's referenced in the data. 14 Q. Where is that referenced? 15 A. I lost the audio again. 16 Q. Where is that referenced in the data? 17 A. On the Altman, it's on the first page under 18 features. It says, color frame, wire mesh, 19 safety screen and safety cable with spring clip 20 included. On the Leviton, it's on the second 21 page under accessories. It says, safety cable 22 next to where it says TASC000. Above that it 23 says, light duty black steel sequin. It's a list 24 of accessories that come with this. This -- as I 25 said before, I've given you technical data sheets

50 1 to understand my thought process on identifying 2 something that most closely resembles what's in 3 photograph SWB66. That doesn't mean that -- 4 Q. Is there any practical difference in a safety 5 cable and a safety chain? 6 A. I think it's the same thing. 7 Q. Okay. Would that be basically a braided wire 8 cable? 9 A. It could be a cable or a wire. The point is, 10 it's something as a redundant measure if the 11 primary fastener isn't properly installed or 12 fails. 13 Q. You're not here to make the contention that every 14 single manufacturer of these lights in the world 15 includes either a chain or a cable with them, 16 right? 17 A. I don't see how that's even relevant to what 18 happened here. I'm here to offer expert opinions 19 about an unstable object above someone who's in a 20 business who is seated underneath it and to 21 explain the physics of its mass and weight and to 22 explain why the business owner should have been 23 involved in the setup and was responsible for 24 what happened. I wasn't hired to research every 25 lighting manufacturer.	52 1 changed light bulbs in our house, and we know 2 that they're not that heavy to pick up a 3 lightbulb. So, factually putting a lightbulb in, 4 one of these would add mass, therefore, it would 5 add weight. I don't think it would significantly 6 change the overall weight of the object, but yeah 7 it has mass to it so it has weight. 8 Q. It seems like a fairly wide diameter fixture. 9 Could you put a much smaller lightbulb in that 10 fixture with the same socket type? 11 A. The base of the lightbulb would have to match the 12 socket. They're intended for the type of 13 fixtures that I wrote about in my disclosure, 14 because they're used in theatrical presentations. 15 So I guess, we could sit here and come up with 16 all kinds of hypotheticals, but it's really not 17 relevant to why it hit her on the head. 18 Q. Do you know what kind of lightbulb was in that 19 fixture when it hit Ms. Eddins? 20 A. I don't know what kind of lightbulb was installed 21 in the fixture. 22 (DEFENDANT'S EXHIBIT 4 MARKED FOR IDENTIFICATION 23 PURPOSES (4 pages) - PHOTOS) 24 Q. Looking again at SWB66, we'll mark that Exhibit 4 25 just for the record, and it looks like there's
51 1 Q. You produced documentation on lighting, so that's 2 a no to my question. You're not saying that 3 every lighting manufacturer in the world does 4 that, right? 5 A. I don't make global opinions about anything. I 6 produced the data sheets because those are facts 7 that will help you, Mr. Liska and a jury 8 understand that this is closely resembling the 9 picture in SWB66, because none of us have the 10 actual light to examine. 11 Q. You'd agree with me that the weight of these 12 light fixtures could vary with the type of bulb 13 that's installed with them, correct? 14 A. No, I think that would be an insignificant 15 factor. I think the weight varies from the 16 overall size because they're mostly made from 17 steel or aluminum. So if you compare one, that's 18 four inches in diameter with one that's 12 inches 19 in diameter, it's going to be heavier. 20 Q. Okay. And I appreciate your discussion on the 21 significance of it. I think that makes sense, 22 but as far as an answer to the question of 23 whether or not that could change the weight, and 24 the answer is yes, right? 25 A. Well, let's -- both of us agree that we've	53 1 some kind of phalange or protrusion on the front 2 end of that light fixture. What is that? 3 A. That's what you see on the Altman data sheet, 4 which is attached to the cylindrical structure if 5 you wanted to slide something into there to 6 change the color or to diffuse the light. I 7 guess the best way to describe it may be is a 8 bracket or a phalange. 9 Q. Okay. 10 A. Do you see the one on the Altman? 11 Q. I do. 12 A. Okay. If you need to collect your thoughts, I 13 will take a short break and get a cup of coffee. 14 Q. Sure. You want to take 10? 15 A. Five's fine. 16 VIDEOGRAPHER: We're going off the record. 17 The time is 12:11 p.m. 18 (Off the Record) 19 VIDEOGRAPHER: We're back on the record. 20 The time is 12:25 p.m. 21 EXAMINATION CONTINUES BY MR. NEINAST: 22 Q. Mr. Williams, in paragraph -- I lost my page here 23 -- paragraph 11, you begin a discussion of 24 photogrammetry and some measurements that you've 25 estimated in this case. I haven't seen any

54 1 documentation of those measurements or any 2 software printouts. How did you perform -- or 3 did you perform any photometric analysis of this 4 -- the scene? 5 A. I did. I looked at different aspects of 6 photographs and ultimately received the 7 deposition from Haines, which I didn't have at 8 the time, to try to get a reliable estimate for 9 the height so there was some basis for 10 mathematical calculations. So, the picture -- 11 unfortunately we're on Zoom, so I'll just have to 12 pull this up, but this photograph that I gave 13 you, do you have a copy of that? 14 Q. I do. Hold on just one second, and I'll pull it 15 up to make sure we're looking at the same 16 photograph. And I think we already marked these 17 photographs as an exhibit. Are you on -- I've 18 got two files here; one's labeled drag brunch for 19 pride and one's labeled Facebook 8416. Which one 20 are you looking at? 21 A. I think the drag brunch was a poster that was on 22 the internet to advertise that event. This was a 23 photograph of people seated at tables with a 24 performer standing in proximity to a person at 25 the table. So, I looked at the black object you	56 1 and this is certainly an estimate, but she said 2 four to six feet. So, I think looking at 3 everything that's available that I've got, a 4 reasonable factual basis to say that it's between 5 four and six feet. 6 Q. Did you generate any kind of software printout 7 when you performed that photogrammetric analysis? 8 A. Sometimes photogrammetry can be measuring 9 distances on pictures and applying a ratio. If I 10 have a picture of a curb in a photograph and I 11 know it's a six-inch high curb, I can compare 12 that in the photograph to something else as long 13 as there's no parallax. 14 Q. So, did you do this analysis by hand or did you 15 use software? 16 A. I did it by hand. 17 Q. Okay. I haven't seen any of your calculations or 18 measurements produced in your file. 19 A. They're not in my file. I could produce that to 20 writing if it'd be helpful. I put it into the 21 disclosure based on the examination of these two 22 pictures. I used those two pictures. I used the 23 Altman technical data sheet, and then I 24 ultimately read what Haines said. So, I think 25 I'm --
55 1 see on the column in the background, and I looked 2 at vertical measurements from -- I'm going to put 3 my finger on here if that's helpful to you, call 4 that where the tent or the awning stops. I 5 looked at vertical measurements from that going 6 down towards the floor, and I measured it to 7 different people's heads and compared that with 8 this seated person from antimorphic charts, and 9 it looks like architectural graphic standards. I 10 was given the information that Eddins is five 11 foot 11. I was able to estimate approximately 12 where her head would have been. I was able to 13 look at the SWB66 and understand that the 14 building column you see that more likely is 15 either a five and a half inch wide column or 16 larger, because of the height and the mass of 17 that structure. I looked at the physical 18 dimension of that light that's placed on there. 19 I took all these different pieces together and 20 estimated that the light was at least eight foot 21 above the floor, and paragraph 12 said that based 22 on her height that it would have been about four 23 feet -- her head would have been about four feet 24 above the floor and then recently Haines was 25 asked the same question, and I think she said --	57 1 Q. Sorry. I cut you off there. 2 A. I think it's reasonable to estimate the height. 3 I don't think it requires more accuracy to 4 determine whether it hit her on the head or not. 5 The purpose for the exercise was to demonstrate 6 in paragraph 26 that the height and weight of an 7 object produces a hazard. So, when you have 8 something suspended above your head, there's a 9 relationship between the distance of the object 10 and the speed or velocity which it might strike 11 you, because gravity is constant. Right? 12 Q. Yeah. I understand that. My question to you is 13 where's your data, and you said you can reduce it 14 to writing. Did you make any writings when you 15 measured this based on these photographs? 16 A. The data are the photographs. 17 Q. Okay. 18 A. So I measured -- 19 Q. You don't have any separate written measurements 20 or data that you've made based on these 21 photographs other than what's contained in your 22 disclosures. Is that a fair statement? 23 A. In my file I don't. I reduced it into the 24 disclosure. If you would like an explanation of 25 that process, I could certainly do it.

58 1 Q. I think you've explained your process, and I'm 2 following you on that. What I'm curious about is 3 the data and the numbers that you used to arrive 4 at the numbers in your disclosures. And what I'm 5 hearing is, there's nothing out there written 6 down. Right? 7 A. No, that's misleading. 8 Q. Okay. Then where is -- 9 A. What I've -- well, what we look at -- what I look 10 at to say that I had sufficient facts and data 11 were the things that I was given and the things 12 that I found via internet research. So, I took 13 measurements on the photographs to estimate the 14 size of physical objects. Those are estimates, 15 they're not data. The data and the facts are 16 things that are on pieces of paper that we can 17 argue about, but I took measurements to determine 18 what I thought was a reasonable and reliable 19 estimate of those distances. 20 Q. Okay. 21 A. I don't think anybody's going to dispute that 22 she's five foot 11 and that her head would have 23 been in the magnitude of at least four feet off 24 the floor. 25 Q. And I don't see any need in a semantic argument	60 1 photographs and made calculations, and then I 2 wrote the text. 3 Q. Okay. I understand. The photographs that you've 4 produced, these internet photographs, they don't 5 show the floor around that pole, do they? 6 A. No. 7 Q. You don't know how tall those people sitted -- 8 seated around that pole are, do you? 9 A. I'm sure they're all different, but I wasn't 10 trying to determine everyone's height. I was 11 trying to look at relationships between 12 distances, and so I have her height -- 13 Q. So no, you don't know how tall those folks are, 14 do you? 15 A. We don't know how tall any of those people are, 16 that's right. 17 Q. And you told me earlier that you don't know how 18 this premises changed from 2016 to 2017, do you? 19 A. I haven't been given facts about the condition or 20 the premises or -- I have read testimony about 21 things that they do in terms of weekly events and 22 what they do when it's cold outside. I don't 23 have facts about something that's changed in the 24 building. 25 Q. You are aware that there was a couch present that
59 1 about the definition of measurement versus the 2 definition of data. My question to you is, where 3 are those measurements written down? 4 A. They are not written down. They were transferred 5 into the work product that went into this 6 disclosure. 7 Q. Okay. Have you made any measurements based on 8 these photographs and the video other than those 9 that are included in your disclosures? 10 A. I made measurements that allowed me to write the 11 paragraphs about distances and heights, because I 12 was not at the facility to take any measurements. 13 So, paragraph 12 says that I was given facts 14 about her height. I looked at anthropomorphic 15 charts to determine -- I'm five 11, so I 16 estimated that her head would have been about 17 four feet above the floor. I think that's 18 reliable enough for the purposes of my testimony. 19 Q. We're not talking about the reliability of your 20 methodology here. My question to you is, are 21 there any other written measurements that you 22 have made related to these photographs other than 23 those that you've included in your disclosures? 24 It's a very simple question. 25 A. I didn't write them down. I examined the	61 1 Ms. Eddins and Ms. Haines were seated on at the 2 time this light fell on them, right? 3 A. Yes. 4 Q. Do you know how tall that couch was? 5 A. No. 6 Q. Do you know how tall the chairs are in these 7 internet photographs on which the -- what appear 8 to be patrons are seated around that pole at the 9 speaker? 10 A. I haven't measured those chairs. 11 Q. Do you know if this photograph that I'm looking 12 at, that we've been talking about, this internet 13 photograph, do you know if that was taken from an 14 elevated angle at all or whether it was taken 15 from ground level? 16 A. I don't know. 17 (DEFENDANT'S EXHIBIT 5 MARKED FOR IDENTIFICATION 18 PURPOSES (194 pages) - BUILDING CODES) 19 Q. Moving on now to your opinions related to various 20 building codes, and we'll collectively mark these 21 codes as Exhibit 5 to your deposition. Beginning 22 with the 2015 international building code, and it 23 looks like you produced a portion of it. It 24 looks like it's from chapter three. Has the 2015 25 version of the International Building Code been

62 1 adopted by Charleston County? 2 A. The adoption of building codes is by the building 3 code council at a state level, LLR. So, LLR in 4 the state of South Carolina adopts the family of 5 ICC codes. Some of them are mandatory and some 6 of them are permissive. It's a statewide -- 7 Q. My understanding is codes like the IPMC can be 8 permissive from county to county. Is the 2015 -- 9 well first of all, has the 2015 IBC been adopted 10 by LLR for the state of South Carolina? 11 A. The family of ICC codes was adopted and has 12 through various cycles going back through many 13 years -- and then they put them in categories so 14 that building code is mandatory and the property 15 maintenance code is permissive. That means what 16 you just said, that each county in the state of 17 South Carolina can determine whether they're 18 going to, I guess, codify it or adopt it by 19 statute. That doesn't mean that the state -- at 20 a state level, they haven't adopted the whole 21 family. They just define them differently. 22 Q. Right. Right. So, a county -- if a code is 23 permissive, a county can choose to not codify 24 that as a required code in that county? Isn't 25 that true?	64 1 Q. Okay. Is that the most recent version that's 2 been adopted by LLR in South Carolina? 3 A. Probably not. I used the 2015 because the date 4 of the incident -- I think the 2018 is current, 5 but the -- if you don't mind an explanation, the 6 purpose of paragraph 18 and 19 is to describe an 7 occupancy group and the characteristics of that 8 occupancy group go back many, many years and 9 decades prior to the ICC codes ever even being 10 promulgated. You can go back into the standard 11 building code and find the same information. 12 Q. That is a helpful explanation. So, define an 13 occupancy group for me. What exactly is an 14 occupancy or assembly group? 15 A. Well, building codes classify structures that are 16 inhabited by their occupancy and also by their 17 structural system, so that the underlying premise 18 is safety to life, health, safety and welfare. 19 If you go back in history and you look at all the 20 tragedies where many people died in a building, 21 it's because the building didn't resist -- didn't 22 have adequate fire resistance, didn't have fire 23 suppression systems. So, the underlying 24 principle of dividing structures into occupancies 25 is to understand the people that will be in the
63 1 A. I don't know legally, but I would say that if 2 they choose not to adopt a permissive code, it's 3 still recognized nationally. It's still 4 relevant, and some counties in South Carolina 5 have adopted it and some haven't. 6 Q. Okay. But the county -- on the county level, 7 that is a choice that is made regarding 8 permissive codes, right? 9 A. That's correct. 10 Q. Presumably by the county council or commissioners 11 or whomever, right? 12 A. I don't know. I'm not -- 13 Q. I don't know either. 14 A. I know that Williamsburg County's adopted it and 15 other counties. It -- I mean, it doesn't affect 16 my opinions as a safety professional when 17 somebody says we're going to codify that. It's 18 still a standard of care to maintain a safe 19 premises. 20 Q. Okay. Is the IBC a permissive or mandatory code 21 in South Carolina? 22 A. It's a mandatory code. 23 Q. Is the 2015 version the most recent version of 24 the IBC? 25 A. That's been published in anywhere, no.	65 1 building and the activities they'll be engaged 2 in. So, a prison and a nursing home are both 3 institutional use groups, I2 and I3, and you 4 think well a prison and a nursing home have 5 nothing in common, but actually one occupancy 6 group can't respond to emergency because they're 7 incapacitated, the other one can't respond 8 because they're incarcerated. So, the A stands 9 for a place where people assemble for various 10 purposes. A church is an A occupancy, but it's 11 only used on Sundays most of the time, so it has 12 a lower level of hazard than a restaurant or a 13 nightclub for A use. And the purpose of 14 paragraph 20 -- excuse me, 19 -- 18, 19 and 20 is 15 not about a provision of a code that's violated, 16 it's about understanding the risk that's inherent 17 with this occupancy. Does that make sense? 18 Q. It does. It does. And so, what I'm -- if I'm 19 understanding you correctly, you've put forward 20 this section of the IBC to explain the occupancy 21 classification of Tabulli? 22 A. It's to explain and in some respects to offer 23 what's in the commentary. Codes have 24 commentaries to them just like law books. So, 25 paragraph 19 gives you an explanation of

66 1 something to be expected in a occupancy that's 2 darkened spaces in nightclubs and theaters serve 3 to increase hazards. So, that's just a way of 4 putting it in context, that a Walmart would be a 5 retail -- a mercantile occupancy. You wouldn't 6 expect people to be sitting on couches in Walmart 7 in the dark, right? 8 Q. So what the code is saying, as a gross 9 oversimplification, is these are the general 10 types of hazards you can expect with respect to 11 the type of use that is expected of a particular 12 building? 13 A. Right. The type of occupancy, how the occupants 14 can respond to emergency and evacuate the 15 building, whether they can find an exit, whether 16 they can identify the means of egress quickly. 17 It's about life safety. 18 Q. Right. So, do you have any opinions with respect 19 to any violations of the IBC in this case? 20 A. The purpose for this discussion, I'd say it 21 starts in 18 and it follows all the way through 22 20. The purpose is to explain to you that a 23 business owner with this occupancy should have a 24 heightened sense of concern and awareness about 25 placing people in the dark that they're serving	68 1 premises. 2 Q. And we can discuss those in a sec. We'll get to 3 them. But my question to you was which specific 4 sections of the International Building Code did 5 Tabbuli violate with respect to this case? 6 A. That's not -- 7 Q. If the answer's none, the answer's none. 8 A. Well, there are no specific provisions and -- 9 Q. Okay. And I appreciate what you're saying about 10 the commentary and general statements regarding 11 the hazards of a premises like this, but if the 12 question are there any specific sections that 13 you're going to point to in the IBC that they 14 violated, is the answer no? 15 MR. LISKA: I'm going to object -- 16 A. I will not -- 17 MR. LISKA: -- he needs to go ahead and 18 answer that question that you interrupted. 19 A. I'm not going to -- 20 Q. I apologize. 21 A. I'm not going to go to trial and whip out the 22 code provision and surprise you out of IBC, but 23 the way the question's phrased, if I say yes, 24 then I've ruled out everything from cover to the 25 back page. And the point I was making is that
67 1 food and beverages, and sometimes alcoholic 2 beverages, and that they're putting on a 3 presentation that has noise and activity. So, 4 it's a visually rich environment in the dark, and 5 it's intended to capture your attention. So, 6 having understood all those things, surely you 7 wouldn't purposely sit somebody underneath a 10- 8 pound object that you haven't been involved with 9 and expect that this not to happen. It's the 10 same as Chapin saying how they put up a very 11 large tent and they rented this tent. Well, I'm 12 sure that the tent didn't fall down on people. 13 Even though in spite of the fact that they didn't 14 own it, they still had to make sure it was safe. 15 Q. Okay. And as far as any specific sections of the 16 IBC that have been violated in this case or you 17 contend to have been violated in this case, have 18 you identified any? 19 A. Well, I think a better way of saying that is, the 20 building code references things like a safe means 21 of egress, and it references other codes. I 22 think the best place for us to focus on what 23 you're saying is a provision would be the 24 National Electric Code, which was violated, and 25 the Property Maintenance Code to maintain a safe	69 1 there is implicit obligation on a business owner 2 to maintain a safe means of egress. That's a 3 performance requirement or performance 4 specification. It's not a specific code 5 provision with a number attached to it. So, I'm 6 going to answer your question and say yes, you're 7 correct. I'm not going to cite a specific 8 provision. We can get that off the table. I'm 9 not going to agree with you, though, that putting 10 a 10-pound object over people in the dark isn't 11 in some manner making the means of egress less 12 safe had there been an emergency. So -- and 13 that's a code issue, and you're not old enough to 14 remember 1970 and the WHO concert in Cincinnati, 15 but 13 people died at that concert. So, there's 16 just an implicit requirement for performance 17 under the building code that you maintain a safe 18 means of egress. It's not a specific page or 19 section I'm going to cite. 20 Q. How does placing the light on top of a speaker at 21 a height above head height make egress less safe? 22 A. Because it's a darkened space and people are 23 close together. There are ill-defined aisle ways 24 and passageways, and you know that in our society 25 people are typically expected not to get up in a

70 1 theater in the middle of a film and yell fire. 2 That's not really covered under the freedom of 3 speech, right? So if there was an emergency 4 during this drag show and somebody's costume had 5 rayon on it, came close to a votive candle on a 6 table and they caught on fire, everyone in that 7 place is going to suddenly consider how do we 8 evacuate. So all I'm saying is, placing 9 something above people that had a cord attached 10 to it is implicitly decreasing the safety in a 11 case -- just in case there was a need to evacuate 12 that area. It's not different than the tent. If 13 they rented a tent, it should be adequately 14 staked and set up so that if they experience 15 higher than normal winds it isn't going to blow 16 off or fall on everyone. 17 Q. Okay. And I'm just not following you here. I 18 mean, if the cord wasn't in anyone's way or the 19 light wasn't in anyone's way if they're egressing 20 this part of the restaurant, how does it make 21 egress less safe? 22 A. Because you've introduced an object that has the 23 potential to fall and hit somebody, and neither 24 you nor I or anyone can predict the behavior of 25 people and the direction they'll take in an	72 1 Eddins or Ms. Haines were trying to egress the 2 restaurant with this happened -- 3 A. No. 4 Q. -- right? 5 A. No, I'm not. I'm just telling you that when you 6 ask me a global question about there's nothing in 7 the building code that's relevant to this, I 8 can't agree, but I didn't put that in my 9 disclosure to cite a provision. I put it in the 10 disclosure to educate you on the fact that this 11 particular assembly occupancy has an elevated 12 level of hazards. 13 Q. Do you know if this specific light was motorized 14 in any way? 15 A. I don't think that's a plausible hypothetical. 16 Q. And you would agree with me that if that light is 17 placed on top of a speaker until some kind of 18 force acts upon that light, it's a stationary 19 object, right? 20 A. Are we going into Newtonian physics now? 21 Q. Sure. 22 A. Stationary doesn't imply stable. I have seen 23 cases where merchandise in retail environments is 24 stationary, it's not flying through the air, but 25 it doesn't necessarily require that someone touch
71 1 emergency. All we can say is -- architects and 2 safety professionals, is that they will all act 3 in unison and they will act in an emergency to 4 evacuate the building. It won't be orderly. 5 Q. Okay. So, what you're saying is if someone was 6 trying to egress the restaurant and this light 7 was somehow bumped into and it fell, then it 8 could be a hazard to egress? 9 A. Well, it is a hazard when it's unsecured, but 10 yes. I'm saying that when you add hazardous 11 elements in an assembly occupancy, you're not 12 considering what might happen if everyone in this 13 room suddenly jumped up and tried to run out and 14 find an exit. It would be different than an 15 orderly process. When you go into a theater, you 16 go in with your wife or girlfriend, right? Two 17 at a time. You look for a seat, you sit down. 18 What happens when the movie's over? Everyone 19 gets up together. They walk out, slowly. They 20 take their time. But if I went in and got in the 21 back row and yell fire, what do you think's going 22 to happen? You wouldn't sit there and wait for 23 the credits. 24 Q. Okay. And just for the sake of clarity of the 25 record, you're not making any contention that Ms.	73 1 it for it to fall. What causes things to fall is 2 gravity. 3 Q. Right. And that light's not going to move around 4 if it's on a cord, right? 5 A. That's correct. 6 Q. There has to be some kind of exterior force that 7 acts upon it before it falls? 8 A. Well, either acts on it or acts on some part of 9 it. I mean, it sounds like you're heading into 10 some sort of differential diagnosis about the 11 probable causes. 12 Q. Did you see anyone bump into that pole or that 13 speaker in that video? In the surveillance 14 video? 15 A. I didn't get all of that audio. 16 Q. Did you see anyone make contact with that speaker 17 or that pole in the video? 18 A. I don't know. I didn't see it, but I think I 19 only saw about 10 or 12 seconds. 20 Q. Okay. Did you see anyone -- 21 A. I can't rule it out. 22 Q. Did you see anyone make contact with that light 23 prior to it falling on Ms. Eddins? 24 A. I can't rule it out. 25 Q. Do you know if music was playing on that --

74 1 through that speaker at the time the light fell? 2 A. No. 3 Q. Do you know if -- sorry, backing up one question. 4 By you can't rule it out, I mean, the answer to 5 that is no, right? You don't see anybody touch 6 the light in the video before it falls, do you? 7 A. Well, I didn't see the video in a broader 8 context, and I think we discussed earlier that 9 the light actually wasn't visible in the video, 10 so asking me if I saw something on a video clip, 11 I guess I can say no I didn't see it, but it -- 12 that doesn't mean that it's improbable. 13 Q. Gotcha. You don't know at what volume any music 14 may have been playing on that speaker, do you? 15 A. No. 16 Q. You don't know how long that light was placed on 17 that speaker, do you? 18 A. I can estimate the duration that it had been in 19 there. I think that's been given to both of us 20 in the testimony. We know what time it happened 21 and we know what time the -- Chapin said they 22 normally come in between 3:00 and 4:00. Show 23 didn't start til 10:00, so I can't agree with 24 that. I think that it was probably there at 25 least six hours.	76 1 that you produced chapter six. Do you know if 2 Charleston County has adopted the 2015 IPMC? 3 A. I don't know, but I doubt it. 4 Q. Why do you doubt it? 5 A. Pardon me? 6 Q. Why do you doubt it? 7 A. I said, I don't know the answer to your question, 8 but I don't think they have adopted or codified 9 it. I'd be happy to research that. 10 Q. Do you know when the IPMC was last updated? 11 A. 2018. 12 Q. When a county in South Carolina chooses to adopt 13 or not adopt a given permissive code, can they 14 make the choice to adopt part of it or is the 15 only choice available to the county to adopt it 16 in full or not adopt it? 17 A. Well, it's -- the procedure for all of them is to 18 have amendments. So, when you talk about the way 19 we really should be talking is that there's a 20 South Carolina Building Code, which is the IBC 21 with South Carolina amendments. But many people 22 just refer to the code as the IBC, because most 23 states like South Carolina and North Carolina, 24 they don't get a blank sheet of paper out and 25 write the code from scratch. They adopt what's
75 1 Q. But you don't know if music had been playing at 2 any point prior to the show beginning? 3 A. I haven't studied anything about the music. 4 Q. Do you know if this particular DJ had placed the 5 light on this speaker in the past? 6 A. I don't know the DJ or the past. I only know the 7 facts that you and I have in front of us. We'd 8 be speculating. 9 Q. Right. Have you ever hired a DJ personally? 10 A. No. 11 Q. Have you ever been present in a restaurant in 12 Charleston County when a DJ was playing? 13 A. I don't recall if there was a DJ. I tend to go 14 to places where there's a jazz quartet like High 15 Cotton or a couple of instruments like Paul's. I 16 mean, the idea at my age of going some place with 17 a DJ means it's going to be pretty deafening and 18 probably not the kind of music I grew up 19 listening to. 20 Q. Actually, we can agree on that. I'm right there 21 with you. Do you know if any other DJs in the 22 Charleston area use these same kind of lights? 23 A. I don't have any knowledge about other DJs. 24 Q. I'm turning to the second code section that you 25 produced, which is the 2015 IPMC, and it appears	77 1 called model codes and there used to be three 2 legacy codes. So, most people just get the model 3 ICC codes and they adopt it and if they want to 4 modify a paragraph, they do the amendments. So 5 they could, if somebody wanted to, amend the 6 IPMC. They could. 7 Q. Okay. And have you seen those kinds of 8 amendments promulgated on the county level 9 before, or is that typically done on the state 10 level? 11 A. You know, I work in 10 states and I've seen 12 everything you can imagine through Tennessee and 13 Mississippi and Louisiana, Alabama and Georgia 14 and Carolinas. There's -- I couldn't answer that 15 to say that anything's consistent. 16 Q. Okay. Is that something you've seen in the past? 17 The county putting forth its own amendments to a 18 property management code or a building code? 19 A. I've seen examples of cities and counties 20 creating or adopting model codes because they 21 want a higher level of code provisions as opposed 22 to the state. The best example is Mississippi 23 made the IBC mandatory, but then the legislation 24 said, you can choose whether you adopt it or not 25 at a county level. So, they took all the teeth

78 1 out of it. 2 Q. I'm looking at the commentary section that you've 3 enclosed within paragraph 38 of your disclosures. 4 It says, "It is the responsibility of the 5 building owner or operator to provide and safely 6 maintain the electrical facilities required 7 herein." Was any part of this lighting fixture 8 that we've been talking about today a required 9 electrical facility? What I mean by that is, was 10 it in any way mandatory for the operation of the 11 restaurant? 12 A. No. It's part of the drag show. It's part of 13 the atmosphere that people are creating to get 14 what they talked about in the handbook as the 15 customer experience. 16 Q. You've cited under section 604.3, a hazard 17 condition that the IPMC appears to describe as 18 inadequately supported devices, wiring or 19 equipment and around that bullet point under 20 section 604.3 there are, it looks to be, I don't 21 know, approximately 10/12 other bullet points 22 that describe possible hazards. Are you going to 23 offer any opinions about other hazards that may 24 have been present other than your contention that 25 this light was inadequately supported?	80 1 the county -- solely the county, I think -- I 2 look at the word safe and approved and 3 subjectively say that there are many sources one 4 could look at to see if that was safe or not. 5 Q. What bodies would you look at for approval of 6 temporary lighting equipment? 7 A. I wouldn't put it that way. If the manufacturer 8 publishes technical data sheets that instructs 9 you to do certain things, take certain actions, 10 and you don't do it, then you're not installing 11 in an approved manner. I don't think the phrase 12 safe and approved manner means that it needs to 13 be evaluated by a code official. I think that 14 that's one possibility, but I don't think that -- 15 I think you're trying to make a distinction, a 16 very narrow distinction. Safe and approved means 17 all the people that would have published guidance 18 on this, the manufacturer, the NECESSARILY, I 19 don't think the building department is going to 20 be involved in that to the extent that you're 21 suggesting. 22 Q. Well, I'm not trying to suggest anything here. 23 There was some question with Mr. Rivenbark's 24 deposition last week about whether or not this 25 was subject to a code inspection. I mean, you're
79 1 A. No, it didn't fall because it was a shock hazard, 2 and it didn't fall because there was improper 3 fusing. It fell because it wasn't properly 4 attached. 5 Q. So, the only bullet point we're looking at there 6 is the fact that it was -- again your contention 7 that it's adequately supported, right? 8 A. Yes. 9 Q. Okay. Are there any other -- other than 604.3 10 and I guess 605.1, are there any other sections 11 of the IPMC that you're going to claim at trial 12 that Tabbuli violated? 13 A. No. 14 Q. Okay. And 605.1 says with respect to 15 installation of electrical equipment, that it 16 must be properly installed and maintained in a 17 safe and italicized, manner, unitalicized. Are 18 you aware of any -- actually scratch that. And 19 then it appears to look at and incorporate the 20 National Electrical Code, NFPA 70. Are you aware 21 of any approval process that is typically done in 22 Charleston County with respect to temporary stage 23 lighting? 24 A. No, and I think that if you're implying that the 25 word approved in 605.1 is suggesting that that is	81 1 not suggesting that in any way after this DJ came 2 in at 3:00, Tabbuli should have gone down to code 3 compliance for Charleston County and said, we've 4 got to get a code inspector out here to look at 5 this temporary lighting, right? 6 A. That's preposterous. 7 MR. LISKA: Object to the form. 8 A. I'm saying that it's the business owner's 9 responsibility, just like it was when they rented 10 a tent, to be involved in what goes on in the 11 building. To be involved in the set up and 12 involved in the supervision and the knowledge. 13 They had plenty of time to find it, and to say 14 that we're not responsible because we don't own 15 it is preposterous. They didn't need to go to 16 the code department. I mean, the handbook 17 instructs them to use common sense about safety, 18 exercise caution. So -- and Chapin testified 19 after the fact that if she'd have known that, she 20 would have made them take it off. It's not that 21 complicated. It's a pretty simple case. 22 Q. Other than the fact that you're claiming that 23 this light was unsecured, are there any other 24 hazardous conditions present there? 25 A. Present where? In the entire --

82 1 Q. With respect to the light. 2 A. Specifically with respect to the light, I'm not 3 aware of how it was wired or plugged in, but I'm 4 not aware of any other hazards. The hazards is - 5 - the hazard is the mass and weight when you 6 evaluate in the context of the height. So if I 7 have a hundred-pound tree branch that's failing 8 and it looks like it's going to break and fall 9 off, I'll barricade the ground underneath it. 10 It's still a hazard, but it's not dangerous if 11 you can't walk under it. Setting a 10-pound 12 object eight foot off the floor creates a hazard 13 because of its mass and weight. If you had 14 barricaded it and you hadn't invited people to 15 sit right underneath it, then it would have just 16 fallen on the cushions. You understand there's a 17 difference between hazard and danger? 18 Q. What about securing the light? Would that have 19 remediated the hazardous nature of the condition 20 to you? 21 A. If it was adequately secure, then the hazard of 22 it falling is not present. You can't take away 23 gravity. If you take a 10-pound object and place 24 it eight foot over someone's head and you ensure 25 that it's adequately secure and you have a	84 1 one looks to be a good bit shorter. Is the 2 shorter section included within the longer file 3 as well? 4 A. It is. I just probably did that out of an 5 abundance of enthusiasm. 6 Q. What are your opinions related to the national 7 electrical code as it pertains to this case? 8 A. They are set forth in the disclosure in the 9 paragraphs starting with 28, 29 and of course 10 standard of care -- it evolves into the standard 11 of care in 30 and 31. 12 Q. Okay. AS a global question, have you reached any 13 opinions regarding this case other than those 14 that have been included within your disclosures? 15 A. Do I have other opinions in addition to what's in 16 the disclosure? 17 Q. Right. 18 A. No, not at this time. No. 19 Q. What work do you anticipate doing on this case in 20 the future before trial? 21 A. It depends. 22 Q. What does it depend on? 23 A. If you hire an expert. If my client requests me 24 -- that I do something else. I don't anticipate 25 -- as I sit here today, I don't anticipate
83 1 redundant chain or cable in case it fails, then 2 that's called hazard mitigation. 3 Q. Do you have any opinions on the speaker -- the 4 placement or attachment of the speaker? Was that 5 in any way hazardous? 6 A. I don't have any opinions about the speaker other 7 than it provided a convenient ledge. 8 Q. The speaker probably weighs a lot more than that 9 light, right? 10 A. Oh, I would imagine so if it's built out of wood. 11 Yeah. 12 Q. How -- 13 A. It hasn't fallen though. 14 Q. Do you know how that speaker was attached to that 15 pole? 16 A. I don't. 17 Q. Do you know who attached that speaker to the 18 pole? 19 A. No. 20 Q. Moving to -- 21 A. Your audio's -- 22 Q. Here, I'm moving to the next section, code 23 section we have and it looks like you sent two 24 separate files related to the National Electrical 25 Code. One is about 200 pages or 170 pages, and	85 1 anything. I mean, as I sit here today, I'm ready 2 to go to trial tomorrow. Let's go. Are you even 3 having trials? 4 Q. What's that? 5 A. Are you even having trials right now? 6 Q. We're having trials. Oh, yeah. Yeah. We tried 7 a case about three weeks ago. 8 A. Good. I miss it. 9 Q. I know. Yeah. We need to get back in the 10 courtroom. Fortunately, it looks like the docket 11 is finally clearing out a bit and Charleston's in 12 kind of a weird situation, but at least up here 13 we're having them back in person. Now, you're 14 not contending that there's anything inherently 15 wrong with using portable or temporary light 16 fixtures, right? 17 A. If they're installed safely? Is that part of 18 your question? 19 Q. Right. Right. Right. 20 A. Correct. 21 Q. It's only when those fixtures are installed in an 22 unsafe manner that they may become a hazard, 23 right? 24 A. That's true with anything if you put it over 25 someone's head.

86 1 Q. Right. I'm looking at -- well scratch that. 2 What violations of the National Electrical Code 3 do you contend that Tabbuli committed on July 4 20th? 5 A. Section 520.10, as referenced, as well as section 6 520.63 B as in boy. Do you need help finding 7 them? 8 Q. No, I don't. We'll start with 520.10. 9 A. Page 70-484. 10 Q. Right. How did Tabbuli violate section 520.10? 11 A. Well, it says provided the equipment is 12 supervised while energized and barriered from the 13 general public. Haven't seen any evidence that 14 there was any supervision. In fact, the 15 testimony is actually that they just show up, and 16 we let them do whatever they want. I think that 17 was a direct quote. So, there wasn't any level 18 of supervision and then in terms of barrier, when 19 I talked about earlier, is if you know you've got 20 something that's unsecure and it's above where 21 people might be sitting, you could mitigate the 22 hazard by simply barricading the area. If a 10- 23 pound light is sitting eight feet off the floor 24 and it's not attached in any manner and you 25 barricade it, the hazard is still there because	88 1 outcome shouldn't come as a surprise to anyone. 2 Q. Do you know for a fact what degree of supervision 3 the DJ exercised over the installation of this 4 light? 5 A. I haven't seen any facts about that at all. 6 Q. Do you know whether this particular light fixture 7 was "identified for outdoor use" from the code 8 section? 9 A. Well, I don't have the exact light fixture in my 10 review, so I guess neither of us can say to an 11 absolute, but I can say to a reasonable degree of 12 certainty or more likely than not that it's 13 designed and manufactured for indoor use and when 14 I say outdoor, I wouldn't install one of these 15 outside where it was sitting in the pouring rain. 16 Q. Do you know of any light fixtures that are 17 similar to this that are waterproofed or are 18 certified for outdoor use? 19 A. Sure. There's light fixtures that people put on 20 -- most commonly put on the outside of their 21 residences. Sometimes they put them on motion 22 detectors. There's indoor light fixtures, 23 there's outdoor. Some are waterproof. There's a 24 whole -- 25 Q. Do you know whether this particular light fixture
87 1 it -- there's still something likely to promote 2 harm, but it's not dangerous because you can't 3 encounter it. That's the whole point of design 4 guard warn. If you guard people, you barricade 5 them away from something and if it were to fall, 6 then it's not going to strike them. 7 Q. What does the term supervised in that code 8 section mean to you? Does that mean -- I mean, 9 it doesn't mean sitting there watching a light 10 24/7, right? 11 A. No, I think it relates to the installation 12 because it -- the key word here is portable. 13 You're not reading a section that talks about 14 permanent installation of something that's going 15 to be there all the time. It's portable 16 equipment that's used outdoors. These light 17 fixtures are most commonly used indoors. And so, 18 if you take them and use them outside temporarily 19 for this type of a drag show -- I'm not 20 criticizing the fact they had a drag show. It 21 looks like these people are having a good time in 22 the photograph. What I'm saying is, if you take 23 a portable light and you put it -- temporarily 24 place it like they did without any supervision 25 and you let people sit underneath it, then the	89 1 was waterproof? 2 A. I don't know when you say this particular 3 fixture, because you and I don't have it to 4 examine. I'm looking at something that most 5 closely resembles it, and whether or not it was 6 waterproof it has nothing to do with the fact 7 that it wasn't secured in a manner to be stable 8 and not fall off. 9 Q. And what I'm getting at here is it looks to me 10 like this code section only applies to equipment 11 "not identified for outdoor use", right? You 12 don't disagree with that -- 13 A. Well, I -- 14 Q. -- it's unequivocal. 15 A. -- I guess we can argue about that. I think that 16 -- 17 Q. What's to argue with about that? I mean, what do 18 you -- 19 A. Because -- because you're taking -- and I 20 understand what you're doing. I understand why 21 you're doing it, but not all code sections are 22 prescriptive. Some code sections are performance 23 based. They don't tell you in detail in minutia 24 what the word barrier means or what the word 25 approved means. You have to take that in the

90 1 context that it's a portable fixture and if 2 you're going to install portable fixtures for 3 temporary use, that the installation should be 4 supervised and you shouldn't let people sit under 5 it. That's my interpretation. I'm a licensed 6 architect, and I think I'm the most qualified 7 person in this Zoom to interpret a building code 8 or a National Electric Code. 9 Q. Then how are you interpreting section 520.10 to 10 apply to any equipment that -- other than that 11 not identified for outdoor use? 12 A. I wasn't identifying it in that manner. I wasn't 13 saying that whether it was outdoor use or not is 14 what caused it to fall. I was saying that this 15 is a performance specification that if you have 16 portable equipment and you're using it outside, 17 it should be supervised. I don't think it's that 18 complicated. 19 Q. You said that they violated this code provision, 20 and it looks to me like the code provision only 21 applies to equipment not identified for outdoor 22 use. That's all I'm asking. 23 A. Well, you're arguing with me now, and I'm saying 24 that some code provisions are prescriptive that 25 say a stair has to be so high or a handrail has	92 1 then if someone had interacted with the wire or 2 the cable, it wouldn't have had an impact. But 3 if you wanted to analyze why it fell, then you 4 would need to do a diagnosis of what are the 5 probable causes, and the wire is one of them. I 6 can't rule it out. 7 Q. How is the wire a potential probable cause of the 8 light falling? What evidence do you see in this 9 case that indicates that the wire in any way 10 contributed to the light falling? 11 A. I didn't say I saw evidence. I said in the 12 absence of evidence, the way that you would 13 approach this is to analyze the probable causes 14 of something happening, a differential diagnosis. 15 So, why the -- if you ask me why did it fall, I 16 would say it fell because gravity exists. So, 17 the real pertinent question is what made it 18 unstable? Because you used the word stationary 19 earlier, so I mean, I could give you examples off 20 the top of my head that are rationale and I could 21 give you some that are kind of absurd. I could 22 say that maybe a bird landed on it or there was 23 an earthquake, or I could say that someone in 24 some way interacted with the cable or the cord or 25 someone interacted with the actual light fixture
91 1 to be a certain diameter. Other code provisions 2 are performance based. We don't know about the 3 exact fixture that was there, but the Altman 4 fixture that I think most closely resembles it is 5 not suitable for permanent installation outside, 6 but it's okay for portable installation for 7 temporary performances if it's installed 8 properly. That's the way I interpret that 9 paragraph. I don't need to rewrite what I've 10 already written. It speaks for itself at this 11 point. 12 Q. Does code section 520.10 apply to any electrical 13 equipment other than that not identified for 14 outdoor use? 15 A. That is what the section is intended to address. 16 Q. Okay. You said the next one was 520.63? Is that 17 correct? 18 A. Yes. 19 Q. I'll scroll down. I'm on page 11 of the shorter 20 file that was produced. Bracket fixture wiring, 21 is that the correct heading? 22 A. Yes. 23 Q. You don't have any issue with the wiring in this 24 case, right? 25 A. I can't say because if it was properly installed,	93 1 itself and touched it in a manner to cause it to 2 become unstable. Neither of us has any evidence 3 to point to, to say that's what happened. All I 4 can do is say here's a list of probable events, 5 and then rank them according to what's most 6 probable or most improbable. 7 Q. Right. Right. And so, as far as the wiring 8 itself though, the cord of the light, do you have 9 any opinions on whether that existed in a 10 hazardous condition? 11 A. I don't have any information to say yes or no. I 12 only see a picture of it. If the cable was 13 draped in a manner where it came down next to 14 somebody who walked by and they could have 15 brushed against it, then that's not safe. But, 16 you know, we don't -- you and I don't have the 17 level of information and facts here that we'd 18 like to have that we normally get in other types 19 of cases. So, we have -- 20 Q. Based on -- sorry I cut you off there. 21 A. We have to use deductive inferences and 22 reasoning. We have to -- well, we have to look 23 at probable causes. 24 Q. Based on the photograph of that light, post- 25 incident photograph, was the cord draped or

94 1 suspended in a way that you would characterize as 2 hazardous? 3 A. I can't say because I don't see all of it. I can 4 only say that -- I can say to a reasonable degree 5 of certainty that it was upside down and that the 6 cord was draped down along the column and 7 actually there were multiple cords there. So I 8 don't know -- I can't tell from that photograph 9 that the routing of that -- all of that cable. I 10 don't think either one of us could really 11 determine that. 12 Q. Okay. And you mentioned a while ago sheets or 13 documentation from manufacturers relating to the 14 installation of these lights. Are you going to 15 offer any opinions that Tabbuli or this DJ or 16 whomever installed this light in any way 17 disobeyed a manufacturer's recommendation for 18 installing this light? 19 A. That's kind of a compound question. I'm not 20 going to offer any opinions about the DJ at any 21 point about anything. I don't have facts to do 22 that. Wasn't hired to do that. I will offer 23 opinions, as I have in this disclosure, that the 24 installation or the permission to install or the 25 lack of supervision, the lack of involvement,	96 1 owner to observe and be involved in what they're 2 doing. And now that we have someone who's been 3 knocked on the head with a 10-pound object, we 4 have the general manager of the business saying 5 in hindsight if I'd have known it was like that, 6 I would have told them to take it down. 7 Q. All right. Returning to the question, what 8 documentation are you aware of that was went with 9 this specific light when it left the 10 manufacturer? Is the answer none? 11 A. We don't -- none of us know that. We don't have 12 the light. We have evidence and documentation of 13 something that closely resembles the light. 14 Q. Turning to section 520.63, has South Carolina 15 adopted the 2014 version of the National Fire 16 Protection 70 -- the NIPA 70 National Electrical 17 Code? 18 A. At one point they did. 19 Q. Is that the most recent version of this code? 20 A. No, I don't think it is. 21 Q. Do you know if this is the most recent version 22 that South Carolina adopted? 23 A. I can't hear you. I'm sorry. 24 Q. Do you know if this is the most recent version 25 that South Carolina adopted?
95 1 allowed -- led to this insecure installation and 2 that is ultimately contrary to the intent of the 3 National Electric Code and the property 4 maintenance code. 5 Q. Okay. And as far as recommendations or intent or 6 documentation from a manufacturer, there's no 7 evidence that anyone violated any of that, right? 8 A. I don't think that I can agree with that. I 9 think if I say yes, we'd both be wrong. 10 Q. Okay. What evidence do you have that says that 11 anyone violated a manufacturer's recommendation 12 for this specific light? 13 A. Well, we've gone over this before. You can ask 14 me how do I know it wasn't properly secured, and 15 I said I'm familiar with the technical data 16 sheets and I'm familiar with what it takes to 17 anchor it and make it safe and the redundant 18 system with the cable. So, if you take all that 19 action and you do all of that, then this wouldn't 20 have happened. So, if you allow someone to come 21 in to your business and you know they're bringing 22 things in and you take a position that they can 23 do -- and I quote, do pretty much whatever they 24 want, then you're discharging or you're not 25 looking at your responsibility as a business	97 1 A. Off the top of my head, I don't. 2 Q. It looks like there's some highlighting 3 throughout these files that have been produced. 4 Why are those given sections highlighted? I'm 5 looking, for example, here at section 520.68 6 starting at three, subsection three. 7 A. I have no idea. 8 Q. What violations do you contend of section 520.63 9 existed on July 20th at Tabbuli? 10 A. The intent is that fixtures shall be securely 11 fastened in place. It's one short sentence. It 12 seems self-evident to me what that means. If it 13 had been secured in place, then it wouldn't have 14 fallen and struck her in the head. 15 Q. What is a bracket fixture? 16 A. I would take that to mean that the yoke functions 17 as a bracket to mount the fixture as opposed to - 18 - if you've ever seen a cam light that goes into 19 a ceiling, then you know that it just fits up 20 into the ceiling and it has brackets that span to 21 the suspended grid to hold it in place. So in 22 this case, you have something that's portable and 23 you have a bracket that's used for mounting it. 24 Q. Do we see any definition of a bracket fixture 25 within this code?

98 1 A. I haven't looked for something that specific. 2 Q. Subsection A of 520.63 says, brackets for use on 3 scenery shall be wired internally, and then it 4 goes on to discuss some other fixtures related to 5 scenery. Now, what exactly do you understand 6 scenery to mean? 7 A. I don't have any thoughts on that. 8 Q. Bear with me just a moment. Okay. I'm back up 9 to section 520.2, entitled definitions. I don't 10 see a definition of a bracket fixture within that 11 list. Do you? 12 A. I don't have that full version in front of me. I 13 wouldn't be surprised that they haven't defined 14 everything under the sun. 15 Q. I'm looking at 520 -- section 520.5. It's a 16 section entitled wiring methods. We discussed 17 wiring a minute ago. Subsection B of that 18 relates to portable equipment, and it says that 19 fastening cables or cords for portable equipment 20 by uninsulated staples or nailing shall not be 21 permitted. Are you going to offer any opinions 22 that the cord of this light should have somehow 23 been fastened in place? 24 A. If it's found to be causally relevant to the 25 instability, I wouldn't rule it out, but I don't	100 1 know the exact angle. I know that it fell and it 2 hit her on the head, and it hit her companion. 3 Q. You would agree with me that the center of grav - 4 - where the center of gravity of that light was 5 placed with respect to the flat bottom of the 6 yoke could impact the stability of the light, 7 right? 8 A. I'm not sure I would agree with that, because 9 you're implying that if you change the center of 10 gravity that it somehow becomes more stable or 11 more secure. The fact that the apparatus or the 12 assembly wasn't attached to anything is what 13 makes it insecure, makes it unstable. 14 Q. Okay. So you -- 15 A. You could have different degrees of stability, 16 but placing it in a certain altitude or 17 orientation isn't going to mean that it's more 18 secure. It's still loose. It's still just 19 resting there. 20 Q. But it could vary the degree of the stability of 21 that light, right? 22 A. No, I don't agree with that. I think that from 23 my understanding of physics that if you change 24 the position of an object, you can change the 25 center of gravity, but if it's not attached to
99 1 have information today to do that. 2 Q. Dovetailing off that, you mentioned instability 3 and we've kind of danced around this in the past, 4 but the fact that that light pivots on the yoke, 5 that changes the center of gravity of that light, 6 right? 7 A. Any way that you alter the position, whether it's 8 sitting vertical or sideways or at an angle, the 9 center of gravity's going to move with it. It 10 still has the same mass. 11 Q. Right. But the center of gravity of that light 12 positioned over the yoke would change as the 13 light is pivoted up or down, right? 14 A. Are you asking me if it's properly fastened to 15 some structural member above? 16 Q. No, I'm asking you if that light pivots, it's 17 going to change the center of gravity if it's 18 placed on the yoke, right? 19 A. Okay. 20 Q. Okay. And you have no idea what degree that 21 light was pivoted to prior to it falling, right? 22 A. There's several things I don't know that aren't 23 even relevant to the fact that it fell off. So, 24 we could make a list of things that I don't know; 25 what kind of bulb was installed in it, I don't	101 1 anything, it's still unstable. 2 Q. Other than the sections that we've walked through 3 already are there any other selections -- 4 sections, excuse me, of the National Electrical 5 Code that you're going to opine that were 6 violated in this case? 7 A. No. 8 Q. I'm going to page two of the shorter file that 9 was produced, and there's a warning or a reminder 10 rather with a border around it that says, 11 "updating of NFPA documents", and it basically 12 says to me that if you're using this code because 13 it can be amended from time to time, that you 14 have to go to the NFPA website and find any 15 relevant amendments. Did you do that in this 16 case? 17 A. I did not. 18 Q. So, you don't know what amendments may be out 19 there related to portable light fixtures? 20 A. I did not research that. 21 Q. Right. I'm looking at some of your references 22 now that you've produced in this file. We'll 23 mark this as Exhibit, I think I'm on 6, yeah mark 24 these as Exhibit 6, collectively. 25 (DEFENDANT'S EXHIBIT 6 MARKED FOR IDENTIFICATION)

102 1 PURPOSES (42 pages) - REFERENCES) 2 Q. And is this just reference material that you've 3 pulled from the internet? 4 A. What are you talking about? 5 Q. I'm looking at general guidance on lighting 6 safety. There are two documents that you 7 produced. The first is entitled general guidance 8 on stage lighting safety. 9 A. Okay. Are you asking me where I got that? 10 Q. Yeah. I'm asking you where you got that. 11 A. From our library. 12 Q. Okay. What is Strand lighting? Is that a 13 manufacturer of lighting? 14 A. Yes. 15 Q. And this publication is dated 1992, right? 16 A. Yes. 17 Q. Do you know if Strand lighting is still in 18 business? 19 A. No. 20 Q. You're aware that this publication was published 21 with respect to law in the United Kingdom, right? 22 A. I'm aware of the source. 23 Q. This is not from an American publisher, right? 24 A. I'm aware of where it came from. 25 Q. Is this in any way a mandatory or binding set of	104 1 Q. Was that a no? 2 A. I said, no I'm not. 3 Q. I think your audio might be cutting out. And 4 this was published by, it says, the Texas 5 Education Agency initially, right? 6 A. Yes. 7 Q. What authority does the Texas Education Agency 8 have to promulgate requirements for a restaurant 9 in Charleston, South Carolina? 10 A. I don't know. I don't think that's the point of 11 it. 12 Q. Did you pull this document from -- 13 A. Are you suggesting that scholarly studies and 14 articles from Harvard don't apply to people in 15 South Carolina? 16 Q. What about this handbook appears scholarly to 17 you? 18 A. I think that it is research and recommendations 19 by people who have experience in a particular 20 field or industry, and that's how the safety 21 professionals become informed and self-educated. 22 They don't look at the building code and say, 23 we're going to do the bare minimum actually 24 possible and ignore all other guidance that might 25 be out there available to us.
103 1 requirements for a restaurant in Charleston, 2 South Carolina? 3 A. I guess that depends. If they want to achieve an 4 acceptable level of safety, then it's what I 5 would consider to be part of the industry 6 standard and it is guidance. And if we were to 7 look at standards and national publications only 8 because someone's adopted them, then we would be 9 missing out on a whole world of research and 10 scientific studies. And I can find similar 11 publications if you'd like an American copyright. 12 I thought that it was more persuasive to show 13 that this is an international idea. 14 Q. Do you know of any restaurant in Charleston that 15 has researched lighting facts sheets from 16 lighting manufacturers from the United Kingdom 17 from 30 years ago prior to bringing in temporary 18 lighting? 19 A. I do not. 20 Q. The next source that you've presented is -- 21 appears to be a handbook. It says Handbook for a 22 One Act Play. It appears to have been updated in 23 2009. Are you aware of any more recently updated 24 versions of this handbook? 25 A. No.	105 1 Q. What do you know about the backgrounds of the 2 authors of this handbook? 3 A. I don't. 4 Q. Do you know if they were safety professionals? 5 A. I don't know about the backgrounds. 6 Q. What research was this based on? 7 A. Can't answer that. 8 Q. Do you know if it's even peer -- sorry. Go 9 ahead. 10 A. I don't know the answer to that. 11 Q. Do you know if this publication's been peer 12 reviewed? Do you know if this publication is 13 generally accepted in the industry? 14 A. I can't say yes or no. 15 Q. Are you aware of a restaurant in Charleston, 16 South Carolina that's reviewed this or 17 incorporated its recommendations in any way? 18 A. I didn't say that a restaurant in Charleston has 19 obtained a copy. I said that these are my 20 opinions as a licensed architect and a safety 21 professional, and if somebody wanted to be 22 informed or self-educated, here is an example of 23 what's available. So, if it's in my library and 24 I can find it and other people want to be 25 informed, self-educated, it's available to them.

106 1 You're characterizing it differently than the way 2 I presented it. 3 Q. Okay. So, that's a no to my question. You're 4 not aware? 5 A. I'm not. 6 Q. Do you intend to offer any opinions related to 7 Ms. Eddins' damages in any way other than the 8 fact that a light hit her? 9 A. No. 10 Q. Okay. Your calculations regarding velocity of 11 the light, those are independent of the mass of 12 the light, correct? Just from a physics 13 standpoint, objects all fall at -- what is it, 14 5.8 meters per second per second? 15 A. No, that's -- you're mistaken. It's not 16 independent, it's related. The formula that I 17 presented has to do with gravity, which is 32 18 feet per second squared and the height. So, I 19 gave you two calculations; the first one in 20 paragraph 26 is if the object fell from a height 21 of eight feet, and the second was if it fell from 22 a distance of five feet. 23 Q. Right. And my question was whether those 24 calculations were independent of the mass of the 25 light?	108 1 right? Force equals mass times acceleration? 2 A. It does. And I wasn't dealing with force here. 3 Q. Right. And you haven't offered any opinions 4 regarding the force at which this object struck 5 Ms. Eddins, right? 6 A. I haven't. 7 Q. You're only offering opinions as to its velocity? 8 A. Yes, that's correct. 9 Q. Okay. Well, I think that's about all I have for 10 you, Mr. Williams. I'm looking over your 11 invoices just to cover our bases here. We can 12 mark that collectively with Exhibit 2. And it 13 looks like you've invoiced a total of about 14 \$3,300 in this case? Is that correct? 15 A. I don't know. 16 Q. Okay. And I'm fair -- it's a fair assumption 17 that someone else in your office handles your 18 invoicing for you? 19 A. I don't have an office anymore. The best way to 20 say that is that we enter our time on each case 21 in a proprietary software. It's captured by the 22 corporate office. They send the client the bill. 23 I didn't add these up yet. If you have, I don't 24 have any reason to doubt what you said. 25 Q. Okay. And when you say you don't have an office,
107 1 A. Well, mass is a function of the weight, it's 10 2 pounds. The mass doesn't change. What changes 3 as something -- an object falls in the 4 gravitational field it accelerates. It doesn't 5 increase in mass. It accelerates the velocity. 6 This is just a simple presentation of a formula 7 for people to understand that when you drop 8 something from a particular height, the velocity 9 increases over time. 10 Q. Right. And I think -- 11 A. So if -- 12 Q. -- I think we're talking past each other here. 13 My question is basically, objects fall at a 14 constant rate completely irregardless -- 15 regardless of how heavy they are, right? I mean, 16 that's basic physics. In a vacuum a feather 17 falls at the same speed as a -- 18 A. Well -- 19 Q. -- hammer. 20 A. That's true, but you're using -- you're talking 21 about how it falls and I'm talking about 22 acceleration here, which is the change in the 23 velocity, but yeah the feather analogy's true. 24 Q. Right. Right. And so, the force that that 25 object carries as it falls depends on its mass,	109 1 you're working totally remote or what do you mean 2 by that? 3 A. I mean, my office has been closed permanently. 4 Q. Okay. And you're still with Robson, right? 5 A. I am. 6 Q. And how are you -- you're just working remotely? 7 A. My office closed March 20, 2020, so next Friday 8 will be two years, and about three months ago I 9 learned that it's been shut down permanently. 10 The Charleston office has been shut down 11 permanently. 12 Q. Why has the Charleston office been shut down 13 permanently? 14 A. I don't know. 15 Q. Okay. So, are you -- you're still working for 16 Robson through their corporate offices, or what's 17 that arrangement look like? 18 A. I'm still employed by Robson Forensic as are 19 three other people who live in Charleston, but 20 the physical office that I came here and built in 21 2008 no longer exists. 22 Q. It looks like this invoice was dated 12/23/21. 23 Have you done any work on this case since 24 December? 25 A. Yes.

110 1 Q. Okay. What have you done? 2 A. I've read the depositions of Eddins and Haines 3 and organized the file prepared for today. I saw 4 Sweeny's name on the document, so I thought these 5 guys will be very well prepared, so I should be 6 too. 7 Q. I appreciate that. 8 A. I can't hear you. 9 Q. I appreciate that. Do you have any estimate of - 10 - 11 A. Your mentor has quite the reputation. 12 Q. Which mentor? Mark Barrow? 13 A. Mark. 14 Q. He does. Well, I'm -- hopeful is not the right 15 word here, but I'm sure you're probably glad to 16 get me instead of him today, because he'd have 17 you here a bit longer. 18 A. Doesn't matter. I would crave the work with you 19 just as much as anyone else. It's all the same. 20 Q. I gotcha. I gotcha. Do you have any estimate of 21 how many hours you've spent on this case since 22 December? 23 A. No. I have to -- I haven't put that time in yet. 24 Q. Okay. I gotcha. Other than everything we've 25 discussed, do you have any opinions that you	112 1 reasonable degree of architectural and technical 2 certainty based on reliable principles and 3 methods that are generally accepted in your 4 professional community? 5 A. Yes. 6 Q. Have those principles and methods been peer 7 reviewed and published by members in your 8 professional community? 9 A. Yes. 10 Q. In forming those opinions to a reasonable degree 11 of certainty, did you apply those principles and 12 methods to the facts in this case? 13 A. I did. 14 Q. And you were asked earlier about instructions 15 that are included with lights like this, but in 16 your experience do you know what is generally 17 included with lights like these as far as 18 instructions are concerned from the manufacturer? 19 A. Electrical devices for power and lighting when 20 you purchase them will come with written 21 instructions even if you buy a single duplex 22 outlet or a single pole toggle switch for a light 23 that there are instructions. They come in 24 different formats, depending on the product, but 25 I've not been aware or seen any electrical
111 1 intend to offer? 2 A. Other than what's in the disclosure? No. 3 Q. All right. Have you understood all my questions 4 today? 5 A. I think so. 6 Q. Have you provided complete and truthful 7 testimony? 8 A. I have. 9 Q. You don't need to change or alter any of your 10 responses? 11 A. I didn't get that. 12 Q. Do you feel the need to change or alter any of 13 your responses in any way? 14 A. No. 15 Q. All right. Well, Mr. Williams, I appreciate your 16 time. That's all I have for you. Mike may have 17 a few questions for you, but thank you. 18 A. You're welcome. 19 EXAMINATION BY MR. LISKA: 20 Q. Hi, Mr. Williams. Yes, real quick. The opinions 21 that you've given today and in your disclosures, 22 are those expressed to a reasonable degree of 23 certainty? 24 A. Architectural and technical certainty. 25 Q. And are those opinions that you formed to a	113 1 products in my life that come without any 2 instructions. At least not the ones from the 3 United States. 4 Q. And you mentioned earlier about you would like to 5 see more video and you're curious why that was 6 not provided by the restaurant in this case. 7 I'll represent that we did request video from 8 that day and the only video we got has been 9 provided to you. Do you wonder why they didn't 10 give us video from 3:00 when Ms. Chapin said the 11 DJ would have gotten there up until the time that 12 this light fell on Stefanie's head at 10:20? 13 MR. NEINAST: Objection to form. Calls for 14 speculation. 15 A. I think it's not about wondering. I just think 16 that there are potential facts that all of us 17 could analyze that were documented that we 18 haven't had the opportunity to observe. It's not 19 uncommon on cases where I have videos of 20 pedestrian knock downs in a parking lot, and I'll 21 get several minutes or even hours to be able to 22 watch what happened before the time of the 23 incident as well as what happened afterwards. 24 It's unusual for me to get through my client such 25 a small snippet.

114 1 Q. So, even if the business that night didn't have a 2 chain available, a safety chain, they should have 3 had one available? Is that what -- 4 A. I would back up a little bit further in time and 5 say that the first thing would be to involve 6 yourself in the installation, just like the 7 Chapin testified that after it was over they took 8 down the stage and they move all the furniture. 9 So, they are involved at some level in other 10 things about the show, but she said if we don't 11 own it, then we're not responsible and I find 12 that to be inconsistent with the fact that they 13 rent this very large tent that they don't own and 14 it hasn't fallen down or injured anyone. 15 Q. We requested photographs of the light in 16 discovery in this case as well from the 17 restaurant and the photograph that you and Mr. 18 Neinast had been discussing was provided by them 19 in discovery, and I think you did say earlier you 20 saw where their employees testified that they 21 think the DJ took the light with them that night. 22 Based on that, can we assume that the picture 23 that has been provided would have been taken 24 before this incident occurred? 25 MR. NEINAST: Objection to form.	116 1 a safety chain and then seating a patron 2 underneath it? 3 MR. NEINAST: Objection to form. 4 A. No. I think I testified that I'm not exact and I 5 think I said -- I testified that it's -- we can't 6 be exact, we can only be -- make a reasonable 7 estimate based on something that most closely 8 resembles it, but that's all a distraction to my 9 real opinions is that you have a 10-pound object 10 that wasn't adequately secure and fell on someone 11 who was seated underneath it in the dark. 12 Q. And you were asked about different, for lack of 13 better word, things that might impact that light 14 such as noise, gravity, air, somebody contacting 15 it, the music, the pivoting. Are all those 16 things reasons why the light needs to be 17 supervised when it's installed and properly 18 barriered from patrons, properly chained and 19 properly secured to begin with? 20 MR. NEINAST: Objection to form. 21 A. Yes. I think another way of saying that is that 22 no one here on this Zoom could posit a 23 hypothetical about what happened that wouldn't 24 ultimately have been prevented if they took the 25 right action.
115 1 A. S -- are you talking about SWB66? 2 Q. I believe so. Is that the picture of the light 3 on top of the speaker? 4 A. Yes. 5 Q. Yes, sir. Thank you. 6 A. What -- your question is? 7 Q. Well, if the DJ took the light that night after 8 this happened as they are guessing and if they 9 don't have that light and haven't had that light 10 since that night, can we assume that that picture 11 was probably taken before the incident? 12 MR. NEINAST: Same objection. 13 A. I think the logical conclusion -- it's not an 14 assumption, but if you're saying that I can 15 assume as a fact that the light went with the DJ 16 and it was dark, then the logical conclusion is 17 this had to have been taken at a different time. 18 Either prior to it or some other time. 19 Q. And you were questioned extensively about various 20 measurements and formulas and stuff, but even if 21 those were not exact, does that detract from the 22 fact that the restaurant should not have allowed 23 a heavy unsecured light to be placed above where 24 they were going to seat patrons without 25 barriering it from the patrons and without using	117 1 Q. Thank you, Mr. Williams. Those are all the 2 questions I have for you right now. 3 RE-EXAMINATION BY MR. NEINAST: 4 Q. I have just a couple of quick followups. Do you 5 know anything about a tent being in place on the 6 date that this light fell? 7 A. No. 8 Q. Would a tent being in place in any way have 9 changed your opinions? 10 A. About what? 11 Q. About this light. I mean, how does the tent 12 relate to the installation of the light? 13 A. It doesn't. It relates to their attitude and 14 their testimony about the fact that they don't 15 have any obligation or responsibility to be 16 involved in installation. And all I said was 17 that it's a fact that they rented a very large 18 tent when it was cold, and I would expect that if 19 they rented a very large tent that they were 20 responsible to make sure it was safe and didn't 21 collapse, but they didn't own it. So, then to 22 take the position that well if we don't own the 23 light we're not responsible for it, I think 24 that's inconsistent with safety and it's 25 disingenuous.

118 1 Q. Okay. Earlier you told me that you didn't have 2 any experience testifying or consulting with 3 respect to a case dealing with theater lighting. 4 Is the same also true for the broader category of 5 portable lighting? 6 A. I can't remember every case that I've had. I 7 think if your question's in the context of 8 testimony, I don't recall a premises case 9 involving theater lighting or portable lighting. 10 Q. What about just lighting in general? As we're 11 sitting here today, do you recall a premises case 12 in which you consulted that's dealt with lighting 13 or the installation -- 14 A. Well, of course -- 15 Q. -- of lighting? 16 A. -- well sure. I mean, a lot of times when people 17 fall outside, it's because there's inadequate 18 lighting. And I've had both plaintiff and 19 defense cases involving allegations that the 20 lighting was not adequate and contributed to the 21 incident. But you have to understand too that 22 poor lighting isn't a hazard. Poor lighting just 23 conceals other things that are hazards. 24 Q. Right. And I should have been more precise with 25 the question. Specifically pertaining to the	120 1 Q. Sure. 2 A. So, the hazard hierarchy that the National Safety 3 Council gave us in 1989 is design, guard, warn. 4 And if you can't design a hazard out, but you can 5 guard people from encountering it, then yes 6 you're correct. So, if you think about somebody 7 who's doing construction work, have you ever seen 8 those tall orange cones that have a round thing 9 on the top and they feed a piece of tape through 10 it? They're called looper tubes. 11 Q. Right. 12 A. So, if you were doing some repair work on an 13 outside sidewalk or parking area and you 14 barricaded a region where the construction 15 activity was going on, that wouldn't prevent 16 people from actually touching something. It just 17 prevents them from having accidents. I think if 18 that -- if that's what you're saying, I agree 19 with you. 20 Q. Okay. Yeah, and it was an inartfully phrased 21 question. I apologize for that. What I'm 22 getting at is to me, something like a wall would 23 be an obvious barrier or guard, right? 24 A. Nothing's obvious. You have to have context. I 25 mean, if you're looking at this particular
119 1 installation of lighting or the securing of 2 lighting fixtures, do you recall any cases 3 dealing with that? 4 A. Well, the installation of lighting is directly 5 relevant to how many foot candles are on the 6 ground. If there aren't enough fixtures, they 7 aren't spaced properly, then that doesn't provide 8 adequate coverage in terms of the use of the 9 space whether it's a parking lot or a sidewalk. 10 Q. What about how a given lighting fixture was 11 secured? Have you ever had a case dealing with 12 that? 13 A. I don't remember. 14 Q. We've talked a lot about barriers today with 15 respect to certain portable lighting fixtures and 16 code requirements. Does a barrier to your 17 understanding necessarily mean a physical object 18 preventing contact with a given lighting fixture, 19 or could a lighting fixture just be placed 20 significantly out of reach of anyone such that 21 nobody could contact it? Would that constitute a 22 barrier as well? 23 A. Can we use the word guard? 24 Q. Yes. 25 A. In place of barrier?	121 1 situation and you have bar stools and you had 2 enough extra bar stools that you could have 3 arranged them in a circle around that column and 4 then put some tape or some rope or something and 5 for -- just to fence people away from getting 6 close to it, it still could have fallen, but it 7 wouldn't have hit anyone in the head. Is that 8 where you're trying to go? 9 Q. Yeah. I mean, you know, what I'm getting at is 10 if you have a hazard -- let's just assume for the 11 sake of argument that this light's a hazard. I 12 know we disagree on that, but let's just assume 13 for a second. 14 A. I think we disagree that a 10-pound object above 15 your head is not a hazard. 16 Q. Okay. If that object is placed in a way that no 17 one can physically touch it, interact with it, 18 bump up against it, would that sufficiently guard 19 against the hazard to you? 20 A. No, because you left out sitting under it. 21 Q. Okay. 22 A. If you include with your hypothetical no one can 23 sit under it, walk under it, get anywhere close 24 to where it might land, then yes I agree with 25 you. That's the whole point of hazard mitigation

122 1 is some hazards can't be eliminated. We both 2 shave with a sharp object. If it was dull, it 3 wouldn't be useful for its intended purpose, but 4 that hazardous edge is in a plastic guard, right? 5 We don't pick it up -- we don't pick up the razor 6 blade with our hand. We have -- it's in a 7 plastic guard. It's still hazardous. You could 8 still cut yourself. Sometimes you probably do, 9 right? 10 Q. I gotcha. Okay. I understand what you're 11 saying. Well, that's all I have for you -- 12 A. People -- 13 Q. -- Mr. Williams. 14 A. Keep people from sitting underneath it. Don't 15 put a couch underneath the 10-pound object. It 16 doesn't matter if it's a light or a bowling ball. 17 Don't put somebody under something that could 18 fall and hit their head. That's the simplicity 19 of the case to me. 20 Q. Okay. All right. Well, that's all I have for 21 you. 22 A. Do you have a trial date? 23 MR. LISKA: Yeah, let's -- 24 Q. Not yet. We don't have a date, sir. 25 MR. LISKA: I've got no other questions. We	124 CERTIFICATE OF REPORTER 1 I, DONNA M. CURREY, COURT REPORTER AND NOTARY PUBLIC 2 IN AND FOR THE STATE OF SOUTH CAROLINA AT LARGE, HEREBY 3 CERTIFY THAT I REPORTED THE VIDEO CONFERENCE DEPOSITION OF 4 MARK WILLIAMS, ON FRIDAY, THE 11TH DAY OF MARCH, 2022; THAT 5 THE WITNESS WAS FIRST DULY SWORN BY ME AND THAT THE 6 FOREGOING 123 PAGES CONSTITUTE A TRUE AND CORRECT 7 TRANSCRIPTION OF SAID DEPOSITION. 8 I FURTHER CERTIFY THAT I AM NEITHER ATTORNEY NOR 9 COUNSEL FOR, NOR RELATED TO OR EMPLOYED BY ANY OF THE 10 PARTIES CONNECTED WITH THIS ACTION, NOR AM I FINANCIALLY 11 INTERESTED IN SAID CAUSE. 12 I FURTHER CERTIFY THAT THE ORIGINAL OF SAID TRANSCRIPT 13 WAS THEREAFTER SEALED BY ME AND DELIVERED TO WILLIAM A. 14 NEINAST, ESQ., SWEENEY, WINGATE & BARROW, P.A., POST OFFICE 15 BOX 12129, COLUMBIA, SOUTH CAROLINA, WHO WILL RETAIN THIS 16 SEALED ORIGINAL TRANSCRIPT AND SHALL BE RESPONSIBLE FOR 17 FILING SAME WITH THE COURT PRIOR TO TRIAL OR ANY HEARING 18 WHICH MIGHT RESULT IN A FINAL ORDER ON ANY ISSUE. 19 IN WITNESS WHEREOF, I HAVE SET MY HAND AND SEAL THIS 20 23RD DAY OF MARCH, 2022. 21 22  23 24 DONNA M. CURREY, COURT REPORTER 25 MY COMMISSION EXPIRES JANUARY 31, 2024
123 1 can go ahead and go off the record. 2 A. Oh, I'm sorry. I'm sorry. 3 Q. No, it's all right. 4 VIDEOGRAPHER: Going off the record. The 5 time is 2:03 p.m. 6 Further deponent sayeth not. 7 (There being no further questions, the deposition 8 concluded at 2:03 p.m.) 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	125 VERIFICATION OF DEPONENT 1 I, MARK WILLIAMS, HAVE READ THE FOREGOING DEPOSITION 2 CONSISTING OF 123 PAGES, WHICH WAS REPORTED BY DONNA M. 3 CURREY, COURT REPORTER AND NOTARY PUBLIC IN AND FOR THE 4 STATE OF SOUTH CAROLINA, ON MARCH 11, 2022. 5 I FIND THE TRANSCRIPT OF THIS DEPOSITION TO BE A TRUE 6 AND ACCURATE TRANSCRIPT ACCORDING TO MY TESTIMONY ON THAT 7 DATE, WITH THE EXCEPTION OF _____ CHANGES AND/OR 8 CORRECTIONS LISTED ON THE ATTACHED ERRATA SHEET WHICH WAS 9 FILLED IN BY ME. 10 11 12 13 14 MARK WILLIAMS 15 _____, 2022 16 17 18 19 20 21 22 23 24 25

126 ERRATA PAGE <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;"></th> <th style="width: 20%; text-align: left;">Page # Line #</th> <th style="width: 70%; text-align: left;">Change/Correction (& Explanation)</th> </tr> </thead> <tbody> <tr><td>1</td><td></td><td></td></tr> <tr><td>2</td><td></td><td></td></tr> <tr><td>3</td><td></td><td></td></tr> <tr><td>4</td><td></td><td></td></tr> <tr><td>5</td><td></td><td></td></tr> <tr><td>6</td><td></td><td></td></tr> <tr><td>7</td><td></td><td></td></tr> <tr><td>8</td><td></td><td></td></tr> <tr><td>9</td><td></td><td></td></tr> <tr><td>10</td><td></td><td></td></tr> <tr><td>11</td><td></td><td></td></tr> <tr><td>12</td><td></td><td></td></tr> <tr><td>13</td><td></td><td></td></tr> <tr><td>14</td><td></td><td></td></tr> <tr><td>15</td><td></td><td></td></tr> <tr><td>16</td><td></td><td></td></tr> <tr><td>17</td><td></td><td></td></tr> <tr><td>18</td><td></td><td></td></tr> <tr> <td>19</td> <td colspan="2">The above changes were noted by me on this errata page</td> </tr> <tr> <td>20</td> <td colspan="2">before signing the attached Verification of Deponent. I</td> </tr> <tr> <td>21</td> <td colspan="2">have retained a copy of this errata page for my records,</td> </tr> <tr> <td>22</td> <td colspan="2">and the court reporter is to attach this page and my</td> </tr> <tr> <td>23</td> <td colspan="2">verification to the original transcript.</td> </tr> <tr> <td>24</td> <td colspan="2">Dated: _____</td> </tr> <tr> <td>25</td> <td colspan="2" style="text-align: right;">Mark Williams</td> </tr> </tbody> </table>		Page # Line #	Change/Correction (& Explanation)	1			2			3			4			5			6			7			8			9			10			11			12			13			14			15			16			17			18			19	The above changes were noted by me on this errata page		20	before signing the attached Verification of Deponent. I		21	have retained a copy of this errata page for my records,		22	and the court reporter is to attach this page and my		23	verification to the original transcript.		24	Dated: _____		25	Mark Williams		
	Page # Line #	Change/Correction (& Explanation)																																																																													
1																																																																															
2																																																																															
3																																																																															
4																																																																															
5																																																																															
6																																																																															
7																																																																															
8																																																																															
9																																																																															
10																																																																															
11																																																																															
12																																																																															
13																																																																															
14																																																																															
15																																																																															
16																																																																															
17																																																																															
18																																																																															
19	The above changes were noted by me on this errata page																																																																														
20	before signing the attached Verification of Deponent. I																																																																														
21	have retained a copy of this errata page for my records,																																																																														
22	and the court reporter is to attach this page and my																																																																														
23	verification to the original transcript.																																																																														
24	Dated: _____																																																																														
25	Mark Williams																																																																														

Deposition of James Rivenbark

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
THE NINTH JUDICIAL CIRCUIT
Civil Action No.: 2020CP1002481

STEFANI EDDINS,)
)
Plaintiff,)
)
v.)
)
TALL SAM I AM, LLC d/b/a)
TABBULI,)
)
Defendant.)

DEPOSITION OF JAMES AARON RIVENBARK

Friday, March 4, 2022, 10:13 a.m.
The Nye Law Group, P.C.
402 West Trade Street, Suite 112
Charlotte, North Carolina
Reported by Candace E. Thomas, CSR

Worley Reporting
P.O. Box 99169
Raleigh, NC 27624
919-870-8070

Deposition of James Aaron Rivenbark

2 (Pages 2 to 5)

2

APPEARANCES

For the Plaintiff:

Michael E. Liska, Esq.
Gary C. Johnson, P.S.C.
P.O. Box 55106
Lexington, KY 40505

For the Defendant:

William A. Neinast, Esq.
Sweeny Wingate & Barrow, P.A.
P.O. Box 12129
Columbia, SC 28211

In Attendance:

Garrett Simpson
Darren Carreras, Videographer

4

THE VIDEOGRAPHER: Good morning.

Today's date is March 4, 2022. The time on the monitor

is 10:13 a.m. We are now on the record for the

deposition of James Rivenbark. The court reporter is

Candace Thomas. The videographer is Darren Carreras.

Will counsel please introduce themselves, after which

the court reporter will swear in the witness?

MR. NEINAST: Will Neinast here for

Charleston Hospitality Group d/b/a Tabbuli.

MR. LISKA: And I'm Mike Liska from Gary

Johnson Law Offices. I'm here today on behalf of the

plaintiff, Stefani Eddins.

JAMES AARON RIVENBARK

having been first duly sworn, was examined and

testified as follows:

DIRECT EXAMINATION BY MR. NEINAST:

Q. Mr. Rivenbark, we just met a minute ago off

the record. Again, my name is Will Neinast, an

attorney from Columbia, South Carolina. I'm here today

to take your deposition in a case that's been brought

by Ms. Stefani Eddins. As we just discussed, I

represent a restaurant ownership group that owns a

couple of places down in Charleston.

3

EXAMINATION INDEX

Examination By Whom Page Number

Direct Mr. Neinast 4

Cross Mr. Liska 109

Redirect Mr. Neinast 125

Recross Mr. Liska 135

Further Redirect Mr. Neinast 136

EXHIBIT INDEX

Exhibit No. Description Page Marked

Defendant's 1 Rivenbark Curriculum Vitae 10

Defendant's 2 Excerpt of Plaintiff's Expert Disclosures 28

Plaintiff's A Plaintiff's Expert Disclosures 110

Plaintiff's B Rivenbark Curriculum Vitae 113

Plaintiff's C Photograph 119

5

You understand that you're here today to

provide -- because you've been listed as an expert

witness in this case, right?

A. Yes, sir.

Q. Okay. Let me get your full name just for the

record.

A. James Aaron Rivenbark.

Q. Okay. Have you had your deposition taken

before?

A. No.

Q. Okay. So there are a couple of basic ground

rules that we have to go over, and then we'll get into

kind of the meat of your testimony, as it were.

First and foremost, is there anything

preventing you from understanding my questions or

providing truthful testimony today?

A. No.

Q. Okay. You're doing a good job of this so

far. It's a little bit easier with a video deposition,

but in ordinary conversation, we'll nod our heads or

say "nuh-uh" and things like that, but because we're

also taking down a written transcript of everything

that we're saying today, to the best that you can,

please give me verbal answers to any questions that are

asked. Okay?

6 1 A. Yes. 2 Q. All right. By the same token, if you answer 3 any of my questions, I'm going to assume that you 4 understood them. If you don't understand a question or 5 need clarification, I'll be more than happy to provide 6 that. Just let me know. Okay? 7 A. Okay. 8 Q. By the same -- again, by the same token, for 9 the record, things can get a little bit confusing if we 10 talk over each other. You know, again, in ordinary 11 conversation, it's a very common thing. But if I ask 12 you to wait until I finish a question, I'm not doing it 13 to be rude or cut you off. We just need a clear 14 record. Okay? 15 A. Understood. 16 Q. If at any point you need to take a break, 17 just let me know. We can take as many as you need, you 18 know, get water, coffee, run to the bathroom, anything 19 like that. Okay? 20 A. Got it. 21 Q. All right. Now that the deposition has 22 begun, any conversations that you have with anyone or 23 documents that you review, anything like that, I'm 24 entitled to ask you questions about those. Okay? 25 A. Okay.	8 1 Q. Okay. This was all mailed to you. Okay. 2 A. Yes. 3 Q. This video -- I see there's a CD in here. Is 4 that the video of the incident that is involved in this 5 case in which the light fell on Ms. Eddins? 6 A. The light fell, yes. 7 Q. Okay. I see there's the lease, our discovery 8 responses, some photographs of what appear to be the 9 Tabbuli premises, a lease between Tall Sam I Am and the 10 owner, the employee handbook from Charleston 11 Hospitality Group, and what appear to be the deposition 12 transcripts of Cait Chapin and Jeff Diehl in this case. 13 Okay. Have you reviewed any other documents 14 other than what we just discussed, what's contained 15 within this binder? 16 A. No, I don't think so. 17 Q. Okay. Who did you speak with to prepare for 18 giving this deposition? 19 A. I mean, I've dealt with Mike over the term of 20 this -- what's going on here, but to prepare for the 21 deposition, I've never done it before. 22 Q. Okay. 23 A. I didn't really have a coach or anything like 24 that. 25 Q. Right. So other than Mike, have you spoken
7 1 Q. All right. And you said you've never had 2 your deposition taken before? 3 A. No, never. 4 Q. What documents did you review to prepare for 5 this deposition? 6 A. I got them all right here. It was the 7 depositions of the two employees from Sam I Am -- or 8 excuse me, I may have said that wrong -- a handbook, a 9 few other things I can't remember. I saw the incident 10 report. I can't remember everything that I reviewed, 11 but those three were the three that stand out. 12 Q. Okay. And that looks like a three-inch 13 binder with you. Is that your file on this case? 14 A. Yes. 15 Q. Okay. And you brought that today to comply 16 with the deposition subpoena? 17 A. Yeah, I brought those in. 18 Q. Okay. Why don't you hand that over to me 19 real quick, and I'll take a look at it? 20 A. (Tenders binder.) 21 Q. Okay. So I'm seeing the disclosures in which 22 you were listed as an expert witness. It looks like 23 some correspondence from Ms. Eddins' attorneys. And 24 then is it -- did you generate this table of contents? 25 A. No, that was all mailed to me.	9 1 with anyone to prepare for giving your testimony? 2 A. No. 3 Q. Okay. 4 A. I don't know anyone since I haven't done it. 5 Q. Got you. Do you go by James? 6 A. Either -- yeah, that's fine. Yeah. 7 Q. Okay. Have you ever gone by any other names 8 in the past? 9 A. Jamie. 10 Q. Jamie? 11 A. Yeah. 12 Q. Any other nicknames, anything like that? 13 A. That's it. 14 Q. Okay. What's your current address? 15 A. 948 Pecan Tree Lane. That's in Fort Mill, 16 South Carolina, 29715. 17 Q. What's your date of birth? 18 A. 3/7/82. 19 Q. Where were you born? 20 A. Lumberton, North Carolina. 21 Q. Okay. How long have you been in South 22 Carolina? 23 A. Three years. 24 Q. Do you own that house in Fort Mill? 25 A. It's in my wife's name. We just sold it. I

10 1 bought a new house, but it's not completed yet, so -- 2 Q. Congratulations. 3 A. Thank you. 4 Q. Do you own any other property in South 5 Carolina. 6 A. No. 7 Q. Other than your wife, do you have any 8 relatives over the age of 18 in South Carolina? 9 A. No. 10 Q. Okay. Tell me about your educational 11 background. 12 A. Education? Undergrad, finance, '05 from 13 Charlotte. MBA, 2020, Charlotte. Six Sigma Green 14 Belt. That's kind of it as far as education. 15 Q. Okay. And I have a copy of your resume' 16 that's been produced to us in this case. We'll mark 17 this Exhibit 1. 18 (Defendant's Exhibit Number 1 19 marked for identification.) 20 BY MR. NEINAST: 21 Q. I'll hand you over a copy of it. 22 A. Okay. 23 Q. I want you to just look through here -- it 24 looks like it's about three or four pages -- and let me 25 know if there's anything that's incorrect or that needs	12 1 A. I'll have to look back. 2 Q. But is it fair for me to say that other than 3 what's listed on this resume, you have no professional 4 training or certification related to restaurants or the 5 restaurant industry? 6 A. Is it fair to say I have no training? No, I 7 don't have any -- 8 Q. Okay. What training or certifications do you 9 have that are not listed on this resume -- 10 A. Well, certifications are listed. Training -- 11 Q. Sorry, I got to finish question. Related 12 to the restaurant industry? 13 A. Certifications are listed. As far as 14 training, I have 20 years of experience, I've trained 15 at different companies that are listed there -- 16 Q. Okay. 17 A. -- as far as how to operate and things like 18 that. 19 Q. All right. And we can work through some of 20 that. But first of all, tell me about your finance 21 background. 22 A. Undergrad, finance. Did some investment type 23 of work, life insurance work, stuff like that right out 24 of college. Traded some. Pretty straightforward. 25 Q. Why did you move from the finance industry
11 1 to be updated. 2 A. I don't think so. I mean, I don't include on 3 a resume things like working at restaurants on the 4 weekend, things like that, when I was younger. But 5 besides that, all of the main jobs I had I believe are 6 on here. 7 Q. Sure. 8 A. I'm going back a ways, though. 9 Q. Yeah. No, I got you. Other than what's 10 listed here on this resume, do you have any other 11 professional training or certifications? 12 A. What's listed here? Let's see what's listed. 13 Formerly, Series 7, Series 6, Series 63 on the finance 14 side. Restaurant side, formerly Serv Safe, TIPS 15 trained. 16 Q. Now, I thought it had on here that you were 17 currently Serv Safe and TIPS certified. 18 A. I may have been when this started. 19 Q. Okay. But not anymore? 20 A. I don't think so. I think my Serv Safe 21 expired earlier this year. 22 Q. Okay. 23 A. My TIPS may -- my TIPS may be in force. I'm 24 not sure. 25 Q. Got you.	13 1 into the restaurant industry? 2 A. I never really left the restaurant industry. 3 Even when I was in the finance world, I worked at that 4 restaurant, The Clock, on the weekends that's listed on 5 there. It's just not on my professional resume. I 6 didn't -- I didn't like the finance world. 7 Q. Okay. And during the period in which you 8 were working kind of part time in restaurants with I 9 guess we'll call it a finance day job, were you 10 managing restaurants, or were you waiting tables or 11 working as a cook? What were you doing? 12 A. I've done all of that. 13 Q. Okay. 14 A. At The Clock, back -- if you look, when I was 15 16 or 17, I wasn't managing then. Kind of a cashier, 16 cook, things like that. When I became 18, management 17 wise from I would say 2000 and -- I don't know -- '08, 18 '07, '08, something like that, maybe before. But I've 19 done every -- I've served, I've bartended, I've cooked, 20 I've managed, assistant manager, general manager, 21 owner, the whole line. 22 Q. Okay. 23 A. I'm not very good at prep. Besides that, 24 I've done everything else. 25 Q. Got you. Are you still employed as the CEO

14 1 and owner of Jars Hospitality, LLC? 2 A. Yes. 3 Q. Okay. Tell me about that business. What do 4 you do? 5 A. My business manages other restaurants. 6 Q. Okay. 7 A. And -- mostly managing other restaurants -- 8 Q. So you -- 9 A. -- consulting. 10 Q. Is it primarily a consulting business or 11 primarily a staffing business? 12 A. Primarily consulting. 13 Q. Okay. Do you provide managers, managerial 14 staff for other restaurants? 15 A. Through Jars, no, but I operate restaurants. 16 Q. Okay. What about through consultant -- or 17 through 800 Degrees Phillips Place? It says you're an 18 operations consultant presently. 19 A. Uh-huh. 20 Q. Okay. Tell me about that job. 21 A. I interviewed all their managers that they 22 wanted to bring on. I sat down with them with their 23 architects and their general contractors about how 24 layout, things like that in their restaurant should be. 25 Q. Okay.	16 1 A. If there's an issue, they'll give me a call 2 or e-mail. 3 Q. Okay. So The Office Craft Bar and Kitchen 4 and Blue Smokehouse, are those both restaurants? 5 A. Correct. 6 Q. And you are the co-owner and managing partner 7 of both restaurants? 8 A. Correct. 9 Q. Okay. Where are those located? 10 A. One's in Indian Land, South Carolina, and the 11 other is in Fort Mill, South Carolina. 12 Q. Okay. Are those I guess technically four 13 positions that we just discussed, are those the only 14 professional capacities in which you're currently 15 working? 16 A. No. I also am -- TWF Burgers is under 17 construction. I'm also a co-owner in that, and I'm 18 doing everything to get that restaurant open. 19 Q. Okay. Where is that restaurant located? 20 A. That's in Fort Mill, South Carolina. 21 Q. Okay. Any other employment capacities that 22 you're currently serving in, any other ventures that 23 you have open? 24 A. As far as a legal -- not yet. I'm working on 25 some software stuff, but not yet.
15 1 A. I consulted with them on the suppliers. 2 Q. It says that you assisted in all operational 3 aspects of restaurant opening. Is that restaurant 4 open? 5 A. Yes. 6 Q. Okay. Are you still employed as a consultant 7 with them? 8 A. No. 9 Q. Okay. So when it says January '21 to 10 present, that would be outdated at this point? 11 A. Not technically. I don't get paid to 12 consult, but until paperwork says otherwise, I will own 13 one percent of that business. It can go up to over 14 five years. 15 Q. Okay. How much work are you doing on a 16 weekly basis for -- 17 A. With 800? 18 Q. Yes. 19 A. Very little. 20 Q. Okay. 21 A. Very little. 22 Q. Is that on kind of an as-needed basis at this 23 point? 24 A. At this point, yes. 25 Q. I got you.	17 1 Q. Okay. Other than Serv Safe and TIPS, do you 2 have any formal education in the restaurant or 3 hospitality industry? 4 A. Formal education, no. 5 Q. Okay. So it's all kind of on-the-job 6 training plus Serv Safe and TIPS? 7 A. Yep. 8 Q. Okay. Have you ever been sued? 9 A. No. 10 Q. Have you ever sued anybody? 11 A. No. 12 Q. Have you ever testified in court as an expert 13 before? 14 A. No. 15 Q. Is this the first time you've been retained 16 as an expert witness? 17 A. Yes. 18 Q. How much are you charging? 19 A. One seventy-five an hour. 20 Q. How much time have you billed on this case so 21 far? 22 A. Four hours. Four, four and a half, something 23 like that. 24 Q. Okay. Tell me about those four hours of 25 work. What all have you done on this case?

18 1 A. Reviewed the same stuff we have here -- 2 Q. Okay. 3 A. -- and looked at video, reviewed. That's 4 basically it. 5 Q. A couple of phone calls, I'm assuming? 6 A. Yeah, but nothing crazy. 7 Q. Okay. Have you discussed this case, the 8 facts of this case, with anyone other than the 9 plaintiff's attorneys? 10 A. No. 11 Q. Have you prepared any kind of draft or formal 12 report in this case? 13 A. No. 14 Q. Okay. Did have you any input into the 15 writing of the disclosures in which you were listed as 16 an expert witness? 17 A. No. I talked to Mike over the phone. 18 Q. Okay. But none of those words are written 19 words that were passed from you to the plaintiff's 20 lawyers? 21 A. No. 22 Q. Okay. 23 A. I wish I had time. I don't have time to -- 24 Q. Are you still certified as a Six Sigma Green 25 Belt?	20 1 out as far as, you have to have a certain amount of 2 lighting over like a food surface area. It can't be 3 dim lighting where things are being prepped. There's a 4 certain amount of light that has to come down in 5 certain areas. So it's involved in the restaurant. I 6 mean, Six Sigma Green Belt, did it -- did I personally 7 study that when I was doing it? No. Could it come 8 into play as far as how much light's being produced, 9 where the most efficient area to put it is, yeah, that 10 could happen. 11 Q. Right. And that was a poorly phrased 12 question. I should have phrased it in a better manner. 13 During the training that went into the 14 certification process as a Six Sigma Green Belt, was 15 lighting ever discussed? 16 A. I don't -- I don't recall. I don't think so, 17 but I don't -- 18 Q. Okay. What about sound equipment, was that 19 ever discussed? 20 A. I don't think so. 21 Q. All right. We'll walk through your 22 disclosures in just a sec, but for now, I want you to 23 tell me in your own words what opinions you've reached 24 during your review of this case, what opinions you plan 25 on testifying to.
19 1 A. Yes. 2 Q. Tell me about that. 3 A. Six Sigma is basically how to improve 4 operations, reduce waste, be more efficient, things 5 like that. 6 Q. Okay. Does Six Sigma in any way pertain to 7 premises safety? 8 A. It could. 9 Q. How so? 10 A. As far as being more efficient, eliminating 11 waste. You know, if things are -- if you have an 12 excess amount of waste, it could cause a problem. 13 Q. Okay. 14 A. If I put in too much chemical in something, 15 that could be an issue. Too much ordering, too much of 16 one item, that could be an issue, it could go bad. 17 Things like that. 18 Q. Have you received any training in the process 19 of being certified as a Six Sigma Green Belt related to 20 lighting safety or electrical safety? 21 A. As far as lighting, no. 22 Q. Okay. That's more related to efficiency, I 23 guess we would say, or -- 24 A. Well, lighting comes into play in restaurants 25 as far as when you design a restaurant and it's laid	21 1 A. I mean, it's pretty -- I think it's pretty 2 cut and dry. I can't believe it's gone on this long. 3 I mean, you know, someone is responsible for what goes 4 on in a restaurant as far as being the operator/owner 5 of the restaurant, what happens there. A light fell 6 and hit someone in the head. My opinion is that the 7 restaurant's responsible. 8 Q. Okay. So your -- is that the only opinion 9 you've reached in this case? 10 A. I don't know. I mean, I probably have a lot 11 of opinions on a lot of things, but -- I don't really 12 know what you're asking me. 13 Q. Okay. Well, I'm asking you, because when you 14 testify at the trial of this case, I have a right to 15 know what opinions you're going to testify to. So what 16 I'm asking you is, what opinions have you reached and 17 what opinions you're going to testify to? And you just 18 told me that the restaurant was responsible for its 19 premises -- 20 A. Yep. 21 Q. -- and that the light fell, and so it was the 22 restaurant's fault? 23 A. I don't know if I said it in those words, but 24 for the most part, yeah. 25 Q. And that's not a trick question. I just want

22 1 to know what you're going to testify to. 2 A. It depends on what I'm asked. I mean, I'm 3 not going to just go up there and sound off, you 4 know -- 5 Q. Right. 6 A. -- just start given an essay speech. 7 Q. Right. 8 A. Whatever I'm asked, you know, I'll give my 9 answer to. 10 Q. Right. Is that a fair characterization of 11 the scope of work and review that you have conducted in 12 this case? 13 A. No, it's not -- if you're going to say that I 14 just looked at it and said, "A light fell, case 15 closed," no, that's not fair to say that. I looked at 16 -- I've read everything in here and reviewed it, but, 17 you know, that's -- to sum it up, the question you 18 asked me, what I think, that's what I thought. 19 Q. Okay. 20 A. Again, if I go to trial and you ask -- or 21 here, you ask me a question, I'll answer it, but I 22 don't think I'll give up a long essay answer of -- 23 Q. Yeah, understood. What other opinions, if 24 any, have you reached after reviewing all of those 25 documents that we talked about earlier?	24 1 degree of professional certainty mean to you? 2 A. I don't know that I really understand. 3 Reasonable -- reaching an opinion to a reasonable 4 degree of certainty? I don't even know if I know how 5 to answer that. That's like a -- that's a lot of words 6 in there. 7 Q. Okay. Did you know that's the standard that 8 South Carolina holds expert witnesses to testify in 9 court, that their opinions -- 10 A. Reasonable degree of certainty? 11 Q. Got to finish the question. Right, that 12 their opinions have to be reached to a reasonable 13 degree of professional certainty. 14 A. Did I know that? No. 15 Q. Okay. That's new information to you? 16 A. Yeah. I don't know all of the laws of South 17 Carolina. 18 Q. Okay. What do you know about premises 19 liability law in South Carolina? 20 A. Premises liability law? 21 Q. Uh-huh. 22 A. The law I don't know a whole lot about. I'm 23 not an attorney. 24 Q. Okay. Do you know the difference between an 25 invitee and a licensee?
23 1 A. I think there's some stuff in there that 2 doesn't make a lot of sense. 3 Q. Okay. Like what? 4 A. Some of the answers given by the people that 5 work there. They say they know these DJs, and then 6 they say they don't know who it was, or they say they 7 don't know who's working at all on these shifts, things 8 like that. That's kind of alarming, but -- 9 Q. Okay. 10 A. Any time I've been in a situation where 11 there's some kind of incident like that, I can remember 12 back a very long time ago as a couple people who were 13 main players in that or who were involved or who the 14 server was, things like that. 15 Q. Okay. 16 A. It's kind of shocking that no one remembers 17 any of that. 18 Q. What other opinions have you reached? 19 A. That's -- I can't really think of -- that's 20 pretty much the main points. 21 Q. Okay. What does reaching an opinion to a 22 reasonable degree of professional certainty mean to 23 you? 24 A. Say that again. 25 Q. What does reaching an opinion to a reasonable	25 1 A. Someone who's invited into a business and 2 someone who's licensed to operate the business? 3 Q. No. 4 A. I guess not. 5 Q. What do those terms mean to you? Is that 6 what those terms mean to you? 7 A. Invitee is somebody who I invite in, a 8 licensee would be someone who holds a license would be 9 my -- what I would think it would mean. 10 Q. Okay. Are you going to testify that Tall Sam 11 I Am, LLC; Tabbuli; Charleston Hospital Group; any of 12 those entities or people violated any statutes, any 13 laws? 14 A. I don't know all of the laws. 15 Q. Okay. Do you know of any laws they violated? 16 A. I know that -- as far as laws go, I don't 17 know the ins and out of law. 18 Q. Okay. What about regulations? 19 A. Regulations, for example, if you go and 20 design or built or create a restaurant or operation, 21 you have to go through inspections for lighting, being 22 one, plumbing, things like that, and you cannot, or you 23 should not add lighting that are outside of what was 24 approved by that inspector. I do know that. 25 Q. Okay. What specific regulations did any of

26 1 those entities that we just -- or people who we just 2 talked about violate with respect to the incident 3 that's the subject of this litigation? 4 A. I mean, if you're asking me to pull up a code 5 or a number or something like that, I can't do that. I 6 can't tell you what page number I've read in here. You 7 know, that's a lot of stuff. 8 Q. Right. Is it fair for me to say that there 9 are no specific code provisions that you can point to 10 as we're sitting here today to say that those folks 11 violated right now? 12 A. That I personally can point to? 13 Q. Right. 14 A. As far as a number for a code? 15 Q. Right. 16 A. I can't point out a number, no. 17 Q. Okay. Are you familiar with the building 18 codes in Charleston, South Carolina? 19 A. I'm familiar with some of the codes. I'm 20 familiar with what -- I'm familiar with inspections. I 21 don't know the codes of -- number or anything like 22 that. 23 Q. You're not a building inspector? 24 A. No. 25 Q. You're not a code inspector?	28 1 A. No. 2 Q. Have you ever worked in a restaurant outside 3 of the Charlotte area? 4 A. Not outside of -- well, let me think. No. 5 Q. Okay. 6 A. Not outside of Fort Mill and Charlotte. I 7 did work in Greenville, South Carolina, actually, for a 8 few months. 9 Q. Okay. But nowhere in the Midlands, nowhere 10 down in the Lowcountry? 11 A. No. 12 Q. All right. I'm handing you a copy of the 13 expert witness disclosures in which you were disclosed 14 as a witness. I'm going to mark it as Exhibit 2. 15 (Defendant's Exhibit Number 2 16 marked for identification.) 17 THE WITNESS: Thank you, sir. 18 BY MR. NEINAST: 19 Q. Does that look like what I just handed you? 20 A. Yeah. 21 Q. Okay. I don't think you have a cover page, 22 but we're going to the James Rivenbark section. 23 A. Okay. 24 Q. It says under section -- or the paragraph 25 that's letter B under your name on this first page,
27 1 A. No. 2 Q. Have you ever performed any code compliance 3 work? And what I mean by that is, have you ever gone 4 around to restaurants and told them, "Hey, this 5 violates a code section, and so you guys need to fix 6 it"? 7 A. No, I'm not employed -- 8 Q. That's not your scope of expertise, right? 9 A. No. I've been on the other side of that. 10 Q. Okay. As in, someone's come in and inspected 11 a restaurant that you worked for? 12 A. That I worked for or own or all of the above, 13 yeah. 14 Q. Right, right. But you've never gone out and 15 done that inspection process? 16 A. As in working for the State of South Carolina 17 or another state or being employed by them? 18 Q. Any code enforcement body, anything like 19 that. 20 A. No. I don't work for them, no. 21 Q. Right. Have you ever worked in a restaurant 22 in Charleston? 23 A. Charleston, no. 24 Q. Have you ever worked in a restaurant on the 25 coast?	29 1 "The negligence of Defendant and injuries and damages 2 caused by same are the subject matters or areas on 3 which Mr. Rivenbark is expected to testify." 4 Now, I want to break that down real quick. 5 What do you know about Ms. Eddins' injuries? 6 A. Not very much. 7 Q. Okay. Do you know anything about them? 8 A. No. That she got hit in the head. 9 Q. Okay. Do you know anything about her medical 10 treatment? 11 A. No. 12 Q. Do you know anything about any of her other 13 damages? 14 A. No. 15 Q. Okay. So you're not going to testify about 16 her injuries or damages, are you? 17 A. No. 18 Q. Okay. It says, "Based upon his education, 19 training, and experience in becoming and in practicing 20 in operations and in other positions in the restaurant 21 industry as highlighted in his CV, his review of 22 documentation produced and/or obtained herein, 23 including that noted below" -- and this is what I want 24 to get at here -- "and his review of and familiarity 25 with applicable industry standards, laws, codes,

30 1 authorities, literature and/or other learned 2 publications." 3 So that's listing things that you've reviewed 4 in preparation to give this testimony, right? 5 A. Uh-huh. 6 Q. Okay. We'll start with laws. We'll work 7 back towards industry standards in a minute. 8 A. Okay. 9 Q. But what laws have you reviewed in 10 preparation for providing these expert opinions? 11 A. Reviewed? I know laws as far as operating 12 restaurants. 13 Q. Right. What laws do you know about operating 14 restaurants? 15 A. As far as alcohol consumption, hours, what 16 can come and go from the building, employment, you 17 know, just to name some of them. 18 Q. Okay. Do you know of any law, or do you plan 19 to testify to any laws pertaining to the installation 20 of lighting in restaurants? 21 A. As far as lighting goes, not outside of the 22 scope of building out a restaurant. But then again, 23 that's kind of code enforcement you can't pass. So I 24 don't know the laws that go along with lighting. 25 Q. Okay.	32 1 A. Yes. 2 Q. Sorry -- 3 A. Yeah, you're right. Yes. I forgot about 4 that. 5 Q. It's easy to get into that trap. I do it all 6 the time myself, too, but it makes things tricky. 7 A. And I read it in there. That's why I was 8 trying to do it earlier. 9 Q. Yeah, I got you. Literature. What 10 literature other than those documents that we talked 11 about earlier that are sitting over there in that 12 binder have you reviewed in order to provide testimony 13 in this case? 14 A. That's it. 15 Q. Okay. No secondary sources, no journals, 16 nothing like that? 17 A. No. I'm pretty busy. 18 Q. Yeah, I got you. I got you. And I 19 sympathize. I'm right there with you. It seems like 20 everybody is. 21 Learned publications. Learned publications, 22 have you reviewed any of those? 23 A. No. 24 Q. Okay. "Mr. Rivenbark" -- I'm skipping down 25 just a little bit. "Mr. Rivenbark may utilize the
31 1 A. I don't know if there's any specific laws on 2 the books that go around lights. 3 Q. Got you. What about codes? What codes have 4 you reviewed in order to provide this expert testimony? 5 A. I haven't reviewed any codes. 6 Q. Okay. What about authorities? What does it 7 mean by "authorities"? What authorities did you 8 review? 9 A. Authorities could be SLED, which is Alcohol 10 Enforcement South Carolina. 11 Q. Right. 12 A. It could be DHEC, Department of Health, or it 13 could be -- right now, I'm under construction again 14 dealing with more code -- what did you call it 15 earlier -- inspectors. 16 Q. Right. And have you reviewed any 17 documentation or made any communications to SLED or 18 DHEC or any inspectors related to this case? 19 A. No. 20 Q. Okay. So by "authorities," you're just 21 saying those are some authorities that you generally 22 work with in your capacity with restaurants and 23 building out restaurants, that kind of thing, right? 24 A. Uh-huh. 25 Q. That's a yes?	33 1 documents noted above and also various diagrams, 2 charts, and pictures produced and/or obtained herein, 3 including any attached hereto." 4 I don't see any diagrams, charts, or pictures 5 produced -- or attached hereto. Now, have you seen any 6 other diagrams, charts, or pictures other than what was 7 contained in that binder? 8 A. Just the ones in this binder. 9 Q. Okay. Have you made any diagrams, charts, or 10 pictures about this case? 11 A. No, sir. 12 Q. All right. And then it begins a section that 13 says, "Mr. Rivenbark is further expected to testify to 14 a reasonable degree of professional certainty as 15 follows." 16 Now, again, we discussed that standard of a 17 reasonable degree of professional certainty. What 18 exactly does that mean to you? 19 A. That someone knows what they're talking 20 about. 21 Q. Okay. Tell me about your restaurant 22 management experience in a nutshell. How many years 23 have you been managing restaurants? 24 A. 10 to 15. 25 Q. Okay. How many of those 10 to 15 years were

34 1 spent as a general manager of a restaurant? 2 A. Five to eight. I'm not sure. 3 Q. Of those five to eight, how many restaurants 4 have you worked -- did you work at during that span in 5 which you worked as the general manager? 6 A. Four to six. 7 Q. Okay. So within that -- you're saying within 8 a span of five to eight years, you worked at 9 approximately four to eight restaurants as the general 10 manager? 11 A. Uh-huh. 12 Q. Okay. Tell me about those restaurants. How 13 big were they, what kind of restaurants were they? 14 A. Three of those times as GM was with one 15 group, and I used to get sent around to fix issues. 16 The restaurant company now has eight locations. At the 17 time, it was six. You know, based here out of 18 Charlotte. I think revenue when I left was over 20 19 million annually, something in that range. 20 Q. Okay. So you kind of floated between 21 different restaurants? 22 A. Yeah. I was at the flagship most of the 23 time, but that's when I said I spent three months in 24 Greenville, South Carolina. 25 Q. Got you.	36 1 the general manager at any restaurant? 2 A. We brought in one a week at the one group 3 that I was with during the season, which our season is 4 probably six to eight months. You know, the weather 5 here is pretty good. I can't remember when the season 6 started and ended, but weekly. 7 Q. Okay. Would that always have been the same 8 DJ per restaurant, or did you -- 9 A. That was bands with that group. The other 10 group with the DJ, it was -- we had a DJ in every 11 Sunday, mostly the same DJ. We would have different 12 DJs on big events, but mostly the same on -- 13 Q. Okay. When you brought in DJs to that 14 restaurant -- which restaurant was that? 15 A. That was All American with the DJ. 16 Q. Okay. When you brought in DJs to All 17 American, would they bring their own equipment, or 18 would you have equipment for them already at the 19 restaurant? 20 A. They brought the equipment. 21 Q. Okay. What kind of equipment did they bring 22 in? 23 A. Like a turntable/mixer-type -- you know, what 24 it is nowadays, digital, and speakers. 25 Q. Like a laptop and a mixing board --
35 1 A. I was there with that company trying to fix 2 some issues, another location in Charlotte trying to 3 fix some issues, so -- 4 Q. Okay. 5 A. -- I had to move around and, you know, do it. 6 Q. Were you ever assigned as the general manager 7 to solely a single restaurant? 8 A. Yes. 9 Q. Okay. Were those fairly short-term 10 assignments, or how long did you spend at one single 11 restaurant? 12 A. A year to two, depending. 13 Q. All right. Did any of those restaurants have 14 an outdoor patio section? 15 A. All of them, I think. 16 Q. Were you ever engaged in hiring outside 17 vendors for those restaurants? 18 A. Yes. 19 Q. What kind of outside vendors? 20 A. Bands, music, DJs. Those are mostly. I'm 21 trying to think if there was anything else, like one- 22 off. But those mostly, bands and DJs. 23 Q. When you brought in -- well, first of all, 24 about how many bands or DJs -- and you may just have to 25 estimate for me here -- would you say you brought in as	37 1 A. Yeah. 2 Q. -- that kind of thing? 3 A. Nothing crazy like some may, but, yeah. 4 Q. Did they ever bring in their own lights? 5 A. I'm not sure. I honestly don't remember. 6 The one DJ on Sundays did not have lights, but for 7 special events, I don't recall. 8 Q. Okay. What about the bands at your other 9 restaurant? 10 A. Bands, we actually had lights on a stage. 11 They would bring -- you know, it would be a three to 12 five-person band. They would bring speakers, things 13 like that. 14 Q. So the lights for those bands would be 15 provided by the restaurant itself. That's what you're 16 saying? 17 A. Yeah. They could have brought spotlights and 18 things like that. I don't remember what -- we had a 19 lot of different bands. That wasn't the same band, 20 that was multiple people, multiple groups. 21 Q. Okay. When you brought in a DJ as the 22 general manager of All American, tell me about that 23 contracting process. How would you identify and select 24 a DJ to come in and play at your restaurant? 25 A. Well, that one, we -- just from local,

38 1 knowing people, but then we always had W-9s filled out 2 for tax purposes, so we had a record of who it is, what 3 company they're performing as, or if it was their 4 social security number instead if they were just doing 5 it as independent. So we kept track of that via W-9, 6 pay via check. But that person that came every Sunday, 7 that was a normal thing. 8 Q. Okay. As far as selecting that DJ, though, 9 is it fair for me to say that generally that was kind 10 of a word-of-mouth process? 11 A. I don't know. That person, how they 12 originally got the gig, I'm not sure. 13 Q. Okay. Who actually selected those DJs for 14 that restaurant? Was that you, or was that someone 15 else who worked with you? 16 A. That DJ, the one that came every Sunday, 17 predated me. 18 Q. Okay. So that person just kept on doing what 19 they had been doing? 20 A. Kept on, yeah. I knew them, yeah. 21 Q. Okay. What about other DJs that were brought 22 in? You said there were some others for special 23 events? 24 A. Yeah, but we only had a few of them. That 25 would have been corporate. It wasn't me at the GM	40 1 elevated area in the back corner. 2 Q. Okay. 3 A. He would set up there. 4 Q. Kind of like a little stage for him? 5 A. Not a full stage, but kind of a step up, you 6 know. 7 Q. A little platform? 8 A. Yeah, a little platform. "Platform" is a 9 good word. 10 Q. Got you. So he would go, and he would set 11 his equipment up on that platform, right? 12 A. Uh-huh. 13 Q. He would plug in his speakers, his laptop, 14 and whatever else he needed to be able to play music? 15 A. Uh-huh. 16 Q. Right. Would you ever as the general manager 17 of a restaurant go over and look at his equipment? 18 A. Yes. 19 Q. Okay. What would you do when you look at his 20 equipment? Tell me about that process. 21 A. Make sure everything looks all right, speak 22 to Matt, say hello, walk around. You know, I wasn't 23 taking photos of it, but -- 24 Q. Right. 25 A. -- yeah, walked around, see how things are
39 1 level. 2 Q. Okay. Did you ever have involvement in 3 selecting a specific DJ for that restaurant? 4 A. I don't recall. 5 Q. What about bands, do you recall specifically 6 selecting bands? 7 A. Yeah. Bands, we had a lot of involvement. 8 My assistant general manager would be the one who made 9 sure the W-9s were filled out. She was actually in 10 charge of booking bands, but it was all -- this was a 11 thing that her and I worked with together. 12 Q. Okay. 13 A. But she picked -- she had the database, let's 14 say, of bands, but, again, that was something that we 15 knew what was going on, yeah. 16 Q. Okay. I don't want to keep referring to him 17 just as a nameless DJ. So that DJ that came in kind of 18 regularly for you-all, what was his name? 19 A. His name was Matt Bullock. 20 Q. Matt Bullock. Okay. When Matt Bullock came 21 in to All American, tell me about what he would do to 22 set up. What would he do? 23 A. He would walk in. You know, there, came in 24 the front before we opened. It was Sundays, it was for 25 football. He would set up. We had like a small	41 1 going, look where it's at, things like that. 2 Q. Right. What were you looking for, though, 3 when you looked at that equipment? 4 A. Anything out of the ordinary. 5 Q. Okay. What would be out of the ordinary to 6 you? 7 A. Something that could fall, something that was 8 on a ledge, something that wires were exposed or, you 9 know, frayed. Excuse me, "exposed," they run out the 10 back, but frayed. Or just beverages sitting on 11 something that could catch on fire, things like that. 12 Q. You would be looking for something obviously 13 dangerous, right? 14 A. Yeah. 15 Q. Okay. Have you seen any photographs or any 16 depictions of the way that this speaker in this case -- 17 or this light, excuse me, was placed on top of the 18 speaker prior to it falling on Ms. Eddins? 19 A. I don't remember if there was photos. I can 20 look back if they were before. That stuff is not very 21 easy to see on these -- what was provided. I can look 22 back again, but -- 23 Q. Well, you've seen that video, right? 24 A. Yeah. 25 Q. And you can't see where that light is before

42 1 it falls, right? 2 A. Yeah. 3 Q. Because that's out of the frame of the video? 4 A. Yeah. 5 Q. Okay. And you haven't seen any pictures that 6 you understand depict the light prior to it falling on 7 Ms. Eddins, have you? 8 A. I only remember these two photos. 9 Q. You don't know when they were taken, right? 10 A. Yeah, I don't recall. 11 Q. Well, you wouldn't expect someone to just 12 walk around and take pictures of lighting, would you? 13 A. Taking pictures? 14 Q. In a restaurant. 15 A. No, but I would expect someone to walk around 16 and be aware. 17 Q. Right. Okay. But my question to you was, 18 prior to an incident like this, you wouldn't expect 19 someone to walk around and just take random pictures of 20 lights, would you? That would be kind of unusual, 21 right? 22 A. Yeah. Take random pictures of lights, yeah. 23 Q. Sure. I mean, I'm not going to walk into 24 this office and start taking pictures of the 25 fluorescent lights above us, right? That would be	44 1 Q. But I'll represent to you that both she and 2 her at the time fiance testified that they have no 3 idea why this light fell. You would agree with that, 4 right? 5 MR. LISKA: Objection. 6 Q. You can answer. 7 A. As far as -- say it again, the question 8 again. 9 Q. They both testified, I'll represent to you, 10 that they don't know why that light fell, right? 11 MR. LISKA: Objection. 12 Q. You don't know why that light fell, either, 13 do you? 14 A. Gravity. I mean, I know why it fell. As far 15 as what they know, I have no clue what they know. 16 Q. Okay. But you don't know how that light was 17 attached? 18 A. No. 19 Q. You don't know if it was attached? 20 A. No. I don't know -- I don't know who 21 installed it or what they did. No, I don't know. 22 Q. You don't know where it was attached, if it 23 was attached? 24 A. Above. No, I don't know. 25 Q. You don't know what it was attached with?
43 1 weird. 2 A. Yeah, I hope not. 3 Q. Yeah. Is it fair for me to say, then, that 4 you have no idea where exactly on top of that speaker 5 that light was placed prior to it falling on 6 Ms. Eddins? 7 A. I don't know if -- yeah, I wasn't there. 8 Q. You don't know if it was on the speaker, do 9 you? 10 A. From the information I have, we don't even 11 know who the DJ is. 12 Q. Right. Have you talked to Ms. Eddins? 13 A. No. 14 Q. Okay. And so that was a no to my question. 15 You don't know if that light was placed on top of that 16 speaker, right? 17 A. I don't know what the light was placed on. 18 Q. Right. Have you reviewed Ms. Eddins' depo 19 transcript? 20 A. I don't know if I had it. 21 Q. Okay. I didn't see it in that binder. 22 A. Yeah, I don't think I had it. 23 Q. It was a relatively recent depo, so you may 24 have just not got a chance to look at it. 25 A. Yeah.	45 1 A. Huh-uh. 2 Q. You don't know how much it weighed? 3 A. No. 4 Q. You don't know what kind of light it was? 5 A. No. 6 Q. You don't know what brand of light it was? 7 A. No. 8 Q. You don't know how heavy the base on that 9 light was? 10 A. No. 11 Q. You don't know if the base of that light had 12 any gripping material on it, do you? 13 A. No. 14 Q. You don't know if the top of that speaker had 15 any gripping material on it, do you? 16 A. No. That's what I was saying, it was weird 17 to me that no one knew the DJ or the light, where it 18 went. 19 Q. Right. So that's a no to my question that 20 you don't know if there's any gripping material on top 21 of that speaker, do you? 22 A. No. I do not know, no. 23 Q. Okay. So you don't know why that light fell 24 other than gravity? 25 A. Why it fell? No, I don't.

46 1 Q. You don't know if there was music playing at 2 the time the light fell, do you? 3 A. I don't think in that video there's any 4 sound. 5 Q. Right. You don't know how loud that music 6 may have been if it was playing? 7 A. No. 8 Q. You don't know if that light was on or off at 9 the time it fell, do you? 10 A. I wasn't there. Yeah. 11 Q. Okay. Do you know if that light rotates, or 12 if it's a stationary light? 13 A. I don't know. 14 Q. Okay. Do you know if it has any kind of 15 motor in it to rotate it back and forth? 16 A. I don't know anything about the light. 17 Q. Got you. Now, you reviewed the deposition 18 testimony of Cait Chapin, right? 19 A. I did. 20 Q. And she was the manager on duty that night, 21 right? 22 A. Correct. 23 Q. For Tall Sam I Am -- 24 A. Yes, sir. 25 Q. -- or Charleston Hospitality Group. Now, of	48 1 A. Now, if I have someone coming into my place, 2 as I used to have bands coming in, if someone goes to 3 put -- hang a light in the ceiling or speaker or 4 whatever the case may be, that's out of the ordinary. 5 Q. Okay. 6 A. That's not where -- someone adding additional 7 lighting above head or speakers above head or adding 8 something to the floor that would be a trip hazard or 9 something like that, that's out of the ordinary. 10 Q. Okay. 11 A. But without me being there, I can't say what 12 -- I wasn't there. 13 Q. Okay. Right. And I understand that. 14 A. Yeah. 15 Q. Assume with me for a second that this light 16 was just placed on top of that speaker. What's out of 17 the ordinary about that? You're saying that any time a 18 DJ comes in and places their equipment, that's out of 19 the ordinary? That's not out of the ordinary, is it? 20 A. Yes, it is. 21 Q. A DJ placing equipment in a restaurant? 22 A. A DJ is not there every day. A DJ wasn't 23 work -- a DJ doesn't -- if I don't have a DJ there 24 every day, if I'm a nightclub and a DJ's there every 25 single day, but the DJ is not always there.
47 1 course then if you reviewed her testimony, you know 2 that she testified that she didn't see anything 3 obviously dangerous about that light prior to it 4 falling, right? 5 MR. LISKA: Objection. 6 A. I don't remember what she testified. I mean, 7 I don't remember if she said that or not. 8 Q. Okay. 9 A. I can look in there and see, but I don't 10 remember what -- I don't remember her saying that. 11 Q. Okay. Well, let's just assume for argument's 12 sake that that's the case. If you noticed something 13 that was not obviously dangerous in one of your 14 restaurants, what would you do? 15 A. Say that again. 16 Q. If you noticed something that was not 17 obviously dangerous in one of your restaurants, what 18 would you do? Would you do anything? 19 A. Something out of the ordinary, I probably 20 would. 21 Q. Okay. Okay. What was out of the ordinary 22 about this situation? 23 A. One, I wasn't there to walk around and see, 24 so I don't -- without me being there, I can't tell you. 25 Q. Right.	49 1 Q. Right. 2 A. That's not normal. 3 Q. But if a DJ is there at the restaurant, then 4 it's not unusual for that DJ to bring their own 5 equipment? 6 A. No. They bring their own equipment, yeah. 7 Q. Right. And it's not unusual for that DJ to 8 set up their own equipment, is it? 9 A. To set it up? No. 10 Q. Okay. It's not unusual for a DJ to bring in 11 lighting equipment, is it? 12 A. No. It's -- 13 Q. You wouldn't think that's weird? 14 A. It's unusual to place it above head. 15 Q. Okay. Why do you say it's unusual to place 16 it above head? Do you know how high this light was? 17 A. I think it was -- for some reason, I'm 18 thinking like eight to ten feet, but I don't know for 19 sure, no. 20 Q. Okay. What is unusual about that to you? 21 A. I would never place something over where 22 someone was sitting that's not a permanent fixture. 23 That's why -- again, I'm not an inspector, but when I 24 go through inspections, I can't place a light wherever 25 I want to put a light for multiple reasons. So

50 1 anything that goes above head or if a DJ came in to 2 block a path to a door or create a space I can't get 3 through, that's out of the ordinary, anything that I 4 could see potentially causing a hazard. So placing 5 something overhead is out of the ordinary. 6 Q. Okay. So, again, assuming just for the sake 7 of argument that it was placed on top of that speaker, 8 what law does that violate? 9 A. I'm not sure about the law. 10 Q. What code does that violate? 11 A. It probably violates a code as far as 12 lighting. I don't know what the code number is. 13 Q. You don't know what lighting code or 14 electrical code that violates? 15 A. No. I don't know which codes, no. 16 Q. You just think it might violate a code? 17 A. Probably, yeah. 18 Q. Okay. Have any of your -- scratch that. 19 With your experience with code inspection at your 20 restaurants, has a code inspector ever given you a code 21 violation or told you that there was a code violation 22 for unsecured lighting being placed above patrons' 23 heads? Has that ever happened to you? 24 A. I don't recall. 25 Q. Okay. As we're sitting here today, you can't	52 1 Q. That could have been completely ordinary for 2 them, right? 3 A. No. 4 Q. Why not? 5 A. Because putting the lighting -- putting 6 something that's not permanent above someone's head 7 where they're sitting is not ordinary in the course of 8 operating a restaurant. 9 Q. Okay. And -- 10 A. If they did it multiple times, they really 11 should have caught it. 12 Q. Right. And you're speaking from your 13 experience operating your restaurants, right? 14 A. Not just mine, but from where I've been 15 employed, things like that, yes, I'm speaking from my 16 experience. 17 Q. Right. And you're not testifying that every 18 restaurant does everything exactly the same, right? 19 A. Oh, no. People do things differently. 20 Q. Sure. There's variation in the industry, 21 right? 22 A. Uh-huh. 23 Q. Different restaurants run their places in 24 different ways? 25 A. Yes, sir.
51 1 tell me what code that violated, right? 2 A. No. 3 Q. Okay. 4 A. But the question is out of the ordinary. 5 That's out of the ordinary, putting a light over 6 someone's head that's not permanent lighting. 7 Q. Sure. You don't know if that DJ had been to 8 Tabbuli in the past, do you? 9 A. No one there seems to know. 10 Q. That's a no? 11 A. I don't know. They don't know. 12 Q. Right. You don't know if that DJ had put 13 that light on top of that speaker in the past, do you? 14 A. No, I don't know that. 15 Q. You don't know if she had been there five 16 times? 17 A. Don't know. 18 Q. You don't know if she had been there ten 19 times? 20 A. Don't even know if it was a she, I think from 21 what I read. She or he, they didn't know. 22 Q. Right, right. So you have no idea whether 23 that person had put that light in that manner on top of 24 that speaker at Tabbuli before, right? 25 A. No clue.	53 1 Q. Okay. So Tabbuli could have hired this DJ 50 2 times before, right? 3 A. Yep. 4 Q. And that DJ could have put that light on top 5 of that speaker in that exact manner 50 times before, 6 right? 7 A. Yep. 8 Q. And if they had done that, that would be a 9 typical practice for them, right? 10 A. For them, would it be typical? Yes. It 11 doesn't make it -- it still doesn't make it like an 12 ordinary thing. 13 Q. Right. 14 A. If you over-serve somebody in a restaurant 50 15 times and they kill somebody on the fiftieth time, you 16 over-served them 50 times. 17 Q. Right, right. Have you ever instructed any 18 of your employees to remove lighting that was unsecured 19 above patrons' heads? 20 A. I don't know. I don't think so, but -- 21 Q. Have you ever instructed a DJ to set up their 22 equipment in a different way because it was installed 23 in a manner that could be hazardous? 24 A. Bands I have. 25 Q. Bands you have, DJs you have not?

54 1 A. A DJ, I don't -- I don't recall. 2 Q. Okay. With respect to bands, when have you 3 instructed them to do that? 4 A. I think it was in Greenville, as far as the 5 stage had a lip on it. You know, I was worried about 6 something coming off. 7 Q. Right. Because it could be a trip hazard, 8 right? 9 A. Yeah. Something come off, yeah. 10 Q. You would agree with me that trip hazards can 11 be obviously dangerous, right? 12 A. Yep. 13 Q. If there's something that, you know, presents 14 some kind of height differential, there's no 15 transition, somebody could trip over that, right? 16 A. Correct. 17 Q. And you wouldn't want that happening in one 18 of your restaurants? 19 A. Correct. 20 Q. You want to make sure that premises was safe? 21 A. Yes, sir. 22 Q. And so if something like that was obvious to 23 you, you would talk with the DJ or the band about it, 24 right? 25 A. Yep.	56 1 light, I don't know that. 2 Q. As far as lighting design, the installation, 3 maintenance, you don't know anything about that, right? 4 A. Huh-uh. When somebody walks in with lights, 5 things like that, I'm concerned about, you know, 6 "Where's your GFI outlet?" things like that. 7 Q. Right. But that's more on the electrical 8 system of the restaurant. That's not more on the 9 lights themselves, right? 10 A. Both. I mean, it depends on -- you can tell 11 them if they're coming, "Hey, this is how much power we 12 have. You might need to bring something to power your 13 stuff with." 14 Q. Okay. Other than that stage that you 15 mentioned, have you ever requested that a band set 16 anything -- set their equipment up in a different 17 manner? 18 A. I don't recall. I don't -- nothing jumps 19 out. 20 Q. What about your employees, your AGMs, your 21 wait staff? 22 A. My AGM would deal with the bands. She was 23 very involved. Like they weren't allowed to perform 24 without a W-9 -- 25 Q. Right.
55 1 Q. And you would expect them to fix that, right? 2 A. Uh-huh. 3 Q. Yeah. You're not an electrical engineer? 4 A. No, I'm not. 5 Q. You're not a sound engineer? 6 A. Huh-uh. 7 Q. You're not a lighting engineer? 8 A. No engineer at all. 9 Q. Right. Not a lighting technician, right? 10 A. Nah. Nope. 11 Q. Okay. Beyond what we just mentioned as far 12 as opening and the lighting of the interior of 13 restaurants, do you know anything about stage lighting? 14 A. Little. 15 Q. Okay. What do you know about stage lighting? 16 A. Just from dealing with bands that are, you 17 know, doing things, but I don't -- very little. 18 Q. Okay. And by "very little," I mean, tell me, 19 what do you mean? 20 A. I know what they look like. You know, I know 21 it takes a lot of energy sometimes to get it all 22 plugged in, and you got to have -- 23 Q. Extension cords and that kind of thing? 24 A. -- GFIs and all that nonsense you got to deal 25 with, yeah. But as far as, you know, the specs on a	57 1 A. -- so we knew exactly who they were. 2 Q. But as far as specifically -- 3 A. As far as them moving things -- 4 Q. Right. 5 A. -- it doesn't ring a bell. I don't recall. 6 I don't -- maybe. 7 Q. Okay. 8 A. I just don't remember. 9 Q. What kind of training do you provide to your 10 general managers and really any managerial staff at 11 your restaurants right now? 12 A. Serv Safe and TIPS are required. That's one. 13 Two weeks -- two to three weeks of training, depending 14 on experience. So some of it's spent in the kitchen, 15 some's spent in the front of the house. Like my GMs 16 are in place now, but they shadowed me for a while. 17 When they're in place, the AGMs follow them. I have a 18 chef that's over my kitchens, kitchen managers, 19 assistant kitchen managers. As people move up, they 20 shadow them. Things like that. 21 Q. Yeah. So most of that training is shadow, 22 kind of on-the-job based? 23 A. Shadow, on the job, except for the Serv Safe, 24 TIPS, things like that are not -- 25 Q. That's more classroom or laptop?

58 1 A. Class-type stuff, yeah. 2 Q. Okay. Other than Serv Safe and TIPS, is 3 there any kind of formalized, you know, PowerPoint, 4 we'll call it, program-based training, anything like 5 that? 6 A. No, no PowerPoint. 7 Q. Okay. It's all just on the job, you know, 8 figuring out how to do the job kind of stuff, right? 9 A. For the most part. 10 Q. Okay. What formal training do you provide to 11 your managerial staff in your restaurants with respect 12 to premises safety? 13 A. Well, my managers -- my GM as far as the 14 handbook goes, as far as what to look out for, going 15 through the restaurant, operations, things like that. 16 The GM has to review the handbook with everybody, and 17 there's a page they sign off on. All the files come to 18 me. I then put them in the payroll when the file's 19 complete. 20 So the GM goes through that with new hires, 21 and then it goes down to AGM for day to day or the GM 22 who is running a shift. And then we have quarterly 23 kind of meetings, but the quarterly meetings, you know, 24 we talk about the handbook every time just to go over 25 things, including safety, but you got sexual	60 1 A. Yes. 2 Q. And that's the handbook for their restaurant 3 operations? 4 A. Uh-huh. 5 Q. Do you know anyone who works at Charleston 6 Hospitality Group? 7 A. Do not. 8 Q. Are you familiar with them in the industry at 9 all? 10 A. No. 11 Q. Okay. Do you know who Sam Mustafa is? Does 12 that name ring a bell? 13 A. No. 14 Q. How about Jeff Diehl other than reviewing his 15 depo transcript? 16 A. The first thing I thought was Bill Diehl, the 17 attorney, when I saw that name, but I don't know Jeff 18 Diehl. 19 Q. I don't think they're related. 20 A. I don't, either. That's the first -- only 21 Diehl I know of. 22 Q. Yeah, yeah, yeah. But you've reviewed that 23 handbook and their training, right? 24 A. Yeah. 25 Q. Do you think there's anything wrong with that
59 1 harassment, so forth and so on. So that's things that 2 are ongoing, but it's not a -- the GM's not sitting 3 down having a safety meeting every day with everybody. 4 Q. Right. And my understanding is, that's 5 pretty usual in the industry, right? 6 A. Yeah, for the most part. 7 Q. Okay. You sort of have a quarterly meeting, 8 and part of that might be devoted to safety, and then 9 there's a handbook with some kind of additional 10 material in it, right? 11 A. Yeah. 12 Q. Now, that's what Charleston Hospitality Group 13 has, too, right? 14 A. Uh-huh. 15 Q. You understand they have a handbook, and some 16 of that's devoted to premises safety, right? 17 A. Uh-huh. 18 Q. How pages of your handbook are devoted to 19 premises safety, do you know? 20 A. I don't know off the top of my head. 21 Q. Okay. Rough estimate for me, is it five, 22 give or take, ten? 23 A. Two to five or -- yeah. 24 Q. Two to five. Got you. And you reviewed that 25 Charleston Hospitality Group handbook, right?	61 1 training? 2 A. I can't -- I can't recall. I've read a lot. 3 Q. Yeah. 4 A. I really don't recall. 5 Q. Nothing stuck out at you as being egregiously 6 wrong, right? 7 A. Um -- 8 Q. I mean, we're sitting here today, and you 9 can't remember -- 10 A. I honestly don't remember. You know, today, 11 the last -- you know, I got a newborn, so I've read 12 over more of the deposition the last day or so, and, 13 you know, the handbook -- 14 Q. You said you had a newborn? 15 A. Yeah, a month old, a month and a day. 16 Q. Oh, my gosh. Yeah. Well, congratulations -- 17 A. Thank you. Thank you. 18 Q. -- but I know that's probably been tiring for 19 you. 20 A. It's all right. No biggie. But, I mean, I 21 read it. Mike and I went over, you know, just whatever 22 issues I had in it or how they were handling it, but I 23 don't recall talking about it, no. 24 Q. Okay. You don't recall anything off the top 25 of your head that was wrong with their handbook, right?

62 1 A. Off the top of my head, no. 2 Q. Okay. Do you have any opinions on whether 3 staff at Tabbuli were trained in an inadequate manner? 4 A. From reading what was being said, it just 5 doesn't add up, some of the stuff. As far as the 6 managers and things like that, there are some things in 7 there that I thought were -- from actions and 8 reactions, I don't think some things were done 9 properly. 10 Q. Okay. My question was, do you have any 11 reason to believe that staff at Tabbuli were 12 inadequately trained with respect to premises safety? 13 You said some things didn't add up, but what reasons do 14 you have to believe that they were inadequately 15 trained? 16 A. Reasons? As far as Cait -- you know, I'm 17 going off experience. I hate my managers being in the 18 office. When all of this was going on, she was in an 19 office. I mean, there was about to be a show 20 happening. If you're floor manager, the only manager 21 you have on duty is sitting in the office, they're not 22 watching the patrons or what's happening in the 23 restaurant or the event. You know, 10:00 at night, 24 that's not good. 25 As far as -- you know, I think they said that	64 1 Q. Sure. 2 A. I'll give you that, yeah. 3 Q. There's nothing wrong with doing paperwork in 4 the office, right? 5 A. It depends. If my manager's doing paperwork 6 in the office in the middle of lunch or middle of 7 dinner or while there's an event going on, there's a 8 problem. 9 Q. Okay. 10 A. Yeah, there is an issue. 11 Q. Now, my question to you was, what reasons do 12 you have to believe that the staff at Tabbuli were 13 inadequately trained with respect to premises safety? 14 Now, what knowledge do you have of any training that 15 was provided or not provided to Cait Chapin with 16 respect to how much time she had to spend in the office 17 versus walking around? 18 A. Well, she said that I think she followed 19 around the GM at the time. As far as her training, I 20 don't -- I don't really think they mentioned much 21 training. 22 Q. Okay. Do you provide -- with respect to your 23 GMs and AGMs, do you provide any concrete guidelines of 24 how much time they have to spend in the office 25 versus --
63 1 she wasn't very sure about some of the back-office 2 things. She was unsure about who filled out the rest 3 of the information on the incident report. That raises 4 a red flag for me that if she didn't fill it out, who 5 filled it out? It just seemed like some things were 6 falling through the cracks. 7 Q. Okay. 8 A. You know, just the top of my head, I remember 9 her being in the office when all of this happened. 10 That's -- and then -- that's a big red flag. 11 Q. You're not saying a general manager can never 12 be in the office at a restaurant, right? 13 A. No. Never, no. 14 Q. They've got to be in the office occasionally, 15 right? 16 A. Uh-huh. 17 Q. Right. You don't know why she was in the 18 office, right? 19 A. Nope. 20 Q. She could have just been, you know, filling 21 out some paperwork? 22 A. Could have been. 23 Q. That's not unusual, right? 24 A. 10:00 p.m. I mean, it's not unusual to do 25 paperwork in the office.	65 1 A. Yeah. 2 Q. Okay. What guidelines do you provide? 3 A. I provide, "This is what a shift should look 4 like." It's written out. "This is what should be 5 looked at when you walk in the door. When you close -- 6 no office hours between 11 and 2." My restaurants, I 7 don't really do events or 5 to 9 p.m., things like 8 that. So there's written guidelines. You know, walk 9 the cooler, walk the walk-in, walk the front of the 10 store, check for X, Y, and Z -- 11 Q. There's a checklist procedure, things they 12 have to do every shift, right? 13 A. Yeah, yeah. 14 Q. Okay. You have no idea how much time Cait 15 Chapin had spent in the office on that shift, do you? 16 A. No, I don't. 17 Q. Okay. So you don't know whether or not she 18 violated any guidelines the Charleston Hospitality 19 Group may have had like that? 20 A. I don't know that. 21 Q. Okay. Is that an industry standard that 22 restaurants have -- we'll call those kind of checklist 23 procedures for their managers? 24 A. I don't know. I do. I'm trying to think 25 back to -- the large group I had with bands, we had a

66 1 lot of -- we had a lot of procedures in place there. 2 All American where the DJ was -- I think that one, 3 probably less procedures than I have. But the group 4 that has the bands had a lot of procedures in place. 5 Q. Okay. But you don't know whether that's a 6 standard industry-wide? 7 A. I don't know across the board. I don't know. 8 I can't say that, yeah. 9 Q. Right. I got you. Have you ever personally 10 -- at All American, did you ever personally touch the 11 DJ's equipment, Mr. Bullock's equipment, without his 12 permission? 13 A. I don't know. I mean, I never went up there 14 and tried to mix anything, I can tell you that. I'm 15 not a very good DJ. I don't know. I mean, as far as 16 walking up and -- there could have been a situation 17 where, you know, we were very busy, if something 18 happened with him and the music was too loud or 19 something like that, but I don't recall. 20 Q. Right. That's his property, right? 21 A. It is. Yeah, it's his stuff. 22 Q. As a general rule, you don't just go up and 23 touch somebody else's stuff, right? 24 A. For the most part, yeah. 25 Q. Yeah. Not without asking?	68 1 Q. Okay. 2 A. I've kicked patrons out. 3 Q. Would you agree with me that that's the 4 industry standard in a restaurant, that generally if 5 you bring in a band or a DJ, you don't touch their 6 stuff without permission? 7 A. As far as touching their stuff, yeah. I 8 mean, you're not going to touch it. Now, again, if 9 they're doing something that's not safe, you correct 10 it. 11 Q. Right, right. 12 A. But I don't go grabbing their stuff no. 13 Q. What do you think this DJ on that night did 14 that was unsafe prior to this light fall occurring? 15 A. Putting the light above where people are 16 sitting, whoever did it. I don't know who did it. 17 Q. Do you think she did or he did anything else 18 unsafe? 19 A. I don't have any way of knowing that. 20 Q. Okay. 21 A. I wasn't there. I don't know. Not that I 22 know of. 23 Q. Why exactly do you think putting that light 24 up like that was unsafe? 25 A. Putting anything that's not permanent -- I
67 1 A. No, I'm not going to touch their stuff. 2 Q. Yeah. You wouldn't go up there and, you 3 know, mix the treble knob of his mixer all the way up, 4 right? 5 A. No, I wouldn't do that. 6 Q. Yeah. If you thought the bass was too loud, 7 you wouldn't go up there without his permission or him 8 being right there and turning his bass knob all the way 9 down, right? 10 A. It would be very rare. If I told him to turn 11 the volume down once or twice and he didn't, I would 12 probably unplug it. Yeah, that's how it would go. 13 Q. Right. 14 A. That never happened to me, though. 15 Q. Sure. Because you worked with this guy all 16 the time. 17 A. Yeah. I would be like, "I told you twice." 18 I have kicked bands out before for not turning -- 19 Q. Just being too loud? 20 A. Yeah. 21 Q. Okay. 22 A. Not often, but I've done it. 23 Q. Have you ever kicked a band out for being 24 unsafe or setting their equipment up in an unsafe way? 25 A. I don't think so.	69 1 said this -- above where people are sitting, you know, 2 is just a bad idea. I mean, it could fall. 3 Q. Okay. 4 A. And speaking of -- sorry, my wallet fell out 5 of my pocket. 6 Q. Gravity. 7 A. Gravity. 8 Q. There you go. 9 A. There it is. 10 Q. We talked a minute ago about how you're not 11 sure how that light or if that light was secured prior 12 to falling, right? 13 A. Yeah, I don't. 14 Q. Okay. So it could have had a screw in the 15 base or two screws in the base, right? 16 A. I don't think -- from what we have, I don't 17 think anyone knows. 18 Q. Yeah. It could have had Velcro on it or 19 something like that, right, cable ties, something like 20 that? 21 A. Could have. I don't know. 22 Q. Right. And so what I'm getting at there is, 23 you said "permanent," you know, if something's not 24 permanent, you shouldn't put it above someone's head. 25 That's your testimony, right?

70 1 A. Yeah. 2 Q. Okay. What defines whether something or not 3 is permanently installed? 4 A. It was approved from said inspector, whatever 5 the case may be, to be there. Like if you go to put an 6 addition on something, you can't just go and build a 7 garage, you have to get it approved. Adding lighting 8 above head is -- in my expertise says you can't add 9 that without someone approving this. 10 Q. Did you ever put Christmas lights up at any 11 of your restaurants? 12 A. Yeah. Never put them above people's seats. 13 Q. Have you ever put them above head height? 14 A. Head height, yeah. 15 Q. How do you attach them? 16 A. A ladder. I mean, you are talking about get 17 them up there? 18 Q. Yeah. 19 A. Little hooks or things like that. 20 Q. Yeah. You know, the Commandos, that kind of 21 thing, right? 22 A. Uh-huh. Yep. 23 Q. You didn't call a building inspector every 24 time you would do that? 25 A. That's not above people's seats.	72 1 A. One has been sued. 2 Q. Which restaurant? 3 A. It was Mac's Speed. 4 Q. Tell me about that. 5 A. It was an incident, someone left drunk and 6 killed someone. 7 Q. Okay. 8 A. As far as my involvement, ALE came in, took 9 cameras, took everything, and after that, I was kind of 10 out of the mix of it. 11 Q. Were you the manager at the time or -- 12 A. I was the GM. 13 Q. GM? 14 A. Uh-huh. 15 Q. Do you know what happened in that case, there 16 was a settlement or -- 17 A. It was a settlement. I don't know the 18 details of it. 19 Q. Okay. I should have asked you this earlier. 20 We got to ask everybody. Have you ever been arrested 21 or convicted of a crime? 22 A. Been arrested twice. 23 Q. Okay. Tell me about that. 24 A. Arrested in 2003 for disorderly conduct at a 25 football game when I was 21.
71 1 Q. Above head height, do you ever call a 2 building inspector every time you do that? 3 A. For Christmas lights, no. 4 Q. Do you call an electrician? 5 A. Christmas lights? Hopefully not. Hopefully 6 I got enough power to get those things running. 7 Q. Right. Do you break out the electrical code 8 every time you do that? 9 A. For Christmas lights, no. 10 Q. Would you consider those Christmas lights 11 permanently attached or temporarily attached? 12 A. Temporarily. I don't celebrate that long. 13 Q. Kind of for the season, right? 14 A. Uh-huh. 15 Q. How long do you usually leave those up? 16 A. I like to get them down soon. No longer than 17 New Year's. 18 Q. You got to talk to my wife. She leaves ours 19 up until like February. 20 A. I get them down, yeah. 21 Q. Yeah. Have any of the restaurants that you 22 own or operate or manage ever been sued, to your 23 knowledge? 24 A. Yeah. 25 Q. Okay.	73 1 Q. I think we'll let that slide. 2 A. Yeah. Then I got arrested in 2010, I think 3 it was, DUI. But I've been sober eight and a half 4 years. 5 Q. Congratulations. 6 A. Thank you. 7 Q. And you were charged with DUI on that 8 occasion? 9 A. Yep. I think it was 2010, somewhere right in 10 that window. 11 Q. Okay. Did you plead out, take a deal, end up 12 going to court? 13 A. Pled guilty. 14 Q. Got you. 15 A. Yeah. Disorderly conduct, they got rid of 16 that. The Eagles won, though. I don't know what the 17 big deal was. 18 Q. Got you. What football game was it? 19 A. Eagles-Panthers, 2003. 20 Q. Those Philly fans, they get rowdy. 21 A. It was a -- it's not true. I didn't really 22 do anything. To this day, I didn't do anything wrong. 23 Twenty-one years old. But that was 2003, so, yeah. 24 The Eagles won the game here, but the Panthers won the 25 NFC championship game that year. It's the first time

74 1 in the Super Bowl. So I remember how old I was, because 2 I was 21, it was 2003. So it was November 2003. 3 Q. Got you. 4 MR. LISKA: Jamie, are you okay? Do you 5 need a break or another water or anything? 6 MR. NEINAST: Yeah, do you-all want to 7 take a break? 8 THE WITNESS: I'm all right. Do you 9 have a Diet Coke in the building? 10 MR. NEINAST: Why don't we take a break 11 right here. 12 THE WITNESS: We'll take a break. 13 That's fine. 14 MR. NEINAST: I'm out of water. 15 THE VIDEOGRAPHER: The time is 16 11:16 a.m. We're going off the record. 17 (Recess, 11:16 - 11:19 a.m.) 18 THE VIDEOGRAPHER: The time is 19 11:19 a.m. Back on the record. 20 BY MR. NEINAST: 21 Q. I'm looking at number 11 on the expert 22 witness disclosures for you. It says, "Along with a 23 number of other statements, the significance of which 24 Mr. Rivenbark will discuss at trial, Mr. Rivenbark 25 notes that Mr. Diehl surprisingly incorrectly testified	76 1 A. Maybe. There's certain stuff that would not 2 be allowed to be played, yeah. 3 Q. Right, right. 4 A. Yeah, there's certain things, you know, 5 depending on -- you know, All American is different 6 than Mac's, so, you know, you don't want to -- yeah, I 7 would tell them certain things they could and could not 8 play. 9 Q. Okay. 10 A. I wouldn't control the whole list. 11 Q. Right, right. And that's what I was getting 12 at, right? You don't write out a set list for them 13 ahead of time, do you? 14 A. No. 15 Q. Okay. You may tell them, "Hey, it's kind of 16 a family-friendly place. Don't play, you know, 17 horribly explicit rap music," or something like that, 18 right? 19 A. Right. 20 Q. Okay. But you're not sitting out there with 21 a list of, "Hey, you-all have to play these ten songs 22 in this exact order," right? 23 A. No. 24 Q. That would be kind of weird? 25 A. Yeah.
75 1 that Tabbuli has absolutely no duty to make sure a 2 light does not fall on a patron's head if they don't 3 own the light. The restaurant controls and is in 4 charge of who and what comes onto its premises, 5 including light fixtures, and what is done by and with 6 same." 7 A. Yeah. 8 Q. What do you know about the legal concept of 9 duty? 10 A. As far as the definition, I'm not an 11 attorney. I'm not sure I could give you a good 12 definition of that term. 13 Q. Are you aware that under the law, independent 14 contractors -- one way independent contractors are 15 identified is whether they have the ability to control 16 their own work? 17 MR. LISKA: Objection. 18 A. I don't -- no, I didn't know. I'm not sure. 19 Q. Okay. 20 A. They control their own work? 21 Q. Uh-huh. 22 A. Okay. If you say so. I don't -- 23 Q. Okay. Now, when you brought in DJs to All 24 American or bands to other restaurants, would you tell 25 them which songs to play?	77 1 Q. Yeah. Now, you're not telling them exactly 2 which instruments they can play, right? 3 A. Not exactly, no. 4 Q. Okay. You don't say, "Hey, don't bring that 5 guitar, bring this guitar," right? 6 A. Right. 7 Q. Because that's their work? 8 A. It's their guitars. 9 Q. That's their job, right? 10 A. Yeah. Yeah, they bring their instruments. 11 Q. Right. And you're paying them to do their 12 job, right? 13 A. Uh-huh. 14 Q. That's not the restaurant's job? 15 A. To perform? No. 16 Q. No. It's a restaurant. 17 A. Yeah. 18 Q. Serve people food, right? 19 A. Food, drinks, service, yep. 20 Q. You don't play music, right? 21 A. Right. 22 Q. And so that's why you enter into a contract 23 with a band or a DJ, right? 24 A. Yeah. 25 Q. Because that person knows how to do their job

78 1 which is play music, right? 2 A. They play music, yeah. 3 Q. Okay. And you would agree with me that they 4 have a superior degree of control over the music that 5 they play? 6 MR. LISKA: Objection. 7 A. Yeah. Superior degree of control? I mean, 8 no. If I tell someone not to play something and they 9 play it, we're done. 10 Q. Okay. 11 A. So they have -- they can pick what they want, 12 but if we don't want it played in our establishment, 13 it's not going to be played. 14 Q. But there's a degree of discretion? 15 A. Yeah, they play -- I'm not going to monitor 16 -- "Give me your 20 songs you're going to play 17 tonight." I don't want to -- yeah. 18 Q. Within the bounds that you set out for them, 19 they have leeway within to operate. Is that fair? 20 A. Yeah, uh-huh. With the music, yeah. 21 Q. Okay. Have you ever hired an independent 22 contractor or anyone for your restaurant to orchestrate 23 any kind of stage show, drag show, fashion show, 24 anything like that? 25 A. Not drag or fashion show. I'm trying to	80 1 A. Correct. 2 Q. Okay. And I guess the testimony of Mr. Diehl 3 and Ms. Chapin? 4 A. Yeah. Everything here, yeah. 5 Q. "Mr. Rivenbark will" -- I'm sorry, I do this 6 all the time when I'll start a quote, and then I'll 7 forget to introduce it. I'm starting on item 12 on 8 your expert disclosures. It's like the second 9 sentence. "Mr. Rivenbark will cite recommendations, 10 industry standards, and best practices applicable to 11 restaurant operations and premises safety." 12 What recommendations do you plan on citing? 13 A. As far as recommendations, when you hire -- 14 Q. Now, are those your personal recommendations 15 that we're talking about here, or where are those 16 recommendations coming from? 17 A. We talked about earlier there's different 18 standards at different places. 19 Q. Okay. 20 A. But recommendation is, when you bring an 21 independent contractor on or anybody you hire or let 22 come into your premises to do a job to be aware of what 23 they are doing and how they are doing it. 24 Q. Okay. I got it. 25 A. So that's --
79 1 think, stage show. The only thing close would be, I 2 think at All American, we had a New Year's event where 3 the whole building -- it's a large building -- we had 4 different things going on. But as far as drag or 5 anything like that or fashion, no. 6 Q. Okay. What about other stage shows, anything 7 like that, do you have any experience with that? 8 A. Just in the building at All American when we 9 were there, we had, you know, musical performers, but 10 not as far as fashion and runway things, no. 11 Q. Right. As far as setting up or orchestrating 12 or installing any equipment for those shows, though, 13 you have no experience, right? 14 A. We had a stage that -- Mac's Greenville had a 15 stage that was inside the establishment, but it 16 wasn't -- it was not for a runway or anything like 17 that. 18 Q. Okay. Anything other than that stage, any 19 equipment, any experience in those sort of shows? 20 A. Let me think back all those years. I don't 21 think so. 22 Q. Okay. You've never been to Tabbuli, right? 23 A. No. 24 Q. So everything that you know about their 25 premises you're basing off of those photographs?	81 1 Q. Do you -- have you found anything in the 2 documents that you reviewed for this case that says 3 that Tabbuli staff were unaware that a DJ had come in 4 that night? 5 A. This whole thing with the DJ is kind of -- 6 they don't even know who the person is, so -- 7 Q. Right. My question to you was, have you 8 found anything in your review of the documents that 9 says that Tabbuli staff were unaware of whether a DJ 10 had come in to play that night? 11 A. I don't honestly remember, because there's 12 differing as to -- there's documentation that someone 13 was there, but they don't know a name. 14 Q. Okay. 15 A. There's no -- the thing between Mr. Diehl and 16 Cait, I think her name is, is kind of all over the 17 place. 18 Q. Okay. 19 A. There's nothing there that says that there 20 wasn't a DJ there. It's just, don't know who -- 21 Q. Yeah. There's nothing there that says that 22 they were surprised that a DJ had shown up that night, 23 right? 24 A. No. I think Cait said that they were used to 25 these people coming.

82 1 Q. Yeah. They intentionally went out and got a 2 DJ that was an independent contractor. You don't 3 disagree with that statement, right? 4 MR. LISKA: Objection. 5 A. They intentionally went out? 6 Q. Uh-huh. 7 A. I don't agree or disagree with that 8 statement. 9 Q. Okay. 10 A. I mean, the reason I say it is because this 11 stuff is so mixed up of what they're saying. They said 12 people would come, then they said they didn't know if 13 they were there, they said they didn't know if it was a 14 man or a woman. So via their testimony, I don't -- if 15 you can't tell me if a man or a woman showed up or have 16 a name, then it's kind of all over the place. 17 Q. Were you unaware that the DJ's actually been 18 identified in this case? 19 A. Yeah. 20 MR. LISKA: Objection. 21 Q. Okay. Is that new information to you? 22 A. As far as name, yeah. 23 MR. LISKA: Can we go off the record for 24 a second? 25 MR. NEINAST: Sure.	84 1 Diehl. From what I read, they never confirmed that. 2 Q. Okay. Do you know any of the DJs that have 3 been identified in this case? 4 A. No. 5 Q. Have you ever worked with any of them? 6 A. Huh-uh. 7 Q. Okay. Their names mean nothing to you, 8 right? 9 A. Yeah, nothing. 10 Q. They're probably based down in Charleston? 11 A. Yeah. I have no idea. 12 Q. What other recommendations -- well, scratch 13 that. You said that your recommendation was with 14 respect to the work of a DJ or independent contractor 15 to know who was coming onto your premises, and what was 16 the second part of that? 17 A. I don't remember what I just said. 18 Q. Okay. Just to know who's coming onto your 19 premises? 20 A. Like our process, if a contractor comes on, 21 they fill out a W-9 -- 22 Q. Okay. 23 A. -- like I said. And that -- you know, it's 24 either their business with their signature, or it's 25 using their name and their social.
83 1 THE VIDEOGRAPHER: The time is 2 11:26 a.m. We're going of the record. 3 (Discussion off record.) 4 THE VIDEOGRAPHER: The time is 5 11:26 a.m. We're back on the record. 6 BY MR. NEINAST: 7 Q. I'll represent to you that a sheet has been 8 produced in this case that appears to be a roster of 9 DJs that were hired on various days at Tabbuli. Okay? 10 A. I read about the roster. 11 Q. Right. Have you seen that roster? 12 A. I can't recall if I read it or looked at it. 13 I think it was in one of the other depositions. I 14 don't know, to be honest with you. 15 Q. You have not personally seen that roster? 16 A. Yeah. 17 MR. LISKA: Objection. 18 Q. Okay. And I'll represent to you that the 19 name of the DJ that was apparently hired per that 20 roster on the day in question was a DJ by the name of 21 Beck Danger. 22 MR. LISKA: Objection. 23 A. Well, I read in that deposition that that 24 wasn't -- that they didn't know the name. There was 25 Danger, then someone else said it was Diehl -- or not	85 1 Q. Okay. How did not filling out a W-9 result 2 in this light falling on Ms. Eddins' head? 3 A. Don't know. 4 Q. That doesn't have any connection to it, does 5 it? 6 A. Very little if it does. 7 Q. Okay. What other recommendations are you 8 going to testify to at the trial of this case? 9 A. Basic recommendation is, anyone you bring 10 into your establishment, contract out, or employ, that 11 you're responsible for what they do inside of your 12 establishment. 13 Q. Okay. 14 A. That's how I operate. 15 Q. Okay. That's how you operate. 16 A. Uh-huh. 17 Q. Is that an industry standard? 18 A. As far as I know. 19 Q. Okay. 20 A. I mean, I treat it as -- like I brought up 21 the alcohol earlier. If I let my staff over-serve 22 someone, they leave, they do something wrong, me and my 23 staff are liable. And that is law as far as South 24 Carolina on the alcohol side. 25 Q. Sure.

86 1 A. Now, as far as this goes, they can come in 2 and arrest the bartender and the manager and me. 3 Q. Okay. So articulate in your own words for me 4 what the industry standard is in South Carolina with 5 respect to control of an independent contractor's work 6 by a restaurant. 7 A. Control, if you hire someone to do a task, 8 they should do the task you hired them for. And if 9 they're doing that task under your scope, your 10 supervision, your restaurant, then you should be 11 responsible for what they do and do not do. 12 Q. Okay. How do you know that's the industry 13 standard in South Carolina? 14 A. That's I think subjective as far as industry 15 standard. I can't -- 16 Q. Right. 17 A. I can't comment and say what an industry 18 standard is as far as -- 19 Q. And I know some industries -- for example, I 20 do a lot of trucking cases, right? 21 A. Uh-huh. 22 Q. It's a very regulated industry. You have 23 federal regulations, you have state regulations, DMT, 24 Federal Motor Carrier Safety Administration, that kind 25 of thing, right?	88 1 Q. The unsecured light that fell -- I'm on -- I 2 did it again, I'm sorry. I'm on item 13 on your expert 3 witness disclosures. "The unsecured light that fell 4 and struck Ms. Eddins on her head, regardless of who 5 owned or installed the light, was a dangerous condition 6 and posed a foreseeable risk of harm to restaurant 7 patrons. Mr. Rivenbark is familiar with such fixtures 8 in the industry, and they are not manufactured or 9 intended to be placed unsecured on a ledge or shelf 10 above where patrons and spectators are seated." 11 Now, again, we've been over this ad nauseam, 12 but you don't know if that was secured or not, right? 13 A. I have no way of knowing. 14 Q. How are you familiar with such fixtures, 15 meaning this light fixture, in the industry? 16 A. I picked light fixtures for all of my 17 restaurants, The Office, Blue, TWF Burgers. I worked 18 with an architect for those fixtures, and then I worked 19 with the GC and the general contractor and the 20 inspector when they're installed. 21 Q. Okay. So I think we need to be very precise. 22 Those are light fixtures as in kind of interior light 23 fixtures, right? 24 A. Uh-huh. 25 Q. And the purpose of those light fixtures is to
87 1 A. Yep. 2 Q. Other industries are a little more 3 unregulated, we'll call it, right? Now, what I'm 4 getting at here is, you're not aware of any set of 5 regulations in South Carolina that prescribe an 6 industry standard for restaurants with respect to 7 independent contractors, are you? 8 A. No, I'm not. 9 Q. Okay. So it's kind of more of a -- more of a 10 -- along the side of an unregulated thing, right? 11 A. As far as if there's any regulations, you 12 know, paper in a book somewhere, I don't know. 13 Q. Okay. 14 A. Yeah, I don't know the answer. 15 Q. You would agree with me that industry 16 standards can vary from place to place? 17 MR. LISKA: Objection. 18 Q. They might do things differently in Florida 19 than they do in South Carolina, right? 20 MR. LISKA: Objection. 21 A. That's possible. 22 Q. Sure. They might do things differently in 23 Charleston than they do in Charlotte, right? 24 MR. LISKA: Objection. 25 A. Yeah, it's possible.	89 1 provide illumination for patrons of the restaurant and 2 back-of-house staff, right, if it's in the kitchen? 3 A. Yeah, for the most part. 4 Q. Yeah. Those aren't stage lights, right? 5 A. Well, you said "interior," but, for example, 6 every one of my restaurants has a patio. Those are 7 dining areas where people sit. Those lights are 8 treated the same as the other lights. 9 Q. Right. And what I'm getting at there is, 10 you're not familiar with stage lights in the restaurant 11 industry, right? 12 A. Stage lights? 13 Q. Right, DJ lights. 14 A. Well, I mean, like I said, at Mac's we had 15 stage lights, but -- I replaced some of those, but I'm 16 not -- wasn't the one purchasing them. 17 Q. Okay. You didn't select, purchase, or 18 install those lights, right? 19 A. No, I didn't install them. 20 Q. You didn't maintain them in any way, right? 21 A. As far as maintaining, to a point I did. For 22 example, at Mac's, something I picked up there that was 23 really good is, we -- every Monday I had a walk- 24 through, a maintenance walk-through. So I walked 25 through the building, and anything I had an issue with,

90 1 whether it be floor, light, equipment, could be a 2 chair, X, Y, and Z -- 3 Q. Right. 4 A. -- it was done in a report and sent to 5 corporate that these things have issues. 6 Q. And is it fair for me to say that during 7 those maintenance walk-throughs, what you would be 8 looking for is anything visibly wrong, right? 9 A. Visibly, or I would know of equipment issues 10 that may not be visible. 11 Q. Yeah, right. But you're looking for 12 equipment issues that need to be remediated? 13 A. No, not just equipment. My rule of thumb, 14 floor to ceiling. 15 Q. Okay. What do you mean by "floor to 16 ceiling"? 17 A. I walk into a restaurant, and I look at it 18 like I'm going to buy it. I look from the floor to the 19 ceiling to see if I was going to buy this place, would 20 I buy it, and I look at everything. 21 Q. Okay. Do you remember from the deposition 22 testimony of Cait Chapin that Tabbuli staff were 23 instructed to walk around and inspect the restaurant? 24 A. I remember her talking about it. I don't 25 know that they were -- I don't think she put it in	92 1 Q. Right, right. But prior to it falling and 2 hitting someone, do you have any evidence of that at 3 all? 4 A. Where it was -- I didn't see no evidence of 5 them putting it up there. 6 Q. Right. 7 A. I never saw that, but I saw the light fall. 8 Q. Right. But prior to it falling, my question 9 is, do you have any evidence that that light was in a 10 dangerous condition? 11 A. The light itself in a dangerous condition? 12 Q. Yes. 13 A. It's dangerous where it was placed. 14 Q. Okay. 15 A. As far as if the light had a malfunction or 16 anything like that, I wouldn't know. As far as where 17 it's placed was dangerous. As far as the light itself, 18 if it had, you know, something internally wrong with it 19 or a scratch or a cut or -- I don't know that. 20 Q. Okay. 21 A. I've never seen an up-close of the light, you 22 know. 23 Q. Right. And you don't know exactly where that 24 light was placed, right? 25 A. Above Ms. Stefani's head. I don't know
91 1 those terms. She said they would walk around and do 2 their job, basically. 3 Q. Right, right. 4 A. I think in their handbook, it said they had 5 to be -- somebody would use common sense, basically, 6 things like that. 7 Q. Yeah. Do you have any opinions on the 8 frequency of which those inspections need to be 9 conducted? 10 A. As far as what I used to do, or as far as 11 what is -- what inspection are you talking about? 12 Q. Those maintenance walk-throughs, you call 13 them. 14 A. Weekly -- 15 Q. Okay. 16 A. -- is when I used to do them. But, again, 17 when -- if I'm bringing someone into my building that's 18 not normally in my building to do a task that's 19 normally done in my building, that would trigger 20 someone looking into it at that point. 21 Q. Right, right. What evidence have you 22 reviewed in this case or do you have any opinion on 23 whether the placement of this light prior to it falling 24 amounted to a visibly dangerous condition? 25 A. Well, I saw the video of it hitting someone.	93 1 exactly, you know, the spot, no. I can't go in there 2 and walk into this place and say, "It's right there," 3 you know. 4 Q. Right, right. You would agree with me that 5 there's nothing inherently dangerous about lights over 6 people's heads, right? 7 A. No. 8 Q. I mean, we're sitting here under lights now. 9 A. No, I wouldn't agree with that. If you're 10 telling me right now you're going to put something 11 above me you just got and put a light above my head, 12 I'm going to look up to make sure something's not 13 wrong, or I'm going to get up. 14 Q. Right. 15 A. So these lights that were per code that were 16 put in this building I feel pretty good about. 17 Q. Okay. 18 A. But if someone else is walking in and 19 starting to hang a light over my head, that's going to 20 make me switch seats with somebody. 21 Q. Okay. Do you have any idea what the 22 manufacturer of this light, his recommendations were 23 with respect to installing it or placing it on any 24 particular surface? 25 A. No, sir.

94 1 Q. Have you read any manufacturer documentation 2 or industry documentation about these stage lights? 3 A. No, sir. 4 Q. Bear with me just a sec. 5 A. No problem. I'll check my phone. 6 Q. Sure. Good? 7 A. I'm good, yeah. I'm not checking these 8 e-mails right now. 9 Q. You don't know if anyone bumped into that 10 light, do you? 11 A. I do not. 12 Q. Looking at item 15 on your expert disclosure, 13 the second sentence reads, "A competent inspection is 14 not wandering around a restaurant casually looking at 15 things; it requires looking for hazards in a 16 knowledgeable manner and implementing proactive 17 measures for safety." 18 What kind of proactive measures for safety do 19 you implement in your restaurants? 20 A. An example of that, you know, that 21 maintenance walk-through is one. 22 Q. Right. 23 A. When I walk in, it's floor to ceiling. I 24 don't expect -- now, servers and things like that, will 25 they pick up everything? No. But my managers should	96 1 Q. Okay. And that was probably a poor example. 2 A. Yeah. But if it's a small -- if it's a 3 scratch, yeah, I don't want to hear about it. 4 Q. Yeah. If somebody drops a glass and breaks 5 it, they're not going to pick up the phone and call 6 you, right? 7 A. I hope not. Now, point, though, an incident 8 report. If some -- as far as an incident report goes, 9 if they drop a glass, not an incident report. If 10 somebody cuts -- staff nicks a finger or any of that, 11 it's an incident report. 12 Q. Okay. 13 A. But, yeah, day to day, if somebody drops a 14 glass, I don't want to hear about it. 15 Q. Okay. 16 A. If there's a drink in it, I will find out, 17 it's in a comp, but, no, that's fine. I'm getting too 18 detailed. 19 Q. Right. You're aware that an incident report 20 was filled out in this case, right? 21 A. I saw it. 22 Q. And you reviewed it? 23 A. Yeah. 24 Q. Okay. Tell me about it. 25 A. It's another thing in this file that's -- is
95 1 know anything that's in that list of issues needs to 2 get to me so we can get it repaired or fixed or done. 3 Q. Okay. So that involves training your 4 managerial and lower staff to come to you with any 5 problems or issues in the restaurant, right? 6 A. To the managers and then up to me. 7 Q. Kind of up the chain of command as necessary? 8 A. Yeah. If I'm in the building, different, 9 but, yeah. 10 Q. Right. Now, you don't as the owner expect to 11 be bothered with really minor issues, right? 12 A. I wish I didn't get bothered with so many, 13 but -- 14 Q. Probably cut down on your e-mails and phone 15 calls a lot, right? 16 A. Yeah. You know, I operate, and I own it, so 17 the office, I was there day and night for the first 18 year we were open, so a lot of people know me, and I'm 19 accessible. But you're correct, there's certain things 20 I don't want to deal with on a daily, yeah. 21 Q. Right, right. If there's a chip on the wall, 22 a chip of paint off the wall -- 23 A. It gets to me eventually if it's big enough, 24 because I got to bring somebody in to fix it. I just 25 actually did that two months ago at The Office, yeah.	97 1 her name Cait or Caitlyn? 2 Q. Cait. 3 A. Cait, she remembers filling out part of it, 4 not the rest. 5 I don't know what's going on with my wallet, 6 man. Give you-all my money. 7 Q. It's all good. 8 A. But she remembered filling it out, not the 9 rest. It was pretty, you know, straightforward, signed 10 off on Ms. Eddins. I didn't -- you know, I don't 11 remember what it says in detail. I just remember that 12 reading when I saw it that she didn't remember filling 13 it out completely. 14 Q. Right. Now, you know this incident happened 15 -- I believe it was July 2018, right? 16 A. '17. 17 Q. '18, '17? 18 A. I think it was '17. I was -- I think it was 19 '17. 20 Q. I think I had it as '18, but let's double- 21 check that while we're sitting here talking about it, 22 because I want to make sure we're a hundred percent 23 right on it. 24 A. They could have changed the date. Just 25 kidding.

98 1 Q. Yeah, it should be there on your amended 2 complaint, actually, in your folder. 3 A. I don't know. Whichever date you tell me. 4 I'm not sure. 5 Q. Okay. Well, you know, frankly it doesn't 6 matter. What I'm getting at here is, do you know when 7 Cait Chapin's deposition was taken? 8 A. No. 9 Q. It was last year, right? Now, three, four 10 years, that's a fairly long amount of time, right? 11 A. Yeah. I mean -- yeah. 12 Q. Do you remember the details of every scrap of 13 paperwork that you filled out three or four years ago? 14 A. As I said, this is one of the things alarming 15 to me. I don't remember a piece of paper, but if 16 there's an incident to this magnitude, like when I had 17 a car hit a building, I know exactly which server went 18 to the hospital, I know exactly what managers were on 19 duty. I got a good -- you know. And that was longer 20 ago than that. 21 Now, do I expect to remember every detail? 22 No, of course not. But they also said they don't even 23 know who was working, which I find that hard to believe 24 that they don't remember anyone who was working. 25 So when I read what they're saying and then I	100 1 accurate, no. 2 Q. Okay. If someone, you know, drops a glass, 3 cuts their finger a little bit, that's going to be a 4 lot less memorable to you than somebody having a heart 5 attack, right? 6 A. Probably. I mean, if they really -- if 7 they're dying or something, yeah, definitely, you know. 8 Q. Sure. 9 A. Probably. I don't -- 10 Q. Is it fair for me to say that we tend to 11 remember major incidents more than minor incidents? 12 A. That's fair. I agree with that. 13 Q. "A competent inspection is not wandering 14 around a restaurant casually looking at things." What 15 evidence have you found in this case or have you 16 reviewed in this case that indicates that Tabbuli staff 17 were wandering around and casually looking at things? 18 A. One, there's a photo that has a book under a 19 stage, a server book, and a speaker fell on somebody's 20 head was the other one. I mean, it's -- no one noticed 21 whoever put that speaker up there is alarming. 22 Q. Okay. And by "speaker," you mean light? 23 A. Light. Excuse me. Light, yeah. I meant 24 light. 25 Q. Right. Now, what I'm getting at here is the
99 1 see the paperwork, it just seems a little -- again, the 2 lady, I don't know her. There's no way she remembers 3 every detail, no. 4 Q. Sure. That's just a little strange. 5 A. Yeah, but there are certain things that they 6 probably should remember. 7 Q. I got you. You would agree with me that 8 turnover in the restaurant industry can unfortunately 9 be pretty high, right? 10 A. Yeah, higher than most industries, I think. 11 Q. Yeah. People tend to kind of come and go? 12 A. Yeah, in the restaurant more than others. 13 Q. Right. And you know that an ambulance was 14 not called for Ms. Eddins that night, right? 15 A. I didn't know either way. I didn't -- 16 Q. Okay. I'll represent to you that there 17 wasn't an ambulance called. 18 A. Okay. Yeah. I didn't see anything that said 19 there was, yeah. 20 Q. Right. And an incident in which an ambulance 21 was called to your restaurant would probably be a 22 little more memorable to you than one in which an 23 ambulance was not called, right? 24 A. I mean, maybe. I mean, maybe. There's 25 incidents. I don't that that's a hundred percent	101 1 inspection, because it says, "A competent inspection is 2 not wandering around a restaurant and casually looking 3 at things." Now, with respect to the inspections that 4 Tabbuli staff performed, do you have any evidence to 5 believe that they were wandering around and casually 6 looking at things? That's a very strange point of 7 inflection for me. 8 MR. LISKA: Objection. 9 Q. You can answer. 10 A. So casually, if someone's coming into a 11 restaurant that doesn't normally work there day to day 12 that's hired on, and someone is putting a speaker -- 13 excuse me, I keep saying speaker -- a light above 14 someone's head, for no one on staff to see that 15 happening to me gives it everybody's casually -- 16 someone should have stopped that from going above seats 17 where people are going to sit. 18 Q. Right, right. So is it your testimony that 19 Tabbuli staff were performing casual inspections? 20 A. I don't think they were performing 21 inspections. I think they were just -- I don't know 22 what they were doing. 23 Q. Okay. Why don't you think they were 24 performing inspections? 25 A. Because someone placed a lot above a seat.

102 1 They think they had seven, eight servers on, they think 2 they maybe had bouncers on, managers on. They said 3 they have, you know, all this staff, and someone still 4 was able to take a light and get it above seats to do a 5 show to perform. 6 And then someone, like I said -- there was a 7 photo, also, I think that I saw that there's a server 8 booklet under a stage holding part of the stage up or 9 keeping it level. Seeing things like that are 10 alarming. Or not seeing or not telling that person not 11 to put that there, no one's stopping it or coming in I 12 think is an issue. 13 Q. Okay. You don't know who saw that light 14 prior to when it fell, right? 15 A. I don't know. 16 Q. You don't know what patrons saw that light? 17 A. No. 18 Q. You don't know what patrons other than 19 Ms. Eddins were there that night, right? 20 A. I don't know, no. 21 Q. Okay. You mentioned a -- I believe it was a 22 card tray or a book -- 23 A. Server book, yeah. 24 Q. -- that was placed under a table leg? 25 A. Uh-huh.	104 1 operational, I wouldn't have done it. You know, I 2 wouldn't have done it. 3 Q. What about that repair was unsafe to you? 4 A. It's not a repair. Just putting a server 5 book, and that thing is cheap plastic, all of them I've 6 ever seen in my life -- they may have better ones, but 7 I've never seen one -- that's not a fix, it's a 8 Band-Aid. It's waiting for something to happen. 9 I would have just -- I wouldn't put myself at 10 risk to say this temporary fix that I don't know if 11 it's going to work or not, to put myself in that 12 situation. 13 Q. Okay. And if the fix had worked? 14 A. Still wouldn't recommend it. It's not a -- 15 it's not safe. 16 Q. Okay. Regarding -- I know we just mentioned 17 your conclusions based on the fact that the light fell, 18 but regarding Ms. Chapin and Mr. Diehl's testimony 19 about how Tabbuli's staff, managerial and wait staff, 20 were trained to identify issues with the restaurant and 21 either remedy them or bring them to the attention of 22 management, do you have any opinions about that process 23 and whether it was adequate or inadequate? 24 A. I think as far as like a server, things like 25 that, they had basically run-of-the-mill stuff.
103 1 Q. Now, wouldn't that indicate to you that 2 someone had noticed that table leg was rocking? 3 A. As a stage, that would -- 4 Q. A stage, rather. Correct. 5 A. Yeah. I don't know what they noticed, if it 6 was rocking or if they did that commonly, but I don't 7 think that's the correct remedy. 8 Q. Right, right. But if that book was thick 9 enough, that could remedy a rocking stage, right? 10 A. Doesn't mean it would make it safe. It could 11 keep it from -- could it keep it from moving? 12 Potentially. I don't know. 13 Q. You would agree with me that a stage that's 14 rocking back and forth would probably be less safe than 15 one that's completely flat and stationary, right? 16 A. If it's rocking back and forth, yeah, 17 stationary is probably safer than rocking back and 18 forth, but the answer would probably be not to do it. 19 You know, in my opinion, I would say I wouldn't want 20 people walking across this stage knowing that this 21 thing could drop an inch, and somebody goes off the 22 stage. 23 Q. So your solution to that problem would have 24 been to just keep people off that stage? 25 A. Yeah, until I had -- until I knew it was	105 1 As far as the managers I think is where kind 2 of the hang-up was. You know, not having like 3 maintenance reports or things like that or not having 4 things in line, like I said. A W-9 doesn't stop a 5 light necessarily from falling, it tracks that this is 6 the person we paid, they were in the building. You 7 know, having an incident report finished -- she said 8 she didn't finish it -- and things like that from the 9 managerial side were just all over the place. Even 10 that sheet they had of performers that we can't read 11 or, you know, can't decipher, it wasn't anybody signed 12 it, it was just, they were listing names. So there was 13 a lot of stuff on the managerial side that I thought 14 was a little off. 15 Q. Okay. That incident report was filled out 16 obviously after the light fell, right? 17 A. Uh-huh. 18 Q. That wouldn't have prevented the light from 19 falling if it had been filled out earlier, right, or if 20 it had been filled out all the way? 21 A. Well -- 22 Q. It's just a piece of paperwork, right? 23 A. Not necessarily. I'll give you an example. 24 We do comps. So if I have a -- if somebody doesn't 25 like a sandwich, somebody doesn't like this beer,

106 1 things like that, a piece of paper is printed, and it's 2 filled out, this is why they don't like it, X, Y, Z. 3 My managers review that and say, "Okay." Over time, 4 maybe this beer's not good, or maybe this server that 5 has all these errors wasn't trained long enough. Then 6 I take those pieces of paper, and it gives me something 7 to learn from. 8 So those incident reports would have been 9 done over years, and I think she said she had never 10 seen one. Now, it doesn't mean that something 11 happened. Maybe something didn't happen when she 12 worked there. But if you fill it out when somebody 13 nicks their finger, you fill it out when somebody falls 14 down, you do it every time, you do it correctly -- 15 Q. Right. 16 A. -- then maybe some of these things as far as 17 safety over time, there's less issues. 18 Q. And I think you hit the touchstone there, 19 which is, you know, you're not aware of any prior 20 incidents of lights falling at Tabbuli, right? 21 A. No, there's nothing I have here, so -- 22 Q. Right. And you're not aware of any other 23 incidents that happened at Tabbuli for which any 24 manager did not fill out an incident report? 25 A. I don't remember in their deposition.	108 1 have some questions for you in follow-up, but, you 2 know, we'll hopefully get you out of here a little bit 3 early. 4 THE WITNESS: No problem. 5 THE VIDEOGRAPHER: The time is 6 11:54 a.m. We're going off the record. 7 (Recess, 11:54 - 11:58 a.m.) 8 THE VIDEOGRAPHER: The time is 9 11:58 a.m. We're back on the record. 10 BY MR. NEINAST: 11 Q. Mr. Rivenbark, I've got just one quick 12 follow-up question for you. 13 A. Okay. 14 Q. You told me earlier that you've never 15 testified as an expert witness or been retained as an 16 expert witness before, right? 17 A. Correct. 18 Q. Okay. Have you ever consulted or been hired 19 as a consultant for a lawyer prior to this case? 20 A. I don't think so. 21 Q. Okay. 22 A. I don't think so. 23 Q. So no one has sought your services as a 24 litigation expert or an expert for litigation prior to 25 this, right?
107 1 There's something -- I can't remember what it was. 2 They said that -- did he say he had been sued before, 3 Diehl, or something? I don't remember what it was with 4 Diehl. But the girl, Cait, said she had not personally 5 filled one out. She didn't know, I think is what she 6 said -- 7 Q. Right. 8 A. -- something along those lines. 9 Q. Right. But my question to you was, are you 10 aware of any incidents that happened at Tabbuli prior 11 to this light falling for which -- 12 A. Me? No. 13 Q. I got to finished the question. Sorry. 14 A. Oh, sorry. 15 Q. -- for which an incident report was not 16 filled out? 17 A. From what I have, I don't have any evidence 18 of that. 19 Q. Okay. 20 MR. NEINAST: I think that's about all I 21 have for you, Mr. Rivenbark, but I'll tell you what. 22 Let's take about a two-minute break. I'm going to look 23 over my notes, make sure we hit everything. 24 THE WITNESS: Okay. 25 MR. NEINAST: And Mike probably will	109 1 A. Huh-uh. No. 2 Q. All right. That's all I have. Have you 3 understood all of my questions today? 4 A. Yes, sir. 5 Q. Have you answered fully and truthfully to the 6 best of your ability? 7 A. Yes, sir. 8 Q. Have we discussed all of your opinions that 9 you've come to in this case? 10 A. I hope so, yeah. 11 Q. I hope so, too. Do you feel a need to add to 12 or change any of your answers? 13 A. No. 14 Q. All right. This is your opportunity. What 15 else do you want to add, what else do you think I need 16 to know? 17 A. I'm okay. 18 Q. Cool. 19 MR. NEINAST: All right. Yeah, Mike may 20 have some questions for you. That's all I have for 21 now. I may have some follow-up based on his follow-up, 22 but I'm good for the time being. 23 THE WITNESS: All right. 24 CROSS-EXAMINATION BY MR. LISKA: 25 Q. Jamie, I'm going to go ahead and attach as

110 1 Plaintiff's Exhibit A to your deposition today the full 2 set of Plaintiff's Expert Disclosures. 3 (Plaintiff's Exhibit A marked for 4 identification.) 5 BY MR. LISKA: 6 Q. I believe you've got that in your book here 7 as well, correct? 8 A. Yep. 9 Q. Okay. 10 MR. LISKA: And I'll give this to you, 11 Madam Court Reporter, when we're done. 12 Q. So you've reviewed these and the ones that 13 were pertaining to you, correct? 14 A. Pertaining to me, yes. 15 Q. Yes. And did you provide those to me over 16 the telephone? 17 A. Yes. 18 Q. And then my office typed them up, correct? 19 A. Yes. 20 Q. All right. And so you've reviewed those, 21 right? 22 A. Yes, sir. 23 Q. And are these opinions that are contained in 24 Plaintiff's Expert Disclosures still your opinions 25 today?	112 1 A. Yes. 2 MR. NEINAST: Same objection. 3 Q. And is it your opinion that if the light had 4 been properly secured, it would not have fallen? 5 A. Yes. 6 MR. NEINAST: Object to the form. 7 Q. All right. And I think one of the main 8 opinions you had was, that light should not have been 9 placed above a patron's head in the first place? 10 A. That's correct. 11 Q. And is there a difference in the industry 12 between having a light above a patron's head that's a 13 permanent fixture that has been inspected by the city 14 inspectors and has passed code as compared to a 15 temporary light, such as the one in the picture in your 16 book here, being brought in by somebody or putting it 17 above somebody's head that's not permanent and has not 18 been inspected by the City? 19 A. Yes. 20 Q. Now, why is that different? 21 A. Because when you have architectural plans, 22 lighting, things like that -- again, I don't know the 23 code numbers -- they are approved by people who do that 24 every day for a living, inspectors, as to where lights 25 can and cannot be and what lights can and cannot be
111 1 A. Yes. 2 Q. And are you planning to offer those opinions 3 at the trial of this matter? 4 A. If needed, yes. 5 Q. Okay. So you were asked about reasonable 6 degree of professional certainty, but let me ask you 7 some questions about that. Okay? 8 A. Okay. 9 Q. And I'll come back to that here in just a 10 minute. You're not a lawyer? 11 A. No. 12 Q. Right. So you don't know what the legal -- 13 A. Jargon. 14 Q. -- terms and jargon that lawyers use, 15 correct? 16 A. Correct. 17 Q. All right. But let me ask you this. So is 18 it your opinion that the defendant in this case most 19 probably was negligent and breached their duties of 20 care? 21 MR. NEINAST: Object to the form. 22 A. Yes. 23 Q. Okay. And is it your opinion that the 24 defendant in this case most probably breached its 25 duties of care which led to the light falling?	113 1 used. Of course, there's some leeway on what lights 2 can be used, so I wouldn't pick -- bringing something, 3 an object, in and placing it above someone's head was 4 not approved. 5 Q. Okay. Going back to the reasonable degree of 6 professional certainty. So if reasonable degree of 7 professional certainty means that Defendant was most 8 probably negligent, and that negligence caused the 9 light to fall, would you agree with that? 10 A. Yes. 11 MR. NEINAST: Object to the form. 12 Q. Okay. Included with Exhibit A, there's a 13 resume' in there for you that we provided to defense 14 counsel in this case. 15 A. Uh-huh. It's back here somewhere. 16 Q. Can you get to that resume'? 17 A. Yeah, I'll find it. I guess it's in the 18 back, maybe? There it is. 19 Q. Okay. And I'm going to separately attach 20 that as Plaintiff's Exhibit B in this case, because I 21 think the one that was provided as defense exhibit has 22 some extra pages in there, and I'm not sure from where 23 they came. So I'm going to attach it. 24 (Plaintiff's Exhibit B marked for 25 identification.)

114 1 BY MR. LISKA: 2 Q. Can you look at that and tell me if that is a 3 true and accurate copy of your resume? 4 A. Yes, it is. 5 Q. Okay. So let's talk about that just a little 6 bit. 7 A. There's something that jumps out to me. The 8 TWF Burgers, expected to open in January, it didn't 9 open because of permitting. It's not open now. 10 Q. Okay. So looking at your resume, are you 11 experienced in commercial hospitality operations, 12 including restaurant enterprises? 13 A. Yes. 14 Q. Does your employment require expertise in 15 maintaining commercial premises in a safe condition in 16 order to protect patrons from harm? 17 A. Yes. 18 Q. And does your employment require you to be 19 familiar with a restaurant's duties with respect to 20 keeping a restaurant in a safe condition in order to 21 protect patrons from harm? 22 MR. NEINAST: Objection to the form. 23 A. Yes. 24 Q. Are you experienced in hospitality and 25 restaurant operations?	116 1 Q. Are you familiar with working with 2 contractors? 3 A. Yes. 4 Q. All right. So the employment handbook that 5 defense provided to us as being the one that they use 6 to train employees -- if I can find that here 7 somewhere. And I'll have you take a look at it. I 8 know what the answer to the question is, because you 9 told me about this. 10 A. It's hard to find. Don't make me read a lot. 11 Q. I won't make you read a lot. 12 A. I think it's -- there it is. 13 Q. Was there anything in that handbook about 14 formally training managers or staff about premises 15 safety? 16 A. I don't recall. I'll have to look back at 17 the handbook. 18 Q. Well, if there was not, can that infer that 19 perhaps the training provided by Defendant to its 20 managers or staff was deficient? 21 MR. NEINAST: Objection to form. 22 A. It could, yes. 23 Q. Would you expect the handbook to have 24 something in there or at least Defendant to have some 25 kind of policy in place about what training is provided
115 1 A. Yes. 2 Q. Are you experienced in designing restaurant 3 layouts? 4 A. Yes. 5 Q. Are you experienced in architectural design 6 at least as far as a restaurant operations manager is 7 concerned? 8 A. Yes. I work with my architects, yes. 9 Q. Okay. And in your profession, are you 10 familiar with premises safety? 11 A. Yes. 12 Q. How about premises maintenance? 13 A. Yes. 14 Q. How about project management? 15 A. Yes. 16 Q. How about interviewing, hiring, training, and 17 managing personnel? 18 A. Yes. 19 Q. How about creating, implementing, and 20 training in operational policies, procedures, and 21 employee handbooks? 22 A. Yes. 23 Q. And would that include premises and patron 24 safety? 25 A. Yes.	117 1 to managers and staff with respect to the safety of 2 patrons in its restaurant? 3 A. Yes. 4 Q. Did you see anything in this handbook that 5 said other than they're supposed to use common sense to 6 make sure the premises was safe? 7 A. I remember common sense just being -- like it 8 jumped out at me, they use common sense. But as far as 9 the premises, I don't recall anything. There's a 10 paragraph on safety, but it's two bullet points, 11 uniform standards, report accidents. Yeah, I don't 12 remember anything else. 13 Q. In your profession and based on your 14 education, training, and experience, are you familiar 15 with the duties required of a commercial hospitality 16 business and restaurant concerning patron safety? 17 A. Yes. 18 MR. NEINAST: Objection to form. 19 Q. And as far as where the light was placed and 20 by whom, are you relying upon the deposition of Cait 21 Chapin and Mr. Diehl that this unsecured light that 22 fell on Stefani Eddins was placed on an audio speaker 23 that was attached to a wood column supporting the roof 24 structure? 25 A. I saw that -- I read what they said, yes.

118 1 Yeah. I think Cait said that they took it back down or 2 something like that. 3 Q. And that's a good point. I was going to ask 4 you about that. Did you see in Ms. Chapin's deposition 5 where on page -- I don't have the page, but the 6 question was, "Did you look that night to see where the 7 light was after it fell on Stefani's head?" Her answer 8 was, "I believe we took it down, because I'm sure they 9 didn't want that to happen again." 10 A. Yeah, I remember reading that. 11 Q. Does that indicate to you that the restaurant 12 actually had control over that light? 13 MR. NEINAST: Objection to form. 14 A. Even before that, I thought they had control 15 over the light. 16 Q. Right. 17 A. And that confirms that she -- if they wanted 18 it down, they could remove it, or they could place it 19 up there. I don't know who placed it. 20 Q. So do you respectfully disagree with 21 Mr. Diehl's testimony where he said Tabbuli had 22 absolutely no duty to make sure a light does not fall 23 on a patron's head if they don't own the light? 24 A. I disagree with that, yes. 25 Q. Is it your opinion that a restaurant controls	120 1 Q. Regardless of who put it there? 2 A. Regardless, yes. 3 Q. Was it the restaurant's duty to make sure 4 that that light was not put there? 5 A. Yes. 6 MR. NEINAST: Objection to form. 7 Q. Was it the restaurant's duty to go through 8 and inspect the premises to discover that that light 9 had been put above the seating area? 10 A. Yes. 11 MR. NEINAST: Same objection. 12 Q. And had they inspected that area and seen 13 that light, should they have taken that light down so 14 it would not be above a patron's head? 15 A. Yes. 16 Q. And had they done that, would you agree that 17 that light would not have fallen on Stefani's head? 18 A. Yes. 19 MR. NEINAST: Objection to form. 20 Q. Should that light have been discovered and 21 taken down before it fell on Stefani's head by the 22 restaurant? 23 A. Yes. 24 Q. I want to go over some of your testimony that 25 you mentioned earlier. Does a restaurant have control
119 1 and is in charge of who and what comes onto its 2 premises, including light fixtures, and what is done by 3 and with those light fixtures? 4 A. Yes. 5 MR. NEINAST: Objection to form. 6 Q. You were asked about being familiar with 7 lights. Let's go back to the picture of the light that 8 Tabbuli provided to us in this case, if I can find 9 that. Maybe you can find it for me. 10 A. It's got to be on this side. 11 Q. There you go. In your education, training, 12 and experience throughout your career, have you had 13 occasions to come across lights like that that's shown 14 in that picture? 15 A. Yeah. 16 MR. LISKAK: Okay. Just for the record, 17 we will go ahead and attach that picture as Plaintiff's 18 Exhibit C today. 19 (Plaintiff's Exhibit C marked for 20 identification.) 21 BY MR. LISKAK: 22 Q. Is it your opinion that that temporary light 23 should not have been placed above a patron's head where 24 they were going to seat a patron? 25 A. Yes.	121 1 over everything in the restaurant, regardless of who 2 brings it in? 3 A. Yeah. 4 Q. Does a restaurant have a duty to make sure 5 that whatever is brought into its restaurant is safe 6 and not injurious to patrons? 7 A. Yes. 8 MR. NEINAST: Objection to form. 9 Q. Does a restaurant have a duty to make sure 10 they don't seat patrons in an area of danger? 11 A. Yes. 12 MR. NEINAST: Objection to form. 13 Q. Would an area of danger be seating a patron 14 below a light that's been set there temporarily? 15 A. Yes. 16 Q. Ms. Chapin testified in her deposition that a 17 DJ came in around 3 or 4 in the afternoon, and the 18 incident report indicates that the incident where the 19 light fell on Stefani's head occurred about 10:20 p.m. 20 that evening. Would that have been plenty of time for 21 Ms. Chapin or any other manager or any other staff 22 member to notice that the light was sitting above a 23 patron seating area where it should not have been? 24 A. Yes. 25 Q. Would that have been plenty of time for them

122 1 to take that light down? 2 A. Yes. 3 MR. NEINAST: Objection to form. 4 Q. Should the restaurant have had a plan in 5 place to go around and inspect for hazards like a 6 temporary light being placed above a patron's head? 7 A. Yes. When they have an independent 8 contractor in bringing in stuff that's not normally 9 there, yes, they should have been checking. 10 Q. And all of these duties we've mentioned, is 11 it your opinion that the defendant breached these 12 duties? 13 MR. NEINAST: Objection to form. 14 A. Yes. 15 Q. And is it your opinion that those breaches 16 caused Stefani to have this light fall on her head? 17 A. Yes. 18 MR. NEINAST: Same objection. 19 Q. Does a restaurant even need a code to tell 20 them they should not place a temporary light above a 21 patron's head, or it can fall and hurt them? 22 A. No. I think their handbook says "common 23 sense." 24 Q. You were asked all sorts of stuff that you 25 don't tell a DJ, like maybe the entire list of his or	124 1 Q. Would you expect the manager to not let a 2 temporary light be placed above a patron's head? 3 A. Yes. 4 Q. Would you expect a manager to remove a light 5 or have a person remove the light if they did place it 6 above a patron's head? 7 A. Yes. 8 Q. Would you expect a manager not to allow 9 patrons to be seated below a temporary light? 10 A. Yes. 11 Q. And if managers are not doing that, can you 12 infer that managers are not being properly trained? 13 MR. NEINAST: Objection to form. 14 A. Yes. 15 Q. And if the staff is not doing that, can you 16 infer that the staff is not being properly trained? 17 A. Yes. 18 Q. Would a light falling off a speaker and 19 hitting someone on the head be a memorable moment in a 20 restaurant? 21 MR. NEINAST: Objection to form. 22 A. Yeah. 23 Q. Is that something you would not forget as a 24 manager? 25 A. I wouldn't forget it.
123 1 her songs. Do you remember that line of questioning? 2 A. Uh-huh. Yes. 3 Q. Would you expect a restaurant to tell the DJ, 4 if in fact the DJ in this case put the light where it 5 was, to not put a light above where a patron is going 6 to be seated? 7 A. Yes. If they walked in with lights, I would 8 expect that. 9 Q. Would putting a light above someone's head be 10 outside the bounds of what a restaurant should allow a 11 DJ to do? 12 A. Yes. 13 Q. If you were going to put a light above a 14 patron's head and where you were going to seat patrons, 15 would you need to have that inspected to make sure it 16 was safe? 17 A. Yeah, yeah. 18 Q. And that's what a restaurant should do? 19 A. Yeah. I would call my general contractor if 20 I'm adding any lights above seats and then let them 21 deal with inspectors and let me know, yeah. 22 Q. Would you expect a restaurant's manager to 23 inspect the lighting being placed by someone else that 24 comes into the restaurant? 25 A. Yes. That's a big red flag, yes.	125 1 Q. Mark Williams is an expert architect -- 2 A. Uh-huh. 3 Q. -- who is going to be testifying in this 4 case, as well. Mr. Williams' disclosures are in there, 5 as well, in Plaintiff's Exhibit A. 6 A. Okay. 7 Q. In paragraphs 29 and 30, he says, "Temporary 8 lights, like stage lights, need to be properly 9 supervised by qualified personnel and barriered from 10 patrons." Do you agree with that as a restaurant 11 operator? 12 A. Yes. 13 MR. LISKA: Okay, Jamie. I think those 14 are all of the questions I have for you right now. 15 THE WITNESS: Okay. 16 REDIRECT EXAMINATION BY MR. NEINAST: 17 Q. I have a couple of follow-up. 18 A. Yes, sir. 19 Q. How much future work do you anticipate doing 20 on this case up to trial? 21 A. Don't know. I really don't know. If it ends 22 today, it's fine by me. If I have to go to trial, I'll 23 show up if asked. 24 Q. Right. But as we're sitting here right now, 25 you don't know about any specific work or projects you

126 1 have to do on this case prior to trial? 2 A. Oh, no, no. 3 Q. Got you. You told me earlier that you put up 4 some Christmas lights as temporary lights in some of 5 your restaurants. 6 A. Uh-huh. 7 Q. What about any other temporary lights? 8 A. Not that I can think of. 9 Q. Okay. We may have gotten this in the record, 10 and I may have just missed it, but Serv Safe and TIPS. 11 Serv Safe is related to the safe service of food, 12 right? 13 A. Correct. 14 Q. And TIPS is related to the safe service of 15 alcohol, right? 16 A. For the most part, yes. 17 Q. Neither of them are related to anything with 18 premises safety or architectural design, lighting, 19 nothing like that, right? 20 A. Correct. 21 Q. Okay. Have you ever consulted, performed any 22 consulting work for a restaurant or any business 23 regarding the installation, maintenance, upkeep, 24 anything like that related to temporary lighting? 25 A. I don't think so.	128 1 fixtures to be inspected by the City, the County, any 2 other government entity? 3 A. Not that I'm aware of. I don't know. 4 Q. You said that you had a -- to follow up, just 5 a second ago, you said you had a case like that with 6 respect to -- or case with lights like that with 7 respect to the light that's at issue in this case. 8 What did you mean by "a case"? 9 A. If I said "a case," I don't know why I said 10 "a case," but those lights are very similar to what 11 Mac's has on their stages that are already there. 12 Q. Okay. How are those lights attached? 13 A. A banister, basically. I mean, it's metal 14 and wood above a stage. It was built -- I'm not sure 15 of all the specs, but it's -- 16 Q. Yeah. 17 A. It's weatherproof. 18 Q. What's the manufacturer of the lights at 19 Mac's? 20 A. I don't know. 21 Q. What's the wattage of the lights at Mac's? 22 A. Don't know. 23 Q. What's the metal that's used to house the 24 lights at Mac's? 25 A. Whatever comes with the speakers, the metal.
127 1 Q. Okay. Do you have market lights in any of 2 your restaurants? 3 A. Do I have what? 4 Q. Market lights. 5 A. What do you mean by "market light"? 6 Q. You know those lights they string at trendy 7 places now across patios? 8 A. Oh, no, my patios do not, but at TWF I'm 9 considering it. But, again, my GC will be installing 10 those if I do. 11 Q. Got you. 12 A. It's not built yet. 13 Q. Got you. 14 A. People do like those, though. 15 Q. Right. At your restaurants, is it a fair 16 statement for me to say that in general, you leave the 17 installation of lighting up to those who have more 18 expertise regarding the installation of lighting? 19 A. As far as the original install and things 20 like that, yes. I change light bulbs, but -- 21 Q. Sure. 22 A. -- they do the professional stuff. 23 Q. Right. Are you aware of any specific 24 requirements, whether it be a code or otherwise, in 25 Charleston, South Carolina, for temporary lighting	129 1 There's nothing -- I don't think there's nothing they 2 added. I'm not sure. 3 Q. Yeah. What kind of base do the lights at 4 Mac's have? 5 A. The base as far as what connects it to the -- 6 I don't know. But the stage is metal and wood. 7 Q. Right. Are those lights motorized at all? 8 Do they move? 9 A. I'm pretty sure they don't. 10 Q. Okay. How much do they weigh? 11 A. Don't know. 12 Q. Okay. You don't know if that light's made 13 out of metal or plastic, do you? 14 A. By looking at the picture, no. 15 Q. Okay. And by "that light," I'm talking about 16 the light at issue in this case. 17 A. Yeah. I don't know. 18 Q. I got you. I'm going to read an excerpt from 19 Cait Chapin's -- I'm sorry, I'm hitting your microphone 20 there. I'm going to read an excerpt from Cait Chapin's 21 deposition, and I want to get your thoughts on it real 22 quick. 23 A. Okay. 24 Q. The question is, "Is your staff always 25 informally looking out for customers' and patrons'

130 1 safety?" I'm on page 97 here, starting on line 19. 2 The answer is, "Yes." 3 "And how exactly are they doing that? Lay 4 that out for us." "Just by being observant, by being 5 observant of the surroundings, the situations, the 6 people, the food, the alcohol content. All of those 7 things come into factor. There's a lot of things you 8 have to be aware of when you're working in an 9 environment like this to just make sure that everyone's 10 following guidelines and things. A lot of them, I 11 would train them. They would have common sense. If 12 something was broken or loose, or if there was a tile 13 coming up from the ground, something like that somebody 14 could trip over, we would make sure to fix that, you 15 know, before something happens. They were usually on 16 top of things and would come and tell me." 17 "Those observing qualities" -- this is a 18 question -- "are those things you would have looked for 19 in hiring staff as a manager at Tabbuli?" The answer 20 is, "Absolutely. I don't want to have to manage people 21 that don't have common sense." 22 Do you disagree with any of that? You want 23 your staff at your restaurants to have common sense, 24 right? 25 A. Oh, you want them to, yeah. Oh, yeah.	132 1 A. I do not. 2 Q. You don't know when Tabbuli opened for dinner 3 that night, right? 4 A. They opened in the morning at 10 or 11, it 5 said in here, so I don't think -- I think from what I 6 read, they don't close until 2, so I don't think they 7 have a break in the day. 8 Q. Right. 9 A. I don't know if it's true, but that's what I 10 read. 11 Q. Sure. You don't know when patrons -- well, 12 scratch. 4:00 is typically not a very busy time for 13 most restaurants, right? 14 A. For most. 15 Q. Kind of a lull? 16 A. Depending, yeah, but it's not as busy as 17 typically 7. 18 Q. So you don't know when the DJ put that light 19 there? 20 A. I don't know when he put it up, no. He or 21 she. I'm sorry. 22 Q. Okay. You don't know when patrons started 23 getting there for the fashion show that night? 24 A. No. 25 Q. Have you ever removed a DJ's equipment
131 1 Q. You wouldn't hire somebody if you knew they 2 didn't have common sense, right? 3 A. For the most part. For the most part, yeah. 4 Q. Intentionally, I mean. 5 A. Intentionally, yeah. 6 Q. Sure. Sometimes I guess you hire somebody, 7 and you realize they don't have much common sense later 8 on down the road, right? 9 A. Uh-huh. 10 Q. Okay. You want your staff to be observant, 11 right? 12 A. Want them to. 13 Q. You want them to always be looking out for 14 things that could potentially pose a safety hazard, 15 right? 16 A. Uh-huh. 17 Q. Okay. So you agree with Cait Chapin when she 18 says those are important qualities for the staff at 19 Tabbuli to have? 20 A. I agree they're important qualities. 21 Q. Okay. You were asked a question about the 22 amount of time that staff at Tabbuli would have had to 23 remove this light or the DJ would have had to remove 24 this light prior to patrons arriving at the restaurant. 25 You don't know when that light was installed, right?	133 1 because you believed it to be unsafe? 2 A. I don't think so. 3 Q. Do you know of anyone in the restaurant 4 industry in your experience who has removed a DJ's 5 equipment because they believed it to be unsafe? 6 A. I don't think so. I wouldn't put anything 7 past my former boss, though. 8 Q. Yeah, I know -- again, not to cast 9 dispersions on your industry, but I know there's some 10 characters in the restaurant industry sometimes. 11 A. Yeah, but I've never -- I've never seen one 12 put it over a table. 13 Q. Yeah. 14 A. That's what the kicker here is. 15 Q. I got you. You were asked some questions 16 about training expectations and your inferences 17 therefrom a minute ago. Are you basing your testimony 18 or your opinions there on any training programs that 19 are promulgated within the restaurant industry? 20 A. As far as like national or local -- 21 Q. Right. 22 A. No, there's not -- 23 Q. Are any of your restaurants accredited by any 24 industry body or authority? 25 A. I don't think so.

134 1 Q. Okay. Do you require your employees to have 2 any third-party premises safety training? 3 A. Besides, you know, TIPS and Serv Safe, those 4 are third-party trainings. But as far as premises, I 5 mean, Serv Safe falls into some of that, TIPS falls 6 into some of that, but not a training just for 7 premises. 8 Q. Right. Do you provide any training to your 9 employees related to the installation of temporary 10 lighting? 11 A. No. I talk to my managers. If any third 12 party is coming in the building, you know, we're going 13 to be aware of what they're doing. I don't provide 14 training on temporary lights, no. 15 Q. Okay. What about the installation of sound 16 equipment, are any of your employees trained in that? 17 A. No. Not directly sound equipment, no. 18 Q. Because their business is providing food, 19 right? 20 A. Food service, beer, drinks. Yeah, all of the 21 above. 22 Q. Right. Food service? 23 A. Yeah. 24 MR. NEINAST: All right. I think that's 25 all I have for you.	136 1 seat patrons." Do you see all of that? 2 A. Yes, sir. 3 Q. And is that still your opinion today? 4 A. Yes. 5 MR. LISK: All right. That's all I've 6 got. Thanks. 7 FURTHER REDIRECT EXAMINATION BY MR. NEINAST: 8 Q. One based on that. What safety rules did the 9 placement of this light prior to it falling violate? 10 What specific rules did it violate? 11 A. What's the list of rules? I mean, I don't -- 12 you're asking me to create a rule. The light was 13 placed above a table, so that table -- it's a temporary 14 light above the table. I don't have a list of safety 15 rules, per se, but -- 16 MR. NEINAST: All right. That's all I 17 got. 18 THE VIDEOGRAPHER: The time is 19 12:31 p.m. This concludes today's testimony. We are 20 off the record. 21 (Signature reserved.) 22 (Proceedings concluded at 12:31 p.m.) 23 24 25
135 1 RECROSS EXAMINATION BY MR. LISK: 2 Q. Jamie, can you do me a favor -- 3 A. Yes, sir. 4 Q. -- and go to your disclosures? 5 A. Yeah. 6 Q. Paragraph 16(c). 7 A. All right. 8 Q. Are you there? 9 A. Yes, sir. 10 Q. Okay. And then about the third sentence 11 down -- I think it's on the next page, maybe -- where 12 it says, "The light that fell in this case would not 13 have passed even a brief inspection that should have 14 been conducted by Tabbuli before then seating patrons 15 underneath same." 16 A. Uh-huh. 17 Q. "Tabbuli even states in its applicable 18 handbook under 3.9, "Safety," that, "Each employee is 19 expected to obey safety rules and exercise caution and 20 use common sense." 21 A. Uh-huh. 22 Q. "This would include staff and management 23 using 'common sense' and objecting to dangerous lights, 24 permanent, temporary, or otherwise, being installed or 25 placed directly above tables where they are going to	137 STATE OF NORTH CAROLINA COUNTY OF UNION CERTIFICATE I, Candace E. Thomas, a Notary Public in and for the State of North Carolina duly commissioned and authorized to administer oaths and to take and certify depositions, do hereby certify that on March 4, 2022, James Aaron Rivenbark, being by me personally duly sworn to tell the truth, thereupon testified as above set forth as found in the preceding pages, this examination being reported by me verbatim and then reduced to typewritten form under my direct supervision; that the foregoing is a true and correct transcript of said proceedings to the best of my ability and understanding; that I am not related to any of the parties to this action; that I am not interested in the outcome of this case; that I am not of counsel nor in the employ of any of the parties to this action. IN WITNESS WHEREOF, I have hereto set my hand, this the 15th day of March, 2022.

138 STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS COUNTY OF CHARLESTON THE NINTH JUDICIAL CIRCUIT Civil Action No.: 2020CP1002481 STEFANI EDDINS,))) Plaintiff,))) v.))) TALL SAM I AM, LLC d/b/a) TABBULL,))) Defendant.) DEPOSITION OF JAMES AARON RIVENBARK CERTIFICATE OF DEPONENT I hereby certify that I was first duly sworn prior to my deposition, and that after reviewing the transcript, I request (CIRCLE ONE): (a) no changes to the transcript, OR (b) that the changes noted on the accompanying errata sheet be incorporated into the transcript. _____ James Aaron Rivenbark Witness, my hand and seal, on this, the _____ day of _____, 2022. _____ Notary Public My Commission Expires: _____									
139 STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS COUNTY OF CHARLESTON THE NINTH JUDICIAL CIRCUIT Civil Action No.: 2020CP1002481 STEFANI EDDINS,))) Plaintiff,))) v.))) TALL SAM I AM, LLC d/b/a) TABBULL,))) Defendant.) DEPOSITION OF JAMES AARON RIVENBARK ERRATA SHEET <table style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: left; border-bottom: 1px solid black;">PAGE</th> <th style="text-align: left; border-bottom: 1px solid black;">LINE</th> <th style="text-align: left; border-bottom: 1px solid black;">SHOULD READ</th> <th style="text-align: left; border-bottom: 1px solid black;">REASON FOR CHANGE</th> </tr> <tr> <td style="height: 150px;"></td> <td></td> <td></td> <td></td> </tr> </table> Signed this the _____ day of _____, 2022. _____ James Aaron Rivenbark	PAGE	LINE	SHOULD READ	REASON FOR CHANGE					
PAGE	LINE	SHOULD READ	REASON FOR CHANGE						

Deposition of Cait Chapin

DISTRICT COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
Civil Case No. 2020-CP-1002481

DEPOSITION OF CAIT CHAPIN
TAKEN VIA ZOOM VIDEOCONFERENCE

March 25, 2021

STEFANI EDDINS,

Plaintiff,

vs.

TALL SAM I AM, L.L.C., d/b/a/ TABBULI,

Defendant.

APPEARANCES:

LAW OFFICE OF GARY C. JOHNSON, PSC

By Michael E. Liska, Esq.

2265 Executive Drive

Lexington, Kentucky 40505

Appearing via Zoom on behalf of
Plaintiff.

and

LAW OFFICE OF THE NYE LAW GROUP, PPC

By Justin D. Maines, Esq.

2008 Whitaker Street

Savannah, Georgia 31401

Appearing via Zoom on behalf of
Plaintiff.

LAW OFFICE OF SWEENEY, WINGATE & BARROW, PA

By William A. Neinast, Esq.

1515 Lady Street

Columbia, South Carolina 29211

Appearing via Zoom on behalf of
Defendant.

Page 2 1 Pursuant to Notice and the South Carolina 2 Rules of Civil Procedure, the deposition of CAIT 3 CHAPIN, called by Plaintiff, was taken on 4 Thursday, March 25, 2021 at 9:04 a.m., before 5 Linda S. Overdeer, Shorthand Reporter and Notary 6 Public within and for the State of Colorado. 7 8 I N D E X 9 DEPOSITION OF CAIT CHAPIN 10 TAKEN VIA ZOOM VIDEOCONFERENCE 11 EXAMINATION BY: PAGE 12 Mr. Liska 3 13 Mr. Neinast 88 14 Mr. Liska 100 15 16 EXHIBITS: INITIAL REFERENCE: 17 Exhibit 1 Copy of Photograph 40 18 Exhibit 1-A Copy of Photograph 57 19 Exhibit 2 Video Recording 62 20 Exhibit 1-B Copy of Photograph 21 Exhibit 3 CHG Employment Handbook 79 22 23 24 25	Page 4 1 A Caitlin Chapin. 2 Q And where do you live? 3 A I live in Parker, Colorado. 4 Q When did you move to Parker, 5 Colorado? 6 A Last July. 7 Q Where did you live prior to July 8 2020? 9 A Atlanta, Georgia. 10 Q All right. For how long did you 11 live in Atlanta, Georgia? 12 A About a year. 13 Q Where did you live prior to Atlanta, 14 Georgia? 15 A Florida. 16 Q I'm trying to get back to 17 Charleston. At some point, did you live in 18 Charleston? 19 A I moved away from Charleston in the 20 end of 2017. 21 Q Okay. And what brought you to 22 Florida and then to Atlanta and then to Colorado? 23 A Family reasons, work for Atlanta. 24 I work in the film industry, so I was working on 25 a film there.
Page 3 1 CAIT CHAPIN, 2 being first duly sworn in the above cause, was 3 examined and testified as follows: 4 EXAMINATION 5 BY MR. LISKA: 6 Q Ms. Chapin, good morning. We met 7 just a second ago before we started. We are here 8 to take your deposition in a case styled Stefani 9 Eddins versus Tall Sam I Am d/b/a Tabbuli. It's my 10 understanding you used to work at Tabbuli and your 11 counsel there has indicated that and that's is why 12 we're here today. 13 MR. LISKA: And I think maybe off 14 the record, we all agree we're allowed to take this 15 via Zoom, since Ms. Chapin is not in South Carolina 16 right now. 17 MR. NIENAST: I have no problem 18 getting that on the record. We can stipulate to 19 that. 20 MR. LISKA: Okay. And as far as the 21 swearing-in process, we all stipulate to that. 22 MR. NIENAST: Yep. 23 Q (By Mr. Liska) Okay. So Ms. 24 Chapin, have you ever -- we'll start with this, 25 give us your full name, please.	Page 5 1 Q What do you do in the film industry? 2 A I was a PA and also a set dresser. 3 Q Okay. Very good. So have you ever 4 given a deposition before? 5 A I have not. 6 Q All right. Couple of, I call them 7 ground rules. It sounds a little bit stringent 8 when I say it like that. A couple of suggestions 9 that we have to make it easier for the court 10 reporter and for the record as we go forward. 11 If you can go ahead and let me get 12 my question out before you start to do your answer, 13 and we'll just try to let you answer before we ask 14 another question. And if there is a question that 15 we ask that you don't understand, it doesn't make 16 sense, don't be shy, just tell us that, because a 17 lot of times we don't ask good questions. And if 18 you need a break at any time, let us know and we 19 are happy to give you a break, okay? 20 A Thank you. 21 Q So how old are you? 22 A I'm 31 today. 23 Q Oh, no, and we're taking your 24 deposition. 25 A Yes.

Page 6 1 Q We could have done it at a different 2 day. All right. We'll try not to keep you here 3 too long then. 4 Tell me about your education. Let's 5 start with this, where did you grow up? 6 A I grew up in North Carolina, 7 Winston Salem. I went to boarding school in New 8 Jersey, my family started the school, for four 9 years. And then I went to a four-year college, 10 High Point University, and I studied English 11 writing with a minor in art. 12 Q You used to be an employee at 13 Tabbuli, correct? 14 A Yes. 15 Q Okay. Were you in school at any 16 time while you were working at Tabbuli? 17 A No. 18 Q So you had finished school before 19 that job? 20 A Yes. 21 Q All right. How did you get to 22 Charleston then? 23 A With my ex-husband. 24 Q All right. What is your 25 ex-husband's name?	Page 8 1 A No. 2 Q All right. Are you currently 3 married? 4 A No. 5 Q Do you have any children? 6 A No. 7 Q All right. Tell me about your work 8 history. Trying to think when to start, maybe 9 since High Point. 10 A I worked for my parents. They had 11 a construction company in Columbia, South 12 Carolina, so I worked for them just a little 13 while. They built bridges and retaining walls. 14 They no longer have the company. I worked for 15 them for a couple of years. 16 Then after that, I started working 17 at Tabbuli the beginning of 2015. And I worked 18 for Tabbuli for a couple of years, I would say 19 three years. And then after Tabbuli, or in 20 between Tabbuli, I was working in the film 21 industry here and there. I would leave Tabbuli 22 for a little bit and come back, if I was working 23 in Atlanta on a film or something. Then I would 24 come back whenever I wasn't working on the film. 25 It was back and forth type of a thing.
Page 7 1 A Hunter Overton, William Hunter 2 Overton. 3 Q All right. Where does Mr. Overton 4 live? 5 A Columbia, South Carolina, I 6 believe. I haven't spoken to him in years. 7 Q Part of the reason I'm asking these 8 background questions, I want to know if you have 9 any relatives over the age of 18 that live in 10 Charleston County, South Carolina, in case we go to 11 a jury. So do you? 12 A Do not. 13 Q How about friends, friends in 14 Charleston, I assume? 15 A I know quite a few people in 16 Charleston, nobody very close, though. 17 Q I won't ask you to list all your 18 friends. Do you have any kind of a criminal 19 record? 20 A No. 21 Q How about lawsuits? Have you ever 22 been a party to a lawsuit? 23 A No. 24 Q When you lived in Charleston, did 25 you attend any particular church?	Page 9 1 Q How did you get from Columbia to 2 Charleston? 3 A I did not live in Columbia. I 4 lived in Charleston. I just drove to Columbia 5 because that's where my parents -- their plant 6 was there. 7 Q What was the name of the business? 8 A Cherry Contracting. 9 Q Tell me about the jobs you had at 10 Tabbuli. What jobs did you have? 11 A Originally, I was hired as one of 12 their hookah servers. And I did that for, I 13 think, about a year or so. And then I moved up 14 to a manager position, and I spent the rest of my 15 time at Tabbuli as a manager. 16 Q What was the manager position that 17 you had? 18 A What was it? 19 Q Yes. 20 A It was just like front of house 21 managerial position, where I would oversee my 22 servers and bartenders and make sure everybody 23 was, you know, up to par with everything and we 24 were following standard procedures. 25 Q Like what kind of standard

Page 10 1 procedures? 2 A Like cleanliness, making sure the 3 kitchen is -- you know, all the -- everything is 4 done properly in the kitchen and all my servers 5 are following the procedures, you know, like the 6 washing of the hands. Making sure they do 7 whatever they have to do every single day when 8 they come in, whether that's roll napkins or 9 getting the tables ready, clean off the tables, 10 set everything up for the day kind of a thing. 11 Make sure everything is in working order. 12 Q What does a hookah server do? 13 A So basically, hookah servers 14 prepare the hookah. So they will create like the 15 shisha, the tobacco itself. You like mix it 16 together and you have different flavors. And we 17 would have this huge menu of different flavors 18 that we would have to create. The hookah server 19 would be back there making hookahs all night. It 20 was pretty high-volume hookahs, so there was a 21 lot. 22 Q When you say high volume -- well, 23 first of all, let me back up. What is Tabbuli 24 exactly? 25 A Tabbuli is a fine-dining	Page 12 1 A If I did, I don't remember exactly 2 word for word. But front-of-house manager, I 3 don't know what my description would be exactly, 4 sorry. 5 Q How did your involvement with these 6 events come along then? Is that part of the 7 managerial duties or just an extra job you were 8 given at Tabbuli? 9 A It was kind of just something I 10 fell into because I was kind of good at it, so I 11 kept doing it and helping out everybody else that 12 was involved with making events go on. 13 Q Did you have a supervisor that you 14 had to report to? 15 A I did, yes, Jay. 16 Q What's Jay's full name? 17 A Jay Witkowski. It's W-I-T -- oh, 18 my gosh. I don't remember how to spell it. I 19 think it's W-I-T-K-O-W-S-K-I, Witkowski. 20 Q What was Jay's position? 21 A He was the GM. 22 Q Did Jay report to somebody? 23 A Corporate. 24 Q And then what do you mean by 25 corporate? What's corporate?
Page 11 1 Mediterranean restaurant where they actually also 2 do -- like, they do events there, too. They do 3 like drag shows and fashion shows and they put a 4 lot of really cool events on for Charleston. 5 Q How do those events work? How do 6 they get scheduled and that kind of thing? 7 A It depends. Through the time that 8 I was there, there was somebody different. 9 Actually, sometimes it was me that was planning 10 the events. There was just a lot of creative 11 people that would either be working for Tabbuli 12 or worked in corporate. We would all kind of 13 just collab (sic) together and create these 14 events if somebody had an idea or if there was 15 something important going on that we would kind 16 of cater to. 17 Q What was the purpose of those? Was 18 that to draw in customers to the restaurant? 19 A To draw in customers or to 20 celebrate something, yes. 21 Q Okay. Did I ask you what was your 22 job description as the manager? I know you said 23 make sure servers are doing what they're supposed 24 to be doing, that kind of thing. Did you have a 25 written job description?	Page 13 1 A Sam usually or Alexis in the 2 corporate office. 3 Q And who is Sam? 4 A Sam is the owner of CHG. 5 Q What's Sam's last name, for the 6 record? 7 A Mustafa. 8 Q He's the owner of CHG? 9 A Charleston Hospitality Group, which 10 Tabbuli is underneath that. 11 Q And who is Alexis? 12 A Alexis, I don't know what her job 13 title was. She was pretty much Sam's right hand. 14 I'm not sure if she's still there or not. 15 Q What's her last name? 16 A I don't remember. 17 Q While you were there, was Sam ever 18 involved in the events? 19 A He would come to support. 20 Q What does that mean, come to 21 support? 22 A He would come to the events, come 23 to the event and celebrate or be involved in some 24 way, most of the time. 25 Q That's what I was getting at. Being

Page 14

1 involved, was he involved in the planning or
2 scheduling or anything like that?
3 A No, not usually. No, not to my
4 recollection.
5 Q Who else was involved in the events
6 besides you, while you were there?
7 A Naquan sometimes did them. I think
8 he was actually a manager there after I left, for
9 a while.
10 Q Who's that?
11 A Naquan, I don't know his last name
12 either. And I can't remember this one guy's
13 name. I wish I could remember. I don't remember
14 his name. I'm sorry.
15 Q Was there a group of you all that
16 sort of planned and set up, that kind of thing, for
17 the events?
18 A It wasn't very organized, no.
19 Q Okay. I just wondered if there was
20 sort of a team leader and the team had some other
21 members on it, that sort of thing?
22 A It was more of just a collaboration
23 that we would all just collab (sic). Tuesday
24 nights were drag nights and Thursdays were the
25 fashion show night.

Page 15

1 That was like the set standard, so
2 we knew -- we knew that -- sorry. Somebody is
3 knocking at my door, just threw me off.
4 We knew that those things were
5 happening on those nights, so then we would just
6 plan accordingly. And I think a lot of times we
7 would outsource people, like outsource people for
8 fashion shows, people that wanted to show their
9 lines or new clothing lines, things like that.
10 So either one of the managers or Jay, the GM, or
11 somebody in corporate, if they knew of someone,
12 we would incorporate that way.
13 Q What were the hours of Tabbuli when
14 you were there?
15 A I think we opened 11:00, 10:00 or
16 11:00 a.m. and closed at 2:00.
17 Q Was that for lunch?
18 A Closed at 2:00 a.m.
19 Q Okay. So 10:00, 11:00 a.m. to 2:00
20 a.m.?
21 A Yeah. I think that changed. That
22 might have changed my last couple of months. I'm
23 not sure. I can't remember.
24 Q For the most part, can I summarize
25 fairly that Tabbuli would be open from

Page 16

1 approximately 10:00, 11:00 a.m. to approximately
2 2:00 a.m. while you were there?
3 A Yes.
4 Q And just for the record, were you
5 employed there on July 20 of 2017? I don't mean
6 necessarily that day were you there, but were you
7 still employed by Tabbuli at that point in time?
8 A Yes.
9 Q And we'll get into it in a minute if
10 you were there that day, that kind of thing.
11 So was Tabbuli open for lunch?
12 A Yes.
13 Q And open for dinner?
14 A Yes.
15 Q And they had these shows, that kind
16 of thing, these events, correct?
17 A Correct.
18 Q Were the events always at night?
19 A Yes. No, I'm sorry. On the
20 weekends, I think they happened during the day,
21 yeah. Sometimes they would have drag brunch on
22 Sundays.
23 Q And then on Tuesdays and Thursdays,
24 those would be at night?
25 A Yes.

Page 17

1 Q I had seen some pictures. Is there
2 sort of an outside area or patio area where the
3 events would take place?
4 A Uh-huh.
5 Q One other thing I didn't mention, if
6 you can give a verbal response to the questions.
7 A I'm sorry. Yes, there was.
8 Q You have been doing great so far.
9 If it's a shake of the head, Linda, the court
10 reporter, can't pick up the answers and stuff.
11 Okay. So yes, there is an outdoor
12 area and a patio area where the events would take
13 place, correct?
14 A Yes, there is.
15 Q I don't have, I don't think, a
16 diagram of the restaurant from that time. Was
17 there -- is the patio area or outdoor area covered?
18 A Occasionally it was in the
19 wintertime.
20 Q How would they go about covering it
21 in the wintertime?
22 A We would rent a very large tent.
23 Q All right. But for the tent that
24 would be rented in the wintertime, it would not
25 have been covered?

Page 18 1 A Correct. 2 Q All right. So in July of 2017, it 3 would not have been covered? 4 A No. 5 Q Is part of the restaurant at that 6 time, I assume it was enclosed in a regular 7 building? 8 A It was just how you described, it 9 was indoor/outdoor. 10 Q So how would you go from the indoor 11 to the outdoor? What I'm trying to get at is would 12 you go through doors or some sliding doors that 13 would be totally opened up? How did they separate 14 those two areas? 15 A They don't. It's very -- so when 16 you enter the building, it's all open. So when 17 we close up at night, we actually have an indoor 18 area where we lock everything. You can actually 19 walk into the restaurant in the middle of the 20 night, if you want to. It's all open. You just 21 walk in. 22 There's no doors and there's the 23 bar and tables on either side. And the bar goes 24 all the way down and then you walk along the bar. 25 There's a whole square open area, which is where	Page 20 1 I assume people had to be contacted 2 and arranged and whoever is going to be 3 participating in the event, that kind of thing. 4 What would you have to do for those things? 5 A Well, a lot of it was 6 word-of-mouth. But we had like Facebook pages 7 where we would post these events. So everybody 8 that knows Tabbuli would go on the Facebook pages 9 and they would follow or say they were going. 10 That's usually how we would invite people. 11 I think there was a whole page 12 called White Hot Nights, which is what our 13 Thursday nights were, our fashion show, White Hot 14 Nights. That was the Facebook group. So pretty 15 much when you look up Tabbuli, this was connected 16 to that, the White Hot Nights is connected to 17 Tabbuli. So people would just find out about it 18 that way, by searching on the internet. 19 Q But what would be involved? I know 20 you said you got arranging chairs and couches, 21 according to the floor plan and setting up the 22 stage. What would be involved as far as getting 23 people there to participate in the events 24 themselves, as far as, you know, the fashion show, 25 for example? What's involved in the fashion show?
Page 19 1 the tent goes in the wintertime. And there used 2 to be a fountain there in the center. 3 Q What kind of things would you have 4 to do to get ready for the events? 5 A We would clean up, arrange chairs 6 and couches. According to whatever floor plan 7 that we agreed upon or whatever event is taking 8 place, that would change. So we would always be 9 moving couches around and tables around. That's 10 pretty much all we did. Oh, and then we would 11 also set up the stage. We had a stage that we 12 would set up. I would have the servers or 13 bartenders set it up. And that would usually go 14 around the fountain in the outside area. 15 Q What about planning the actual event 16 setup, though, as far as getting people involved 17 and that kind of thing? What would you do for 18 that? 19 A As far as like marketing goes and 20 getting customers? 21 Q Well, you touched on it a little 22 bit. You said somebody would have an idea about 23 what would be a good event. And then you got drag 24 shows, you said, on Tuesday nights and fashion 25 shows on Thursday nights.	Page 21 1 What is that? 2 A It could be a variety of things. 3 It could be somebody's artistic creation of their 4 line of clothing they created. It could be a 5 boutique down the road that we had collaborated 6 with. We provide them models. They pay the 7 models and they show their show line and 8 everybody has a good time. 9 Sometimes we would do games. 10 Trying to think of an example of a game we would 11 do. Like they would hide things in the 12 restaurant and tell people to go find them or 13 something and they would get a prize or a drink 14 or an appetizer or something like that. You 15 know, like that's a way to like hold people in 16 and keep them coming. A lot of Tabbuli was 17 word-of-mouth in Charleston. It was just like, 18 oh, everybody goes to Tabbuli on Thursday or 19 Tuesday night. 20 Q Where would you get the models? 21 Like from where would you provide the models and 22 pay them? 23 A Just people we would know from 24 Tabbuli that would come in and become friends 25 with people that worked there. Actually, a lot

Page 22

1 of employees would do it, some bartenders, things
2 like that, hostesses.

3 **Q Did you have to figure out what**
4 **might be involved with supplies and what was going**
5 **to be needed for the event itself?**

6 A Not so much, not for my job, no.
7 I put one event on for myself, but that was at a
8 different time, and so I had to get supplies for
9 that. Other than that, I wasn't throwing the
10 event. I didn't get anything really, no.

11 **Q Well, what about, for example, the**
12 **bartending? If you were going to have an event,**
13 **would you know that there would be more drinks**
14 **served that night, for example? Would you have to**
15 **plan for that?**

16 MR. NIENAST: Object to form.
17 A Not exactly, no.

18 **Q (By Mr. Liska) What do you mean by**
19 **not exactly?**

20 A I guess so. I don't really know
21 how to answer that question.

22 **Q Same thing, for example, food. I**
23 **mean, if there was going to be an event, would you**
24 **plan on there being more food available?**

25 A I mean, I would just stock the bar

Page 23

1 like I normally would. I don't think we did
2 anything extra that we wouldn't normally do.

3 **Q Okay. So lighting at night, what**
4 **would you do to provide lighting at night for the**
5 **event?**

6 A We had -- we had lights that came
7 on at night, like string lights. And I don't
8 even remember what kind of light they had, but
9 there was lights in the building. And then
10 whoever would come and set up for DJ would have
11 their lights or bring a light show.

12 **Q So when you had a DJ come in, how**
13 **would they know where to set their stuff up at?**

14 A It would be according to our floor
15 plan.

16 **Q Who supplied the floor plan?**

17 A It would be a cooperation between
18 all of us. Whoever is putting on the fashion
19 show or the drag show comes in and talks with all
20 the servers and me or whoever else is managing.
21 We would say what kind of show are we doing, what
22 kind of set up do you guys want to do and we
23 would just go from there. It was never one
24 person's decision.

25 **Q So ultimately, Tabbuli would have**

Page 24

1 **control over the floor plan? I mean, in other**
2 **words --**

3 MR. NEINAST: Object to form.

4 **Q (By Mr. Liska) If they didn't want**
5 **something to happen with respect to the floor plan,**
6 **they could say no, we are not going to do that?**

7 A Sure. I could have said no, I
8 don't want to do that, but anybody could say
9 that. I'm sure if anybody objected to a floor
10 plan, we would have just collab'd (sic) back and
11 said okay, what is the different idea that you
12 have.

13 **Q So when the DJ would come in and set**
14 **their stuff up, Tabbuli would be in control where**
15 **they are going to set up their stuff, correct?**

16 MR. NEINAST: Object to the form.
17 A It wasn't one person's decision,
18 no. It wasn't just Tabulli. It was a
19 collaboration of all of us.

20 **Q (By Mr. Liska) When you say all of**
21 **us, who is included in all of us?**

22 A DJ, servers, manager, bartender,
23 everybody that's involved with setting up the
24 event.

25 **Q If Tabbuli didn't want the DJ to put**

Page 25

1 **something somewhere, they would have control to**
2 **tell them no, correct?**

3 MR. NEINAST: Object to the form.

4 **Q (By Mr. Liska) They couldn't just**
5 **come in and do whatever they want, could they?**

6 A They could, yeah.

7 **Q You mean if a DJ came in and wanted**
8 **to do whatever the DJ wanted to do, Tabulli had no**
9 **control over whether or not they were allowed to be**
10 **there?**

11 A It's not control. It's do they
12 have permission to, yes.

13 **Q Okay. So they had to get permission**
14 **from Tabulli to do what they wanted to do?**

15 A No, they did not. They can come in
16 -- we were all very close with the DJs. So if
17 the DJ ever wanted to just come in and set up,
18 they just did sometimes. And if we really needed
19 to move something, then we would say okay, no, we
20 have to do this tonight. We need you over here
21 kind of a thing. But there were definite times
22 that the DJ would just come in and set up.

23 **Q But what I'm saying, if Tabbuli saw**
24 **something they didn't like that the DJ was doing**
25 **and decided to tell the DJ, hey, change that, the**

Page 26 1 DJ would have to do that, correct? 2 A May I ask who is Tabulli in this? 3 (Technical clarification off the 4 record between reporter and parties.) 5 Q That's what I'm saying. They can't 6 just come in, the DJ can't just come in and do 7 whatever they want without permission from Tabbuli? 8 A If they were not scheduled that 9 night, no, they could not. If they were 10 scheduled that night, they did also have 11 permission to set up where they wanted to. 12 Q Okay. But if Tabbuli saw something 13 with the setup that they did not like and told the 14 DJ to not do that, the DJ would have to comply? Am 15 I correct? 16 A Yes, you're correct. 17 MR. NEINAST: Object to form. 18 Q (By Mr. Liska) So tell me about the 19 training you had when you became a manager at 20 Tabulli. Well, let's back up. 21 When you first were hired as a 22 hookah server, what training did you receive? 23 A I was trained for about a 24 week-and-a-half by the other hookah girls there. 25 And they just ran me through the different	Page 28 1 needed to be done in order to keep the premises 2 safe for its patrons? 3 And I'm starting broad. And if 4 there is nothing, that's fine. If there is 5 something, we'll get into more specifics. 6 A I'm trying to remember. It's just 7 so long ago. I mean, we didn't have like safety 8 classes or anything like that, but I don't 9 recall. 10 Q Was anything done -- well, let me 11 ask you this, were there any rules set up that 12 people working had to follow in order to make sure 13 the premises was safe for its patrons? 14 MR. NEINAST: Object to the form. 15 Q (By Mr. Liska) We'll start broad, 16 and if there are, then we can get more specifics. 17 A I mean, nothing outside of normal 18 restaurant duties. 19 Q So what are the normal restaurant 20 duties? 21 A Make sure that your customer is 22 happy and taken care of well, cater to their 23 needs, be kind, be hospitable. That's pretty 24 much what the server's job is. 25 Q What about the manager's job?
Page 27 1 flavors that they had and how to create them, 2 because there were different mixtures. You would 3 have like bubble gum and lemon and that would be 4 like a creation of, you know, one thing on their 5 menu. So they would train me that way, you know, 6 how to speak with the customers, how to handle, 7 you know, working behind a bar and -- yeah. 8 Q What about when you became a 9 manager, what training did you receive when you 10 became a manager? 11 A I was trained by Jay mostly. And I 12 was trained on just general procedures of money 13 counting and drawers and how to open the 14 restaurant in the morning, how to close down the 15 restaurant, hospitality, how to take care of my 16 servers and my bartenders, how to -- pretty much, 17 that's it. 18 Q At any time, whether as a hookah 19 server or as a manager, did Tabulli provide you any 20 training with respect to keeping the premises safe? 21 MR. NEINAST: Object to the form. 22 A Can you specify or give me an 23 example? 24 Q (By Mr. Liska) Did anybody at 25 Tabbuli provide you any kind of training on what	Page 29 1 A Same as well, just extra 2 responsibilities of, you know, watching out for 3 everybody in the restaurant and the bartenders 4 and the servers, and making sure my customers are 5 happy and making sure things are running 6 smoothly, running correctly. 7 Q Did Tabbuli have any kind of program 8 set up for its employees to inspect, discover and 9 correct any hazardous conditions that might be 10 found? 11 MR. NEINAST: Object to form. 12 A I mean, yes. Every time we would 13 open the restaurant, we would check the whole 14 restaurant and make sure everything was in 15 working order. If anything was, you know, not in 16 working order, any one of us would have taken 17 care of it instantly. 18 Q (By Mr. Liska) What do you mean by 19 working order? 20 A Just everything, from the electric 21 to the walls to the flooring to -- you're talking 22 about safety in the building, right? 23 Q Yes, ma'am. 24 A To, you know, fire hydrants and, 25 you know, fire extinguishes, things like that.

Page 30 1 Making sure that things are in working order, 2 things are safe, yes. Yes, if there was any type 3 of, you know, danger, then yes, we would always 4 take care of it. But that was never really an 5 issue. 6 Q Okay. And why was it important to 7 keep and take care of anything that might have been 8 a danger? 9 A So that we would all be safe. 10 Q And if Tabbuli wasn't taken care of, 11 that might be a danger if somebody got hurt? Or 12 could somebody get hurt, that's my question? If 13 something was a danger, could somebody get hurt? 14 A Can you repeat the question? 15 Q Yes, I'll phrase it better. You 16 mentioned, I think, one of the rules you had or one 17 of the duties you had was making sure that anything 18 that was a danger be taken care of, correct? 19 A Sure. 20 Q Okay. And the reason for that rule 21 is to keep everybody safe? 22 A Yes, and myself. 23 Q Yourself included. And if that rule 24 was not followed, somebody could get hurt? 25 MR. NEINAST: Same objection.	Page 32 1 making sure they had what they need, making sure 2 my bartenders were the same. 3 Q Right. And what I'm saying, though, 4 with respect to the safety inspection that you 5 mentioned you would do every time you opened up, 6 what was your routine? 7 A I didn't do a safety inspection, 8 like a full -- like an actual safety inspection. 9 I just opened the restaurant. If I saw something 10 that seemed off or broken or something, of course 11 I would fix it. But it wasn't like I was, you 12 know, doing a written inspection every morning. 13 Q And when I say you, I don't 14 necessarily mean just you. I'm assuming that there 15 were other managers or maybe the owner or whoever. 16 Was there any kind of program set up 17 to go ahead and look for safety hazards? 18 MR. NEINAST: Object to the form. 19 A I think that was kind of a team 20 effort. There was not a -- we did have a 21 maintenance guy, I don't remember his name, that 22 I recall, if we ever had problems. I don't 23 recall his name. But no, we didn't have like -- 24 you know, things broke or problems with things, 25 we would just take care of them.
Page 31 1 A Theoretically, yes. 2 Q (By Mr. Liska) and If that rule was 3 not followed and somebody did get hurt, should 4 Tabbuli be responsible for their injuries and 5 damages? 6 MR. NEINAST: Same objection. 7 A I think that that's not a very easy 8 question. That's not a yes-or-no question 9 because it's subjective. I can't answer that 10 question. 11 Q (By Mr. Liska) Did Tabbuli have any 12 written policies about keeping the premises safe? 13 A If they did, I do not recall it. 14 Q Did you have a certain routine that 15 was supposed to be followed when you were 16 inspecting the restaurant for safety issues? 17 A It was just part of my normal 18 procedure of opening the restaurant. 19 Q Right. I think you mentioned that 20 earlier. But what was your normal procedure, as 21 far as opening the restaurant? 22 A Unlocking everything, taking chairs 23 down, putting tables out, opening the bar, 24 putting the drawers in, counting the money, going 25 to the bank, making sure my servers were on time,	Page 33 1 Q (By Mr. Liska) What if somebody 2 discovered a safety hazard after the restaurant had 3 opened up, was there something in place that should 4 be done to correct that safety hazard? 5 MR. NEINAST: Object to the form. 6 A Of course, yes. Of course. 7 Q (By Mr. Liska) I think you 8 mentioned earlier, you think everything had to be 9 safe like, I think, you said floors, walls? 10 A Sure. 11 Q Fire extinguishers. How about did 12 lighting have to be safe? 13 A Yes. 14 Q So was there an incident reporting 15 process at Tabbuli while you were there? 16 A An incident reporting process, yes, 17 we had pieces of paper to fill out if we had 18 incidents. 19 Q Well, tell me about the process. 20 What were you supposed to do if there was an 21 incident, any type of incident? 22 A Speak to whoever is having the 23 incident happen, getting a written report of what 24 that person says and fill out said paperwork, 25 have them sign it and report it to corporate.

Page 34 1 And from there, it's out of my hands. 2 Q Okay. How did you know about doing 3 all of that? 4 A Because I was trained to do that. 5 Q Who trained you to do that? 6 A Jay. 7 Q Where were the incident reports 8 kept? 9 A In a file in the office and I 10 believe perhaps at the corporate office as well. 11 I'm not sure. I think we might have scanned it 12 over there. 13 Q When you say a file in the office, 14 you are talking about right at Tabulli at that 15 time? 16 A Yes. 17 Q And then corporate would keep their 18 own separate file? 19 A Yes. 20 Q Before July 20th, 2017, were there 21 any incidents that were done that required a report 22 to be made? 23 A Not to my recollection. 24 MR. NEINAST: Object to the form of 25 that question.	Page 36 1 reporting? 2 A I do not know. 3 Q How long had the drag shows and the 4 fashion shows been taking place before July 20th, 5 2017? 6 A A few years. I'm not sure. They 7 were going on when I started working there. 8 Q I think you said you knew the DJs. 9 How did you decide what DJ would be there for any 10 particular event? 11 A It depended on their schedule. It 12 depended on what the event was. Really, it just 13 depended on those two factors. Also, who the 14 people liked. There was -- you know, typically, 15 like the drag queens really liked Trevor D (sic). 16 It would depend on things like that. Whoever is 17 in the event, who do they prefer type of a thing. 18 Q How did you go about having DJs 19 appear to do any kind of event? 20 A Could you repeat the question? 21 Q How would you go about having a DJ 22 appear for any particular event? 23 A We would call them and schedule 24 like a month or two in advance. 25 Q And what would happen from there,
Page 35 1 Q (By Mr. Liska) So from 2015 through 2 July 2017, there was never once an incident of any 3 type that required a report while you were there? 4 A From me, no, not from me. I don't 5 know if there were any other ones. 6 MR. NEINAST: Same objection. 7 Q (By Mr. Liska) What kind of 8 incidents would require a report? 9 A Somebody cut themselves or somebody 10 got in a fight or somebody got something stolen, 11 something broke, something like that. 12 Q Does that include work injuries as 13 well? 14 A Yes. 15 Q And so you're telling us today, 16 though, that when you first started there in 2015 17 through July '17, I'm sorry, 20th, 2017, there was 18 never an incident that required a report? 19 A I did not say that. I said that I 20 did not sign any reports. That was the only 21 report that I signed. I do not know of any 22 others. 23 Q Okay. That's what I'm asking, not 24 necessarily ones that you personally signed, but 25 other incidents that required any kind of	Page 37 1 once you called and scheduled? 2 A We would schedule them on a certain 3 day and they would come on that day. 4 Q What would happen when they would 5 come on that particular day? 6 A As far as set up? 7 Q Everything. 8 A They would arrive probably 4:00 9 p.m., maybe 3:00 p.m. I can't remember. And 10 they would set up whatever they need set up and 11 go from there. 12 Q Who would they talk to when they 13 first got there? 14 A Sometimes nobody. Sometimes they 15 would just come in and just set up. 16 Q So nobody was monitoring what they 17 were doing at times? 18 A Yes, it was just a constant thing. 19 I mean, we knew these people for years. So, you 20 know, it's just like a second home. 21 Q Who was the DJ there on July 20th, 22 2017? 23 A I do not recall. 24 Q If there was a fashion show, it was 25 a Thursday night. Does that give you any idea who

Page 38 1 it would have been? 2 A Not exactly, no. It's a 3 possibility that it was DJ Renaissance. I'm not 4 100 percent sure about that at all. I don't 5 know. 6 Q When they would come in, was there 7 any kind of paperwork that was involved, as far as 8 hiring them to come in? 9 MR. NEINAST: Object to the form. 10 A I do not recall. 11 Q (By Mr. Liska) What did you review 12 to prepare for your deposition? 13 A What did I review? 14 Q Yes. 15 A I'm just trying to remember things 16 because it was a while ago. 17 MR. NEINAST: Just so we are clear, 18 please don't discuss anything -- and I'm going to 19 instruct you not to answer regarding anything that 20 we discussed, as far as anything we prepared for 21 the deposition. 22 A Absolutely. Honestly, what I did I 23 reviewed, I reviewed my addresses because I can't 24 remember them all. 25 Q (By Mr. Liska) Did you review any	Page 40 1 share a screen with you, a document we have got 2 here. 3 (Exhibit 1 was shared on the 4 screen.) 5 Q Do you have a photograph on your 6 screen there? 7 A I do. 8 Q And do you recall what this 9 photograph is showing? 10 A That is showing the stage. That is 11 the outside area. 12 Q Okay. So tell me about the setup, 13 the stage, the runway, the seating, the lights. 14 Tell me what's going on in a particular event of 15 this type. 16 A This is more than likely a fashion 17 show. We would set these tables up. Normally, 18 these big tables, which is the stage that you see 19 in front of you, would normally not be there. So 20 this is what the servers or me and the bartenders 21 would set up. Normally, we would keep these 22 stages in the back. 23 That would be what we would set up. 24 Everything else is just normally as it is. And 25 it looks like there's a projector there, so that
Page 39 1 photographs? 2 A No. 3 Q Did you review any videotape? 4 A No. 5 Q Did you review any documents of any 6 type at all? 7 A No. 8 Q Not the incident report? 9 A No. 10 Q How about the employee handbook? 11 A No, I don't have that. 12 Q Did you ever get an employee 13 handbook? 14 A I think we had one. I don't 15 remember where it went. 16 Q You're not still employed by 17 Tabbuli, correct? 18 A No. I live in Colorado. 19 Q Right. You are not employed by Tall 20 Sam I Am, LLC, either, correct? 21 A No. I own my own company. 22 Q Okay. What's the company that you 23 own? 24 A Real Estate Photography. 25 Q So let me show you, I'm going to	Page 41 1 was set up. That projector is not normally 2 there. Everything else is pretty normal. 3 Q Those lights going across there, are 4 those there all the time? 5 A Yes. 6 Q And how about the seating, would you 7 all have to move the seating in order to set up 8 those tables and the runway? 9 A I think there was normally tables 10 where the stage is at. So we would move tables 11 away from where the stage would be sitting. 12 Q And the stage, is that that wide 13 screen back there? 14 A No, that is the projector screen. 15 The stage is all the tables that you see on the 16 other side of these immediate tables in front of 17 the screen. 18 Q And by stage, does that include the 19 runway? 20 A Yes. 21 Q And people performing in a fashion 22 show would walk on that runway? 23 A Yes. 24 Q Now, was there certain seating that 25 would have been reserved for either management or

Page 42

1 **VIPs, like Sam?**
2 A Not management, no. But definitely
3 VIPs, yes.
4 **Q Who would VIPs include?**
5 A It could be any body from Sam to
6 somebody that would call ahead and -- you know,
7 usually VIPs, you would have to order a hookah.
8 That would be like our stipulation of getting a
9 VIP, would be getting a hookah for the table. So
10 it would really be whoever our regulars were. We
11 would have a lot of regulars that would call in,
12 just random customers that would call in and ask
13 for VIP, so we would, you know, write their names
14 down.
15 **Q And then what we see here, would**
16 **this all have been left in place or was it taken**
17 **down after each show?**
18 A Usually we would take it down after
19 each show.
20 **Q Then what about any additional**
21 **lighting or sound that's not shown in the picture?**
22 A That would get set up by the DJ.
23 **Q Anybody else involved with any**
24 **additional lighting or sound?**
25 A No.

Page 43

1 **Q And did you have a list of DJs or**
2 **was there sort of a regular DJ that would show up**
3 **on Thursday nights, as opposed to one that would**
4 **show up on Tuesdays or Thursdays?**
5 A There was no formal list. It was
6 honestly just do you know the DJ and somebody had
7 the number somewhere. Like I said, we have known
8 these DJs for a long time, so it didn't need to
9 be as formal.
10 **Q I think you mentioned how they would**
11 **come in. At least for the very first time, and**
12 **maybe even after that, they would need your**
13 **permission to come into the premises to set up,**
14 **correct?**
15 A They do not need our permission to
16 come into the premises.
17 **Q What I'm saying, nobody can just**
18 **come in and set up a DJ system without having**
19 **permission from Tabulli, can they?**
20 A If they're scheduled for that day,
21 yes.
22 **Q Right. So before they're scheduled**
23 **for that day, they need your permission to come in**
24 **and do that?**
25 A Sure, yes.

Page 44

1 **Q Okay. Now, were you working on July**
2 **20th, 2017 at Tabulli?**
3 A Yes.
4 **Q I'm going to try and take this down**
5 **for you. Were you working as the manager that**
6 **night?**
7 A Yes.
8 **Q What time did your shift start?**
9 A I do not recall.
10 **Q Do you recall Stefani Eddins at any**
11 **time that night?**
12 A Meeting?
13 **Q Yes.**
14 A I had an interaction.
15 **Q Okay.**
16 A No formal meeting.
17 **Q So your interaction, as you called**
18 **it, when did that take place?**
19 A I do not remember the time.
20 **Q You do know that a light fell and**
21 **hit her on the head, correct?**
22 A Yes.
23 **Q Did your interaction occur before or**
24 **after the light fell on her head?**
25 A After.

Page 45

1 **Q All right. Did you see Stefani at**
2 **any time before the light fell on her head?**
3 A No.
4 **Q Did you know who Stefani was with at**
5 **the time that she was there?**
6 A She was with someone but I do not
7 know who.
8 **Q Do you know who her server was that**
9 **evening?**
10 A I do not.
11 **Q Is there a way to check that**
12 **somehow?**
13 A Potentially, if they still have
14 records, but I don't have those.
15 **Q Where would it be on the record? Is**
16 **it on like the -- you tell me.**
17 A If somebody has an old -- possibly
18 an old calender, maybe. I don't know.
19 **Q Did the servers have assigned**
20 **tables, assigned areas?**
21 A Yes.
22 **Q So potentially, could they look at**
23 **the calendar and see what server had what area**
24 **assigned to that server?**
25 A They could try.

Page 46

1 MR. NEINAST: Object to form of that
2 question.
3 Q (By Mr. Liska) That's what I was
4 getting at. How do you keep track of who the
5 server was?
6 A At this point in time after this
7 many years, I'm not sure that you can. It was
8 more written down at the time.
9 Q Well, normally, how would you keep
10 track of that, even if it was the next day or
11 something?
12 A I wouldn't keep track of it if it
13 was the next day, myself.
14 Q Do you know how many people would
15 have been working on July 20th, 2017 at nighttime?
16 A That was a Thursday?
17 Q Yes, ma'am.
18 A Maybe six people, seven maybe.
19 Q Do you know who would have been
20 working that night?
21 A No.
22 Q Did you look at anything to try to
23 refresh your memory as to who would have been
24 working that night?
25 A No, I have no way to.

Page 47

1 Q On a normal night, you were the
2 manager. Did you have assistant managers of any
3 type?
4 A No.
5 Q And you have bartenders working,
6 correct?
7 A Correct.
8 Q How about hostess or hostesses?
9 A Yes.
10 Q And then you got servers?
11 A Yes.
12 Q And then would your boss have been
13 there?
14 A It's possible.
15 Q That's that Jay person, correct?
16 A Yes.
17 Q All right. What do you know about
18 the incident involving Stefani, where this light
19 fell on her head?
20 A What do I know about it?
21 Q Yes.
22 A I know that she says that a light
23 hit her on her head, and that's what I know.
24 (A photo was shared on the screen.)
25 Q Do you know where the light was?

Page 48

1 A It was in between the -- that very
2 place where it goes from inside to outside. A
3 pole, there is a pole right on the other side of
4 the bar. I believe it was near there.
5 Q What's that pole used for normally?
6 Is that something that's part of the premises
7 itself?
8 A Yes, it holds up the roof.
9 Q So what was your involvement with
10 this incident?
11 A I heard a commotion, screaming, and
12 I went out to see what was going on. And there
13 was lots of screaming and yelling and cursing.
14 And it took me a minute to actually find out what
15 was actually going on. And yeah, that's pretty
16 much all that went down, was a lot of screaming
17 from her.
18 Q Was the fashion show going on at
19 that point?
20 A No.
21 Q Hadn't started yet?
22 A No.
23 Q All right. And then where were you
24 when that happened?
25 A The back of the house in the

Page 49

1 office.
2 Q How is the office set up? Is it
3 like a closed-in room or does it have windows so
4 you can see out? Tell me about that.
5 A It's a closed-in room and it didn't
6 have a window to the outside. That was just a
7 closed-in room.
8 Q Is there more than one office?
9 A No.
10 Q Is that where the security camera
11 footage is kept?
12 A Yes. Us managers did not have
13 access to that.
14 Q But you can see the screens?
15 A I don't think so.
16 Q Where were the screens that were
17 showing what the security cameras were catching?
18 A I don't think I had any. I think
19 they were at corporate.
20 Q So you went out there and there was
21 a commotion. What did you find out, from whom did
22 you find out?
23 A I kind of found out from both Ms.
24 Eddins and the rest of the people that were
25 there, which I do not recall who, just kind of

Page 50 1 all told me at once. She was screaming at me, 2 cursing at me and saying she was going to sue us. 3 And I was not able to calm her down 4 or speak with her civilly in any manner. 5 Eventually, she had to be taken out of the 6 restaurant because of the commotion that she was 7 causing. 8 Q So what do you mean she had to be 9 taken out of the restaurant? 10 A There was a lot of like flailing 11 and screaming and cursing at people, and I had 12 other customers there. And she refused to speak 13 with me so I could write a report for her or even 14 help her in any way. There was no conversation 15 between me and her and it was just yelling. 16 Q How did you have her taken out of 17 the restaurant? 18 A I think -- I think I may have had 19 one of the bouncers ask her to leave, because I 20 couldn't even speak with her. 21 Q Okay. Did they have to physically 22 remove her, or did they just ask her to move and 23 she just left? 24 A I think it was more one of like one 25 of these kind of things. I don't think that they	Page 52 1 Q Did they get paid extra to be a 2 bouncer? 3 A Uh-huh, or a different rate. I 4 don't know what their rate was. 5 Q So if you were a server/bouncer, you 6 get one rate. If you were just a server, you get 7 another rate? 8 A Yes. 9 Q What were those different rates? 10 A I do not know. 11 Q Did they get special training to be 12 a bouncer? 13 A I do not know, but I would assume. 14 Q As manager, were you in charge of 15 hiring anybody? 16 A Yes. 17 Q Did you hire any bouncers? 18 A Not to my recollection. 19 Q Well, if you hire a bouncer, what 20 kind of training would you make sure they had 21 before you hired them as a bouncer? 22 A Usually, I look for somebody that 23 was prior military. 24 Q And what difference does that make? 25 A Because they have training.
Page 51 1 physically touched her. I think it was just 2 an air movement. 3 Q How many bouncers did you have 4 working there that night? 5 A Don't recall. 6 Q What were their names? 7 A I don't recall which one. 8 Q Can you even state for sure that you 9 had bouncers working there that night? 10 MR. NEINAST: Object to the form. 11 Q (By Mr. Liska) I think you can 12 answer. He is just objecting. 13 A I'm thinking. I don't know if I 14 can say for sure. I'm pretty sure -- I don't 15 know what time it was, so I'm not sure if they 16 were clocked in or not. 17 Q That's what I was asking. We were 18 provided with a list of employees that worked that 19 night. I didn't see any bouncers on there. That's 20 why I was asking. 21 A Okay. Perhaps not. It could have 22 been a server. Some of our servers were bouncers 23 and servers as well. 24 Q They had like a dual job? 25 A A lot of us did, yes.	Page 53 1 Q As a bouncer? 2 A As someone who protects us. 3 Q What if they are a clerk in a store 4 that works on a navy base? Is that someone who 5 is -- 6 MR. NEINAST: Object to the form. 7 A I mean, I would make that 8 assumption upon meeting the person. And I would 9 not consider that, of course not, no. 10 Q (By Mr. Liska) Are you sure that it 11 was Stefani that you were having words with or 12 could it have been -- I think it was her 13 then-fiancee, Ashley? 14 A No, it was for sure her. 15 Q How do you know it was for sure her? 16 A Because she was screaming at me and 17 I will never forget that. 18 Q What did she say? 19 A I would rather not repeat the bad 20 words. She told me to F myself. She said that 21 she was going to F'ing sue us. And I was trying 22 to calm her down, and say, ma'am, may I speak 23 with you civilly, we can sit down. No, I will 24 not sit down with you, F you, blah, blah, blah. 25 Just not -- nothing I could work with. So I had

Page 54 1 no choice but to ask her to leave. 2 Q Did you know if she had a 3 closed-head injury at the time? 4 MR. NEINAST: Object to form. 5 A No. 6 Q (By Mr. Liska) No, you did not? 7 A No, I don't know her. 8 Q If somebody had a closed-head injury 9 like that, would you expect that might be normal 10 behavior for somebody with a closed-head injury? 11 MR. NEINAST: Object to the form. 12 A No. 13 Q (By Mr. Liska) You don't know, 14 right? You're not in medical? 15 A I don't know, no. 16 Q All right. Did you ever speak with 17 Ashley Hanes at any time that night? 18 A Ashley Hanes? 19 Q That was with Stefani. 20 A No. I thought a man was with 21 Stefani. 22 Q Okay. That's a no then, you didn't 23 speak with Ashley Hanes? 24 A No, I did not. 25 Q Did you do anything to help Stefani	Page 56 1 A I can hear you. 2 Q I think the question I was asking 3 was, did you offer to have Tabbuli pay any -- 4 (Technical clarification off the 5 record between reporter and parties.) 6 Q (By Mr. Liska) I'll continue with 7 that question. So Ms. Chapin, I was asking, did 8 you offer to have Tabulli pay for any of Stefani's 9 medical charges? 10 A No. 11 MR. NEINAST: Object to the form. 12 Q (By Mr. Liska) Do you recall 13 Stefani or Ashley telling you that they were going 14 to go to a 24-hour emergency care facility near her 15 hotel? 16 A I do not recall that. 17 Q So after the incident, did you speak 18 with Jay about it? 19 A I don't recall. 20 Q Did you speak with Mr. Mustafa 21 about it? 22 A I do not recall. 23 Q Did you speak to anybody else in 24 corporate about it? 25 A I do not recall.
Page 55 1 after that light struck her on the head? 2 A Absolutely. I went to her and I 3 asked her what I could get for her, if I could 4 get her ice, if I could sit her down and speak 5 with her and write a report. To literally do 6 anything that she needed, but she refused. 7 Q Did you bring her an ice pack? 8 A Yes, I was trying to gather ice, 9 but she -- this all happened so fast and there 10 was so much screaming and profanity that there 11 was really no opportunity for me to finish what I 12 was doing to help her because she would not allow 13 me to. 14 Q Did you offer to pay -- 15 MR. NEINAST: Object to the form. 16 (Technical clarification off the 17 record between reporter and parties.) 18 Q (By Mr. Liska) Okay. Did you offer 19 to have Tabbuli pay for her -- 20 (Technical clarification off the 21 record between reporter and parties.) 22 Q (By Mr. Liska) I was trying to 23 correct my connection here. Okay. If that happens 24 again, I'll disconnect and reconnect. Can you hear 25 me now?	Page 57 1 Q Tell me about the incident report. 2 How did you get that? 3 A You're frozen again. 4 (A short break was taken.) 5 Q (By Mr. Liska) I have tried a 6 different internet band. We'll see if this works 7 better. 8 All right. So you got an incident 9 report. Tell me how you got it and what did you do 10 with it. 11 A I wrote a very short part of it. I 12 was not able to finish that incident report 13 because I was not able to sit down and have a 14 conversation. I believe she came in at a later 15 time and filled it out with somebody else. I 16 don't know who. I think I just wrote light fell 17 on lady's head. I don't think I wrote anything 18 specific because I wasn't able to. 19 (Technical clarification off the 20 record between reporter and parties.) 21 (A break was taken from 10:16 to 22 10:27.) 23 MR. LISKA: So I want to go ahead 24 and attach as Exhibit 1-A that picture that I put 25 up on the screen before of the scene.

Page 58 1 Q (By Mr. Liska) I think I was asking 2 you about what kind of investigation, if any, you 3 did to find out what had happened. 4 A Right. 5 Q Did you do an investigation? 6 A I'm sure that I did. I'm sure that 7 I went over to talk to whoever was setting up 8 lighting where this happened at on the other side 9 of that bar. I'm sure I went over there and I 10 looked at, you know, what had happened, how it 11 had fallen, you know, what we could have done to 12 prevent it, why it happened. So yes, I went over 13 there and I investigated the area of where it 14 took place and why. 15 Q What did you find out? What did you 16 learn? 17 A I do not recall what I found out. 18 I don't even recall why it happened. 19 Q Do you know where the light was 20 before it fell and hit Stefani on the head? 21 A I would assume that it would be 22 with the DJ in his briefcase thing, like he 23 brings before setting up. 24 Q What I'm saying, do you even know 25 what light it was that fell?	Page 60 1 A No. I'm sorry. I didn't 2 understand the first time I answered it. I 3 thought you meant before it was installed. No, I 4 do not know where it was. 5 Q Okay. Same kind of question, 6 though, do you know how it got to wherever it was 7 immediately before it fell? 8 A No. 9 Q Do you know when it would have been 10 put wherever it was immediately before it fell? 11 A No. 12 Q Do you know who put it wherever it 13 was immediately before it fell? 14 A No. 15 Q Is it fair to say that no one from 16 Tabbuli was monitoring the light setup? 17 MR. NEINAST: Object to the form. 18 A Possible. It wasn't their job. 19 Q (By Mr. Liska) Well, we'll disagree 20 about that. But you can say as the manager there 21 that night that no one was monitoring the light 22 setup that night, from Tabbuli? 23 MR. NEINAST: Same objection. 24 A No one was standing there watching 25 it being installed, no.
Page 59 1 A I don't. I don't recall at all. 2 Q You can't really say where the light 3 was immediately before it fell? 4 A Where the light was located before 5 -- oh, before it fell, when it was already 6 installed? 7 Q Wherever it was the second before it 8 fell. 9 A I didn't see it myself, no. 10 Q Okay. In your investigation, did 11 you find out where the light was the second before 12 it fell? 13 A Yes. 14 Q How did you find that out and what 15 did you find out? 16 A By asking what had happened and 17 asking where it was. And I was told that it was 18 hanging and that it fell. 19 Q Okay. Who told you that and where 20 did they say it was hanging and how did it fall? 21 A I do not recall any of that 22 information. 23 Q Okay. So that gets back to my 24 original question. You can't really say where it 25 was the second before it fell?	Page 61 1 Q (By Mr. Liska) And no one from 2 Tabbuli checked for any safety hazards that might 3 be presented by hanging the light setup? 4 MR. NEINAST: Object to the form. 5 Q (By Mr. Liska) I didn't hear what 6 you said. 7 A I don't think that there was time. 8 Q Well, how much time would it take to 9 look at the lights to see if they're properly 10 secured? 11 A Well, they have to finish setting 12 everything up first. I'm not sure if they were 13 because it was still early in the day. 14 Q What time did this happen? 15 A I know that it was daytime. I 16 don't know what time it happened. 17 Q Okay. Anyway, is it fair to say 18 that nobody from Tabbuli was telling the DJ where 19 to put the light, if, in fact, the DJ put the light 20 there? 21 A Yes. 22 Q It is fair to say that nobody from 23 Tabbuli told the DJ not to put the light where it 24 was immediately before it fell, if the DJ did put 25 the light there?

Page 62

1 A Yes.

2 Q Again, it's fair to say that nobody

3 from Tabbuli did a safety inspection with respect

4 to the lightning to make sure lights were safe for

5 the patrons before it fell on Ms. Eddin's head?

6 MR. NEINAST: Object to the form.

7 A Yes.

8 Q (By Mr. Liska) Okay. Who at

9 Tabbuli was in charge of making sure that the

10 premises was safe for its patrons?

11 A All of us.

12 Q Let me show you -- did you ever see

13 the video of the light falling on Stefani's head

14 that was produced?

15 A No, I did not.

16 Q Okay. So let me share a screen with

17 you and play this for you.

18 A Okay.

19 MR. LISKA: And we'll mark this as

20 Exhibit 2 and I'll submit it to the court reporter

21 to attach to the official deposition.

22 (Exhibit 2 was shared on the

23 screen.)

24 Q (By Mr. Liska) Do you have what

25 reports to be the start of a video on your screen?

Page 63

1 A Yes.

2 Q I'm going to play this and ask some

3 questions. First of all, do you know how this

4 video was produced?

5 A No.

6 Q Do you know who would have produced

7 this video?

8 A I'm assuming someone at Tabbuli.

9 Q Do you recognize -- I know it's kind

10 of foggy in that picture right now. Do you

11 recognize that being some hookahs and the bar area

12 at Tabbuli?

13 A I recognize a hookah. That's all I

14 can really recognize, and then two bodies, I

15 think.

16 Q Okay. We'll play it here in a

17 second. Did you see any video from that day,

18 besides the video of the light falling on her head?

19 A No.

20 Q Do you know anything -- well this

21 video, for example, it's got Camera 12. Do you see

22 that?

23 A Uh-huh, I do.

24 Q How many cameras did Tabbuli have?

25 A I'm not aware. That was not

Page 64

1 something that we were given permission to handle

2 as managers. I don't even know if the GM was

3 handling that. That was all corporate.

4 Q Do you know where the cameras are

5 located throughout the restaurant?

6 A Right now, I don't remember.

7 Q Was there more than one camera at

8 the time?

9 A Most likely.

10 Q We touched on it earlier. Where was

11 the location in the storage of the video that was

12 captured by the security surveillance system?

13 A The storage?

14 Q Yeah. I think you mentioned it

15 earlier in your office, for example, at the

16 restaurant itself, you don't think you had screens

17 that you could watch the video on.

18 A Uh-huh.

19 Q Whatever the video captured, where

20 did that video go?

21 A Corporate office.

22 Q Do you know who is in charge of the

23 video surveillance system?

24 A I would assume Jay Michael Walker.

25 He does the media for Tabbuli or for Charleston

Page 65

1 Hospitality Group. So I would assume that he

2 would be involved in it, at least. I don't know.

3 They have a lot of people working at corporate,

4 so it could have been someone else as well.

5 Q Do you know what the purpose of the

6 video surveillance system was at the time?

7 A Security.

8 Q All right. Let's watch this video

9 real quick.

10 (Video was played on the screen.)

11 Q Do you see on the right-hand side,

12 is that the pole you were mentioning earlier?

13 A Uh-huh. Okay, I see.

14 Q And then do you see that light just

15 fell down there?

16 A Yes. Can you replay?

17 Q Yes, I can. You see that just

18 happened? I stopped it there.

19 A Yes, I saw.

20 Q Okay. So these people that are at

21 the bar, do you know who any of those people are,

22 by any chance?

23 A I do not, no. It's so hard to see.

24 Q Yeah. This is what was produced to

25 us in discovery by Tabbuli.

Page 66 1 A Okay. 2 Q So then we'll play it further. 3 A I'm just trying to see if I can 4 recognize anybody. 5 Q Do you see that person that just 6 walked in the scene on the bottom right? 7 A Yes, I'm looking. 8 Q I'll show you again. Do you know 9 who that person is? 10 A Can you keep playing it, so I can 11 maybe see a little bit more? Gosh, no, I have no 12 clue. 13 Q How about this person that just 14 walked in to the screen? 15 A I've got to see him walking. 16 That's Naquan. I think that's Naquan. Wait, go 17 back a little bit. I think that's Naquan. 18 Q Who is Naquan? 19 A Naquan is one of the people that 20 helps us at the events. He's a dance instructor. 21 I believe he managed at Tabbuli for a little 22 while after I left. 23 Q Was he an employee of Tabbuli at the 24 time? 25 A No, I don't think so. I don't	Page 68 1 Exhibit 2 to today's deposition. Madam Court 2 Reporter, I will get you a copy of this. 3 (Discussion off the record between 4 reporter and parties.) 5 Q (By Mr. Liska) So after you went 6 out there, there was commotion. You spoke with who 7 you believe was Stefani. What did you do after 8 that? 9 A After she left? 10 Q Well, even while she was there, 11 either while she was there or after she left. From 12 that point forward, with respect to this, what did 13 you do? 14 A Well, when I walked out there and I 15 heard the commotion, I tried to calm her down and 16 asked what was going on. I was told by her and 17 everyone else what happened, that the light fell 18 on her head, followed by lots of screaming and 19 cursing. There was no real speaking, and I had 20 to ask her to leave. 21 Q Did you talk to Naquan to find out 22 what had happened? 23 A Probably. I'm sure that we all 24 spoke about it together upon her exiting. 25 Q Did anybody talk to you from
Page 67 1 know. I don't think so. 2 Q What do you mean he is a dance 3 instructor? What -- 4 A He helps choreograph things 5 sometimes. Like if there is a fashion show where 6 we want to integrate a dance number or like the 7 drag queens, sometimes he would put on dancing. 8 Once in a while, not often, he would put on like 9 a dance. 10 Q What is Naquan's last name? 11 A Can I just see it one more time? I 12 just want to be sure it's him. I'm pretty 13 certain that it is, just by the way he walks. 14 Let me see. Yeah, that's definitely Naquan. 15 Let me look it up real quick for 16 you. It's Naquan T. Villega, V-I-L-L-E-G-A. 17 Q Okay. So I'm going to keep playing 18 it here. Now, that person on the right who's doing 19 something with the lights, do you know who that 20 person is? 21 A I can't tell. 22 Q That's the end of the video. That's 23 all we were provided. 24 A Okay. 25 MR. LISKA: So I'll attach this as	Page 69 1 corporate to find out what had happened? 2 A Probably, yes. I think Alexis did. 3 Q Do you know what you told Alexis? 4 A That a light fell on someone's head 5 and there was a huge commotion, and they would 6 not allow me to accommodate them or help them or 7 speak with me. And then I believe Ms. Eddins 8 came back and spoke with, I'm assuming, Alexis, 9 but I don't know for sure. Came back and spoke 10 with somebody else because more was written on 11 the report that I did not write. 12 Q Did you speak with any other Tabbuli 13 employees, either that night or at any time after 14 this, to find out what happened? 15 A No, I don't think so. 16 Q Would it be important for you, as 17 the manager of Tabbuli, to find out what happened? 18 MR. NEINAST: Object to the form. 19 A No. I mean, it's my job to make 20 sure -- I mean, at that point, it was out of my 21 hands. So I found out as much information as I 22 possibly could and did all the things that were 23 in my power that I knew to be right and just in 24 that situation. I don't know that there was much 25 else that I could do.

Page 70 1 Q (By Mr. Liska) But you didn't do 2 any kind of investigation to find out how that 3 light fell? 4 A If I did, I don't recall it. I 5 don't really recall. 6 Q Would you want to know that, as a 7 manager of Tabbuli, to make sure it didn't happen 8 again? 9 A Of course. 10 Q Why would you want to do that? 11 A To prevent any future accidents 12 from happening again. 13 MR. NEINAST: Object to the form. 14 Q (By Mr. Liska) What did you do to 15 make sure that light didn't fall on somebody else? 16 MR. NEINAST: Same objection. 17 A I'm pretty sure we all spoke to the 18 DJs, you know. And I think corporate probably 19 spoke with the DJs as well. Because like I said, 20 after this happened, it was in corporate's hands, 21 not in mine. 22 And yes, to an extent, it is my 23 responsibility to, you know, be sure everyone is 24 happy and everyone is okay in the restaurant. 25 But it was out of my hands at that point. And	Page 72 1 A If it had happened again, 2 absolutely, I'm sure. But that would not be my 3 call. That would be corporate's call. 4 (A photograph was shared on the 5 screen.) 6 Q Let me share a screen with you 7 again. Do you have another photograph on your 8 screen right now? 9 A I do. 10 Q Okay. What is that photo showing? 11 Just to let you know -- first of all, have you ever 12 seen this photo before? 13 A I have never seen this photo. 14 Q This was produced to us by Tabbuli 15 in this case. What is this photograph showing us? 16 A It is showing a speaker and a light 17 attached to the pole that is right next to the 18 bar. 19 Q Do you know if that's the light that 20 fell on Stefani's head? 21 A I do not know. 22 Q Do you know why Tabbuli would be 23 giving us this picture? 24 A I do not. 25 Q Did you ever look at the light that
Page 71 1 upon me just telling the DJs to make sure that 2 they are setting things up properly and things 3 are secured and not setting things up over people 4 and things like that, which they weren't, I don't 5 even know how the light fell in the first place. 6 So my investigation didn't really go anywhere 7 because I couldn't find answers. 8 Q (By Mr. Liska) So what did you do 9 after that night to make sure the light didn't fall 10 on anybody else, besides talking with the DJs to 11 make sure that they didn't set them up in a way 12 that they would fall on somebody else? 13 A I personally didn't do anything 14 because it's not my job to do that. It was the 15 DJ's job. 16 Q Well, I thought you just said it was 17 your job as the manager, and actually, I think the 18 quote was everybody's job, to make sure the 19 premises was safe for its patrons? 20 A Absolutely. And I told the DJ that 21 he needs to make sure things are, you know, 22 secured and safe. 23 Q Okay. If the DJ didn't make sure 24 things were secured and safe, would you have 25 terminated that DJ's services?	Page 73 1 night? 2 A No. 3 Q Why did you not look at the light 4 that night after it fell on Stefani's head? 5 A Oh, after? 6 Q Yeah. 7 A I did look at it after. I thought 8 you meant before, I'm sorry. After I did, I 9 looked at it. But I'm not a DJ and I'm not a 10 light professional, I'm just a manager. I didn't 11 know what I was looking for. I mean, I looked at 12 it and I asked questions. I, you know, made 13 sure, you know, that it didn't happen again. I 14 told everyone to make sure that things like this 15 are secured, especially that are hanging 16 overhead. I followed procedure and did what I 17 thought was right. 18 Q Were you the manager who took down 19 the light after that patron had put it back up or 20 whoever it was that put it back up? 21 A I don't recall. I would assume no, 22 because I would assume the DJ would have done 23 that. 24 Q Did you look that night to see where 25 the light was after it fell on Stefani's head?

Page 74 1 A I believe we took it down. 2 Q Okay. Why did you take it down? 3 A I'm not 100 percent sure why we 4 took it down. I'm assuming we took it down. I 5 don't recall. Because I'm sure they didn't want 6 that to happen again, the DJ and the people doing 7 the event. 8 Q Where is that light now? 9 A I have no idea. 10 MR. LISKA: And we'll attach this 11 photograph as Exhibit 1-B to today's deposition. 12 Q (By Mr. Liska) You mentioned 13 earlier an incident report. You had filled out 14 part of that incident report. Is that correct? 15 A Yes. 16 Q Let me show you what we'll mark as 17 Exhibit 3 to today's deposition. 18 (Exhibit 3 was shared on the 19 screen.) 20 Q Do you have an accident/incident 21 report form on your screen? 22 A I do. 23 Q Is that the incident report, part of 24 which you completed? 25 A Yes.	Page 76 1 part. 2 Q I'm just trying to find out who else 3 would have put in the top of this. 4 A Alexis. 5 Q Looks like the same handwriting 6 but -- 7 A Either Alexis or Jay would have 8 finished it, because I did not meet with her. 9 That's not my handwriting. 10 Q So now we are looking at the bottom 11 part of it, where it starts injuries and it's got 12 yes. It's got name of physician and that kind of 13 thing and Stefani's signature there. Do you see 14 all that? 15 A Uh-huh, I do see all that. 16 Q You're saying none of that is your 17 handwriting? 18 A No. 19 Q Do you know whose handwriting that 20 is? 21 A No. 22 Q Do all the reports have this big 23 black thing on it, this big black box? 24 A No, I don't know what that is. It 25 looks like some kind of logo or something blacked
Page 75 1 Q As I scroll down here, what's shown 2 on the screen right now, is that your handwriting? 3 A The only part of that that is my 4 handwriting is type of incident and details of 5 incident. 6 Q Is that writing above where it says 7 date of incident, time, name of injured person, all 8 of that, that's not your handwriting? It looks 9 awfully similar to what's down below. 10 A I don't think it is, but I don't 11 know. I honestly don't know. I thought I only 12 filled out the middle part, but I could be wrong. 13 I don't think I filled out the bottom part, 14 though. 15 Q Okay. Do you agree with me that 16 handwriting that's on your screen right now, where 17 it starts date of incident, all the way down to Ms. 18 Eddins' head, looks to be the same handwriting? 19 A It does look to be the same 20 handwriting. I don't recall writing those parts. 21 I'm not sure. 22 Q So looking at this now, are you 23 telling us you cannot deny that you wrote that 24 part? 25 A I 100 percent wrote this second	Page 77 1 out. I don't know. 2 Q Do you know what is there or was 3 supposed to be there? 4 A No. 5 Q Or why it's blacked out? 6 A It looks like forks or a knife, 7 some kind of food symbol. 8 Q Was that big black box there when 9 you completed this report? 10 A I don't recall. 11 MR. LISKA: We'll attach this as 12 Exhibit 3 to today's deposition. 13 Q (By Mr. Liska) Before I leave it, 14 though, do you know if any changes were made to 15 this after you last touched it? 16 A Absolutely, yes, because I didn't 17 meet with her. I didn't write that. 18 Q You're saying people added 19 information to it after you last touched it? 20 A Yes. 21 Q Okay. But, I mean, as far as like 22 were there any other drafts that, you know, got 23 changed out or anything like that? 24 A No. 25 Q And this is the official report of

Page 78 1 the incident, as far as Tabbuli is concerned? 2 A Yes. 3 Q Does Tabbuli want to make sure that 4 it is as accurate as possible? 5 A Am I speaking on Tabbuli's behalf? 6 Q I'm asking you. As a manager 7 trained by Tabbuli, was it that you're supposed to 8 make these as accurate as possible? 9 A Yes, we were. Uh-huh. 10 Q Why is that? 11 A So that we could have a detailed 12 account of what happened. 13 Q And take corrective action to make 14 sure it didn't happen again? 15 A Correct. 16 Q All right. So this middle part 17 right here, where it says who was the party 18 involved, type of incident and details of incident, 19 you did complete all of that, correct? 20 A Correct. 21 Q And you put in there the light 22 fixture above the speaker fell onto Ms. Eddin's 23 head, correct? 24 A Correct. 25 Q And that's what you know from doing	Page 80 1 new position. 2 Q And I'm asking why would you have 3 seen it as being hired into a new position? 4 A Because it gives guidelines as to 5 what my job would be and everything about the 6 company that I'm working for and policies. 7 Q And you had to follow these as an 8 employee of Tabbuli? 9 A Yes. 10 Q Go down to one thing here I wanted 11 to ask you about. You see where it says Charleston 12 Hospitality Group? And by the way, Charleston 13 Hospitality Group is Tabbuli? 14 A Yes. 15 MR. NEINAST: Object to the form. 16 Q (By Mr. Liska) Makes every effort 17 to comply with all federal and state workplace 18 safety requirements, do you see that sentence 19 there? 20 A I do. 21 Q What are the federal and state 22 workplace safety requirements that you have to 23 comply to? 24 A I do not know. 25 MR. NEINAST: Object to the form.
Page 79 1 whatever amount of investigation that you did that 2 night? 3 A Yes. 4 Q Is it still on your screen right 5 now? 6 A No. 7 Q Okay. So did you give a statement 8 to anyone about what happened that night? 9 A Not to my recollection. 10 Q Let me show you what we'll mark as 11 Exhibit 4. 12 (Exhibit 4 was shared on the 13 screen.) 14 Q Do you have something on your screen 15 that says Charleston Hospitality Group Employment 16 Handbook? 17 A Yes, I do. 18 Q Have you ever seen this document 19 before? 20 A I believe so. 21 Q When would you have seen it? 22 A At sometime of my employment or 23 when I became a manager. 24 Q Why would you have seen it? 25 A Because I was being hired into a	Page 81 1 Q (By Mr. Liska) Do you see where it 2 says each employee is expected to obey safety rules 3 and exercise caution and common sense in all work 4 activities? 5 What does that mean? 6 A I think that's just a common sense 7 type of safety. I don't know what it 8 specifically means, but just common sense safety. 9 Q Yeah, it says common sense on there. 10 Is that one of the rules or duties you have to 11 follow as an employee of Tabulli, with this 12 employment handbook? 13 A Yes, if it states that, then yes. 14 Q Okay. And then it says report any 15 potential or current accidents? 16 A Uh-huh. 17 Q Relay to your immediate supervisor, 18 what does that mean? 19 A That means if something happens, 20 that you tell somebody above you what has 21 happened. 22 Q But it says report any potential 23 accidents immediately to your immediate supervisor. 24 Do you see that? 25 A From my perspective and from

Page 82 1 working at a place like Tabbuli, because 2 sometimes, you know, I mean, people come in and 3 you don't know what kind of people you're going 4 to get in there. You just want to make sure 5 everyone is safe in the building. So, you know, 6 if people are like starting a fight or you think 7 that there may be like violence or something, you 8 want to make sure the environment is safe for 9 everybody. 10 That, to me, is a potential hazard 11 that you could prevent. I don't know what other 12 potential hazards you could have, other than 13 that. 14 Q Okay. But you are supposed to 15 report any potential hazards to your supervisor, 16 correct? 17 A Correct. 18 Q All right. And that's what you are 19 supposed to do as an employee of Tabbuli? 20 A Yes. 21 Q Per the Tabbuli rules set forth in 22 this employee handbook? 23 A Yes. 24 Q Okay. And then standards of 25 conduct, is that on your screen right now?	Page 84 1 A Correct. 2 Q According to the rules set forth by 3 Tabbuli in its employee handbook? 4 A Correct. 5 MR. NEINAST: Object to the form. 6 Q (By Mr. Liska) And then you see 7 down here where it says one is prohibited -- let me 8 make sure I got that right. 9 One of these prohibited points or 10 conduct down here is violation of any federal, 11 state or local law or failure to follow prescribed 12 rules or regulations, which could result in 13 potential legal action against Charleston 14 Hospitality Group. 15 What does that mean? 16 A Sorry. I'm just rereading it 17 myself. 18 MR. NEINAST: Object to the form of 19 the question. 20 A I don't know what that means. 21 Don't violate -- 22 Q (By Mr. Liska) That's okay. 23 A I don't know. 24 Q As a manager trained by Tabbuli, I 25 just wanted to know what that means to you.
Page 83 1 A Uh-huh. Yes. 2 Q Where it says all employees are 3 expected to follow the rules and standards 4 faithfully in doing their own jobs and when 5 conducting company business. And it's got 6 following points are prohibited. 7 Do you see that so far? 8 A Yes. 9 Q Okay. And then down here it says, 10 negligence or improper conduct, which leads to 11 damage of employer owned or customer-owned property 12 or boisterous or destructive activity in the 13 workplace on or off duty, which could lead to 14 safety violations or cause injuries to guests or 15 employees. 16 What does all that mean? 17 A That means that you better, you 18 know, be making sure that, you know, that your 19 t's are crossed and your i's are dotted in the 20 restaurant because you want to make sure everyone 21 is safe all around. 22 Q If you see any negligence that could 23 lead to a safety violation or cause injuries to 24 guests or employees, that's something that's 25 prohibited, correct?	Page 85 1 A I did not memorize all of the 2 entire handbook. 3 Q Did you ever read it? 4 A Front to back? 5 Q Yes. 6 A No. 7 Q Were you ever quizzed on it? 8 A No. I was good at my job. 9 Q And you see two more bullet points 10 down, it says another prohibited conduct is 11 violation of company safety and sanitation 12 policies. 13 What does that mean? 14 A That you need to not violate the 15 company's safety or sanitation policies. 16 Q Okay. What are the company's safety 17 policies? 18 A I don't have a guideline for you. 19 I don't know. 20 Q Did you give an exit interview when 21 you left your employment at Tabbuli? 22 A Formally, no. 23 Q But how about informally? 24 A I didn't just leave and quit, if 25 that's what you are asking.

Page 86 1 Q Well, I mean, because there is a 2 provision in this employee handbook that talks 3 about giving an exit interview, I was wondering if 4 you had done that? 5 A No. 6 Q And I'll scroll down a little bit 7 more for you. It talks about staff meetings. I'll 8 get to that for you so you can see it. Do you see 9 that, staff meetings? 10 A I do. 11 Q Did you ever have staff meetings 12 while you were employed at Tabbuli? 13 A We did. 14 Q And what kind of things were 15 communicated to you during a staff meeting? 16 A We would speak about events and 17 issues we were having, how we can do things 18 better, things that people need to work on, 19 scheduling, things like that. 20 Q Would that also include improvements 21 on patron safety? 22 A Sure. 23 Q And if anyone saw any hazards that 24 may need to be addressed? 25 A Of course.	Page 88 1 Q How about any lights that may have 2 been put in place by any DJs, if any? 3 A No, I don't think that they were 4 inspected. I don't know that there was time to 5 inspect it on this certain day. I'm not sure. 6 Q We may be about done, Ms. Chapin. 7 Let me review my notes here. 8 MR. LISKA: Let's take about a 9 five-minute break and we may be done. I'll come 10 back and tell you, if that's okay? 11 MR. NEINAST: Sure. Sounds good. 12 (A break was taken from 11:10 to 13 11:15.) 14 EXAMINATION 15 BY MR. NEINAST: 16 Q Cait, how are you doing? You doing 17 all right? 18 A Yeah. 19 Q Sorry we kept you this long. I've 20 got a couple of follow-up questions. I'll try to 21 make them brief, so you can go ahead and enjoy your 22 birthday. 23 A Thank you. 24 Q The DJ light that we have been 25 talking about today, to your knowledge was that
Page 87 1 Q How about the suggestion provision? 2 Did you ever take part in any suggestion policy 3 that they had available? 4 A Not per this handbook, but I would 5 give suggestions all the time. 6 Q Did you ever get any suggestions 7 about safety? 8 A Not to my recollection. Safety 9 wasn't usually an issue. 10 MR. LISKA: So we'll attach the 11 employment handbook as Exhibit #4 to today's 12 deposition. 13 (By Mr. Liska) While you were 14 there, did you have any building inspections that 15 were done? I say you, I mean Tabbuli. Did Tabbuli 16 have any building inspections that were done while 17 you were there? 18 A I believe so. I think they did, 19 but I don't have any information about it. But I 20 do remember random builders and inspectors coming 21 here and there. 22 Q Do you know if anybody from Tabbuli 23 or on behalf of Tabbuli went in and did an 24 inspection of the lighting system? 25 A I don't. I don't know.	Page 89 1 owned by Tabbuli? 2 A No. 3 Q To your knowledge, was that owned by 4 whatever DJ you all brought in for this event on 5 that Thursday? 6 A Yes. 7 Q Were you ever involved in 8 discussions with DJs about the specific light that 9 they should use? 10 A No. 11 Q Were you ever involved in those 12 kinds of discussions with DJs about how they should 13 install or position those lights? 14 A No, never. 15 Q Was that just something that was not 16 in your field of responsibility? 17 A No, not at all. 18 Q Was it your understanding, as a 19 manager of Tabbuli, that was solely within the DJ's 20 field of responsibility? 21 A Yes. 22 MR. LISKA: Objection. 23 (By Mr. Neinast) Is it fair of me 24 to say Tabulli's understanding and your 25 understanding was that the DJs were solely

Page 90 1 responsible for selecting the lights that were 2 used? 3 MR. LISKA: Objection. 4 A Absolutely. 5 Q (By Mr. Neinast) And is that also 6 true for the installation of those lights? 7 A Yes. 8 MR. LISKA: Objection. 9 Q (By Mr. Neinast) Okay. You 10 mentioned that your staff are kind of looking for 11 safety hazards as they're serving patrons, right? 12 A Correct. 13 Q If your staff had noticed a 14 potential problem with one of these lights, would 15 they have brought that to your attention? 16 A Absolutely, instantly. I'm sure 17 they would have taken care of it themselves and 18 then come have gotten me and showed me. 19 Q What would you have done if a staff 20 member came to you and said I think there is a 21 problem with one of the lights that the DJs are 22 using? 23 A I would have gone out there and I 24 would have investigated the entire situation. If 25 I had known about this prior to this happening, I	Page 92 1 afterwards. 2 Q Sitting here today, do you have any 3 idea why this light fell? 4 A It was not secured properly. 5 That's all I can come up with. 6 Q Whose responsibility would it have 7 been to secure that light properly? 8 A Whoever was installing it, which 9 was the DJ. 10 Q Are you just saying that because it 11 fell? Do you have any specific knowledge of how 12 this light was or was not secured prior to its 13 falling? 14 A I don't have any knowledge about 15 how it was secured. 16 Q Okay. And sitting here today, you 17 don't know what specific DJ was -- we'll call it on 18 duty that night? 19 A I do not. 20 Q These DJs, they weren't employees of 21 Tabbuli, were they? 22 A No, I believe they had a contact 23 with us or some kind of written agreement. 24 Q Have you seen that written 25 agreement?
Page 91 1 would have asked them to take it down or secure 2 it somewhere that it couldn't potentially hurt 3 somebody. 4 Q So when you say had you known about 5 this prior to this situation, did you as the 6 manager of Tabulli know about the situation of this 7 light, the installation of this light prior to it 8 falling on Ms. Eddins? 9 A No. 10 MR. NEINAST: I'm sorry, Mike. Is 11 it Eddins? 12 MR. LISKA: I have been saying 13 Eddins. 14 MR. NEINAST: Okay. We'll go with 15 Eddins. 16 Q (By Mr. Neinast) To your knowledge, 17 did any of your staff notice any issues with the 18 installation of this light prior to its fall? 19 A No. 20 Q Okay. Do you recall discussing the 21 installation of this light with the DJ after it 22 fell? 23 A I spoke with him about why and he 24 didn't give me an answer. I don't think anybody 25 knew why it fell. Yes, I discussed it with him	Page 93 1 A I have not. 2 Q And Cait, I know Mike walked through 3 the employee handbook with you. Is that something 4 that you have seen in the past four years since you 5 left Tabbuli? 6 A No. 7 Q Do you know the last time that you 8 saw that document? 9 A No. Years. 10 Q Would you, as a manager of Tabulli, 11 have trusted the DJ that was on duty that night to 12 install the lights in a safe manner? 13 A Typically, yes. 14 Q Was it the understanding of your 15 staff when you were the manager at Tabbuli that if 16 they noticed -- well pause. 17 First, as they were performing their 18 staff duties, whether that be waiting tables, 19 bartending, etc., that they were to be on the 20 lookout for potential safety issues? 21 A Of course, yes. 22 Q And to your knowledge, was that the 23 understanding of every member of your staff that 24 was on duty on the date of the incident at hand? 25 A Yes.

Page 94 1 Q Are you aware of any other written 2 records of this incident that have not been shown 3 to you today? 4 A No. 5 Q Are you in possession of any written 6 records of anything pertaining to this incident in 7 any way? 8 A No. 9 Q Earlier in your testimony, you 10 mentioned some events that would potentially give 11 rise to you filling out an incident report. Do you 12 remember that? 13 A Yes. 14 Q And you listed a couple of 15 categories. I just wanted to clarify for us, you 16 are not saying that you have filled out incident 17 reports at Tabbuli for those types of incidents, 18 just that those are the types of incidents that 19 could potentially trigger the writing and filling 20 out of a report, correct? 21 A Correct. 22 Q You mentioned a bouncer, 23 potentially. I know that there was some discussion 24 about that, versus potentially a bartender who was 25 doing double duty. Did you see a bouncer or any	Page 96 1 A That's okay. 2 Q The employee handbook that we 3 discussed earlier in your deposition, is it your 4 understanding that any provision of that employee 5 handbook would apply to equipment that was not 6 owned or controlled by Tabbuli? 7 A No. 8 Q Is it fair to say that handbook 9 would only apply to equipment, people, anything 10 under Tabbuli's responsibility and control? 11 A Yes. 12 Q And you said the DJ did not mention 13 to you why this happened? 14 A Correct. 15 Q You said earlier that there would 16 not have been time to perform a formal safety 17 inspection of the DJ lights. What did you mean by 18 a formal, versus informal inspection? 19 A Well, formally, I mean, I wouldn't 20 really go inspect, you know, the setup if they 21 weren't completely finished setting everything 22 up. That goes for the stage and the layout of 23 the floor, the lighting and the DJ booth and all 24 that stuff. You know, I have other stuff that 25 I'm doing that I need to be doing as the manager,
Page 95 1 Tabbuli staff at any point physically touch Ms. 2 Eddins? 3 A Physically, no. 4 Q At any point on that night, did you 5 see a visible injury on Ms. Eddins? 6 A No. 7 Q Had Ms. Eddins requested medical 8 attention, what would you have done? 9 A I would have called 911. 10 Q Okay. Why did you not? I'm sorry. 11 Go ahead. 12 A I was -- I was actually trying to 13 ask her if I could do that for her. 14 Q Right. And is that why you didn't 15 call 911, because she was belligerent? 16 A Yes, and she was saying horrible 17 things to me and we ended up having to have her 18 removed. 19 Q Did you take any photographs of the 20 scene around Ms. Eddins? 21 A No. 22 Q Have you ever spoken to her outside 23 of the night that the light fell on her head? 24 A No. 25 Q Bear with me for just a moment.	Page 97 1 so I can't just stand there while they are 2 setting up. 3 Typically, I'll go and see how the 4 setup is after they're finished setting, which 5 I'm pretty sure he was still setting up his booth 6 and all that stuff when this happened, if I'm 7 remembering correctly. 8 Q And you wouldn't have wanted to get 9 in the way of the DJ if they were setting up their 10 equipment, right? 11 A Of course, yes. In fact, I make 12 sure people stay out of the way when he's setting 13 up. 14 Q You said your staff is kind of 15 constantly looking for safety issues. Is it fair 16 if I characterize those as informal safety 17 inspections? 18 A Yes. 19 Q So is your staff always informally 20 looking out for customers and patron safety? 21 A Yes. 22 Q And how exactly are they doing that? 23 Lay that out for us. 24 A Just by being observant, by being 25 observant of the surroundings, the situations,

Page 98 1 the people, the food, the alcohol content. All 2 of those things come into factor. There is a lot 3 of things you have to be aware of when you are 4 working in an environment like this, to just make 5 sure that everyone is following guidelines and 6 things. 7 A lot of them, I would train them. 8 They would have common sense. If something was 9 broken or loose or if there was a tile coming up 10 from the ground or something like that that 11 somebody could trip over, we would make sure to 12 fix that, you know, before something happens. 13 They were usually on top of things and would come 14 and tell me. 15 Q Those observing qualities, are those 16 things you would have looked for in hiring staff, 17 as a manager at Tabulli? 18 A Absolutely. I don't want to have 19 to manage people that don't have common sense. 20 Q Is it fair to say your staff on duty 21 on the night of this incident would have had those 22 qualities? 23 A Yes. 24 Q So you would expect that they would 25 have been looking out for patron safety?	Page 100 1 was going to set up the light and not you all? 2 A It's possible. I don't know that 3 it got that far. I think it was more just asking 4 what was happening, if I could help her, what I 5 can do to try to calm her down type of 6 interaction. 7 Q Sure. Did she ask you for the 8 contact info for the DJ? 9 A Not to my recollection, no. 10 Q Do you remember her asking for 11 contact information for anybody? 12 A I don't remember, no. 13 MR. NEINAST: Okay. All right. 14 That's all I have for you. Thanks for your time. 15 THE DEPONENT: Thank you very much. 16 EXAMINATION 17 BY MR. LISKA: 18 Q Hi, Ms. Chapin. 19 A Hi. 20 Q During that last break, did you 21 speak with Will before you got back on and gave 22 more of your testimony? 23 A No. 24 Q Did you speak with Will at any time 25 during the deposition today?
Page 99 1 A Yes. 2 Q Did Tabulli ever have any incidents, 3 to your knowledge, other incidents with DJ lighting 4 becoming any kind of -- we'll call it causing any 5 kind of problems? 6 A No. 7 Q Okay. Did a patron ever complain to 8 you about DJ lighting causing problems? 9 A No. 10 Q All right, Cait. I think that's 11 about all I have for you. 12 A Okay. 13 Q Give me just one second, I'll 14 double-check that. 15 You mentioned that Ms. Eddins was 16 screaming at you that she was going to sue you. 17 Did she offer any justification for why she was 18 going to sue you? 19 A No. 20 Q Did you tell -- sorry I cut you off. 21 Go ahead. 22 A No, I was just saying no. 23 Q I hate Zoom depos. We end up 24 talking over each other. 25 Did you indicate to her that the DJ	Page 101 1 A No. 2 Q Okay. Did you communicate with Will 3 at any time during the deposition today in any 4 form? 5 A No. 6 MR. LISKA: That's all I have got. 7 THE DEPONENT: Thank you. 8 (Deposition was concluded at 11:32 9 a.m.) 10 (Reading and signing of the 11 deposition was waived.) 12 13 14 15 16 17 18 19 20 21 22 23 24 25

1 STATE OF COLORADO)
2)ss. REPORTER'S CERTIFICATE
3 COUNTY OF COSTILLA)
4 I, Linda S. Overdeer, do hereby certify that I
5 am Shorthand Reporter and Notary Public within the
6 State of Colorado; that previous to the
7 commencement of the examination, the deponent was
8 duly sworn to testify to the truth.
9 I further certify that this deposition was
10 taken in shorthand by me at the time and place
11 herein set forth, that it was thereafter reduced
12 to typewritten form, and that the foregoing
13 constitutes a true and correct transcript.
14 I further certify that I am not related to,
15 employed by, nor of counsel for any of the parties
16 or attorneys herein, nor otherwise interested in
17 the result of the within activity.
18 In witness whereof, I have affixed my
19 signature this 2nd day of April, 2021.
20
21 My commission expires June 10, 2021.
22
23
24 -----
25 Linda S. Overdeer
216 - 16th Street, Suite 600
Denver, Colorado 80202

Deposition of Jeff Deihl

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

STEFANI EDDINS,
Plaintiff,

vs.

CIVIL ACTION NUMBER
2020-CP-1002481

TALL SAM I AM, LLC, d/b/a TABBULI,
Defendant.

-----/

The 30(b)(6) videotaped videoconferenced
deposition of Defendant TALL SAM I AM, LLC,
d/b/a TABBULI, by Corporate Designee, JEFF
DIEHL, a witness in the above-entitled cause,
taken pursuant to Notice and agreement, before
Ceil Weser, Certified Court Reporter and Notary
Public, before Charles T. Nussbaum, Jr.,
videographer, by videoconference, on the 27th
day of July, 2021, commencing at or about the
hour of 1:30 p.m.



CCR

Page 6 1 Q And it is D-i-e-h-l? 2 A Yes, sir. 3 Q I appreciate that. I don't want to 4 mess up your name today. 5 Go ahead and introduce yourself with 6 your name, address, and where you work. 7 A Jeff Diehl, Director of Operations, 8 Charleston Hospitality Group. The address for 9 the office is 229 Huger Street, Charleston, 10 South Carolina. 11 Q And is the Charleston Hospitality Group 12 affiliated with Tall Sam I Am, LLC and Tall Sam 13 I Am Restaurant? 14 A Yes, sir. 15 Q How are they affiliated? 16 A The Tabbuli is managed by the 17 Charleston Hospitality Group. 18 Q Is it owned by Charleston Hospitality 19 Group? 20 A No, sir. Tall Sam I Am is its own 21 entity. 22 Q So have you ever given a deposition 23 before? 24 A One time before, yes, sir. 25 Q And what was that occasion?	Page 7 1 A That was about 90 days ago or so for 2 another incident or another deposition, whatever 3 you call them, for Charleston Hospitality Group. 4 Q What did that incident involve? 5 A That was at another location with the 6 young lady getting burned. 7 Q Was the young lady an employee or a 8 patron? 9 A A customer. 10 Q So you basically were given the rules 11 about depositions as far as being able to take 12 breaks and that sort of thing, but not being 13 able to talk to your attorney during those 14 breaks? 15 A Yes, sir. 16 Q So you are familiar with that then, 17 right? 18 A Yes, sir. 19 Q I won't repeat it then for you. 20 How old are you, Mr. Diehl? 21 A 46. 22 Q And tell me about your education? 23 A Bachelor's degree from the University 24 of South Carolina in Hotel Restaurateurism. 25 An Associate's Degree in the culinary
Page 8 1 arts and food and beverage from Johnson and 2 Wales in Charleston. 3 Q Do you have any criminal arrests? 4 A No, sir. 5 Q Have you ever been charged with a 6 crime? 7 A Yes, sir. 8 Q What crimes were those? 9 MR. NEINAST: Mike, before we get 10 into this, I will admit for the record 11 here that Mr. Diehl has some pending 12 criminal charges for which we do not 13 represent him. So obviously to the 14 extent that those charges are still 15 pending, there won't be testimony that 16 could potentially impact his 17 representation there. And obviously I 18 am sure you will agree to this as well 19 to the extent that any questioning will 20 get into communications with his 21 attorney or strategy regarding those 22 charges or anything like that, we 23 object to that. 24 BY MR. LISKA: 25 Q Mr. Diehl, concerning the pending	Page 9 1 charge or charges, I won't ask you any questions 2 about that other than what is the charge or 3 charges, or what are the charges? 4 A What are the charges? There is a 5 fraudulent check charge less than \$500 from 2018 6 from a restaurant in Columbia, South Carolina. 7 Q Is that the only pending charge? 8 A There is a -- I don't know the name of 9 it. There is two charges. I can't remember the 10 name of the charges. Fraudulent -- it is not a 11 fraudulent check. I got a paper. I have to 12 find out. 13 Q I was going to say maybe theft by 14 deception? 15 A No, no, no. 16 Q How about past criminal charges that 17 are not pending? 18 A No, sir. 19 Q Have you been involved in any lawsuits 20 before either as a plaintiff or a defendant? 21 A Not as a plaintiff or a defendant, no, 22 sir. 23 Q I am taking it just as a witness at 24 least based on the deposition you gave about 25 90 days ago, correct?



Page 10 1 A Yes, sir. Yes, got you. 2 Q My question was kind of broad I asked, 3 have you ever been involved in any other 4 lawsuits and I followed that with as a plaintiff 5 or a defendant and you said no. 6 Have you been involved in any other 7 lawsuits not being a plaintiff or a defendant, 8 other than the one that you gave a deposition in 9 about 90 days ago? 10 A Have I been involved in any other 11 lawsuits not as a plaintiff or a defendant? 12 Like a witness? 13 Q Sure. 14 A No, I have not been a witness in any 15 lawsuits. To the best of my knowledge, no. I 16 have not been involved in any other way than a 17 plaintiff or a defendant. 18 Q Are you married? 19 A Yes. 20 Q What is your spouse's name? 21 A One more time. 22 Q What is your spouse's name? 23 A Jennifer Diehl. 24 Q And how long have you all been married? 25 A 22 years.	Page 11 1 Q What does Jennifer do? 2 A She works for the State of South 3 Carolina in the virtual SC Educational Program. 4 Q Do you all have any children? 5 A We have three children. 6 Q What are their names and ages? 7 A S., she is 16. 8 N., he is 13 years old. 9 And V., she is nine years old. 10 MR. NEINAST: Mike, would you 11 agree to redacting those except for 12 initials? 13 MR. LISKA: Oh, sure. 14 BY MR. LISKA: 15 Q Where do they go to school? 16 A Cardinal Newman High School and St. 17 John Newman Elementary School. 18 Q Do you have any relatives over the age 19 of 18 that live in Charleston County? 20 A No, sir. 21 Q Tell me about your work history in 22 general as far as -- well, your current position 23 as the Director of Operations, how long have you 24 had that position? 25 A I have been with the Charleston
Page 12 1 Hospitality Group since 2019. 2 And then prior to that 2012. Took a 3 five-year break where I went back to Columbia. 4 Before that I was in the restaurant 5 business since 15 years old, washing dishes all 6 the way up to managing and owning. 7 Q What did you do in Columbia from 2012 8 to 2019? 9 A 2012 to 2019 I owned a restaurant 10 called Chickadee's Diner. 11 2012 to 2014 I was in Charleston 12 working for Charleston Hospitality Group. 13 Q I thought you said you took a five-year 14 break. 15 A Yeah, 2013 to 2019 I was owning the 16 restaurant in Columbia. 17 Q So what restaurant did you work for in 18 Charleston Hospitality Group from 2013 or 2014 19 to 2019? 20 A No, I think I have confused you. Let 21 me try to clarify that. From 2012 until 2014 I 22 worked for the Charleston Hospitality Group as a 23 Director of Operations. 24 From late 2014 until 2019 I worked for 25 my own restaurant in Columbia, Chickadee's Diner	Page 13 1 five years. 2 I returned to Charleston Hospitality 3 Group December of 2019. 4 Q All right, thank you for clarifying 5 that. 6 A Yes, sir, sorry about that. 7 Q Do you have any other relatives that 8 work for Charleston Hospitality Group or Tall 9 Sam I Am, LLC? 10 A No, sir. 11 Q I want to show you what we will 12 identify as Plaintiff's Exhibit 1 today. I will 13 pull that up and hopefully you can see it on 14 your screen here. 15 Can you all see a document on your 16 screen? 17 A Yes, sir. 18 MR. NEINAST: Is this your Notice, 19 Mike? 20 MR. LISKA: Yes, it is the Second 21 Amended Notice of Rule 30(b)(6) video 22 Deposition of Defendant. 23 BY MR. LISKA: 24 Q I will scroll down. 25 Have you seen this document before?



Page 14 1 A Yes, sir. 2 MR. LISKA: Let us go ahead and 3 attach this as Plaintiff's Exhibit 1 4 for today's deposition. 5 (Whereupon, Plaintiff's Exhibit 6 Number 1 was marked for 7 identification.) 8 BY MR. LISKA: 9 Q And on it it has got a number of 10 topics. I will scroll down for you, sir. 11 And do you see the word "topics" there? 12 A Yes, sir. 13 Q And it has got a list of topics 1 14 through 32. 15 A Yes. 16 Q My question is have you been identified 17 today to be the Defendant's corporate 18 representative to address these topics that have 19 been included in this Notice of Deposition? 20 A Yes, sir. 21 Q Did you bring any documents today with 22 you that pertain to topics 1 through 32 in 23 Exhibit 1? 24 A Only the one's that we have in this 25 huge file.	Page 15 1 Q Well, I have to have you go through 2 those documents in that huge file and let me 3 know what they are. 4 MR. NEINAST: Mike, he is 5 referring to our work product case 6 file. We don't have any additional 7 documents that the witness has brought. 8 MR. LISKA: Okay well, because my 9 next question is what did you review to 10 prepare for your deposition today. 11 THE WITNESS: The topics list, and 12 then in the topics there are questions 13 about our Employee Manual or safety 14 training or that kind of stuff. I 15 didn't bring anything with me. I mean 16 I reviewed our own company handbooks to 17 be ready for this. 18 BY MR. LISKA: 19 Q And what are those company handbooks? 20 A Charleston Hospitality Group has a 21 handbook provided to all employees that we hire 22 or each individual company pertaining to that 23 particular brand that involves anything from 24 uniforms, where to park, company policies, 25 things of that nature.
Page 16 1 Q Did you bring that with you today? 2 A No, sir, I did not bring one with me. 3 Q Is there any reason you did not bring 4 it with you? 5 A (No answer.) 6 MR. LISKA: Do you want to produce 7 it so I can know what he is talking 8 about. 9 MR. NEINAST: He is referring to 10 the Employee Handbook that we already 11 produced. 12 MR. LISKA: Do you have that there 13 with you, will? Maybe you can show it 14 to him. 15 MR. NEINAST: Yeah, well, I have a 16 copy. Let me see if I can pull it up. 17 You all should have it. I am looking 18 at it, it is SWB 10 through 30 19 something -- 34 -- 20 MR. LISKA: I understand, and I do 21 have a copy you are referring to. I 22 just want to make sure that is the same 23 document that Mr. Diehl is referencing. 24 THE WITNESS: Yes, sir. 25 BY MR. LISKA:	Page 17 1 Q Are you currently an officer or 2 director of Tall Sam I Am, LLC? 3 A No, sir, no. No Officer, no Director. 4 Q Are you a managing agent for Tall Sam I 5 Am, LLC? 6 A No, sir. 7 Q I am sorry, is that a no? 8 A No. 9 Q And I think you mentioned earlier that 10 Tall Sam I Am, LLC has designated you to testify 11 on its behalf regarding the topics listed in 12 Exhibit 1, correct? 13 A Yes. 14 Q Do you have full authority on behalf of 15 Tall Sam I Am? 16 A I am sorry, you broke up. One more 17 time. 18 Q Do you have full authority to speak on 19 behalf of Tall Sam I Am, LLC? 20 A Yes. 21 Q Who designated you to testify? 22 A Jenny Colvin, who is our controller; 23 and Sam Mustafa who is the CEO of Charleston 24 Hospitality Group. 25 Q When were you designated?



Page 18 1 A Friday evening, which would have been 2 the 28th? 3 Q Today is Tuesday, the 27th -- 4 A So the 25th. 5 Q Why were you so designated? 6 MR. NEINAST: I am going to object 7 here and go ahead and instruct 8 Mr. Diehl to not testify regarding any 9 communications that were had between 10 Counsel, Charleston Hospitality Group, 11 and Jenny Colvin or Sam Mustafa, or any 12 combination thereof. 13 As far as any internal 14 communications regarding the 15 designation we agree that is fair game. 16 But any communications that were made 17 in the presence of an attorney for the 18 purpose of legal advice, do not testify 19 regarding that, okay? 20 THE WITNESS: Yes, sir. 21 BY MR. LISKA: 22 Q Why were you designated? 23 A Because I worked for the company for a 24 total of five years. I can speak knowledgeably 25 about the operations of Tall Sam I Am, LLC.	Page 19 1 Q Were you employed by Tall Sam I Am, LLC 2 or Charleston Hospitality Group on July 20, 3 2017? 4 A No, sir. 5 Q And I am thinking you had not been 6 employed there prior to that date since 2014 7 based on your earlier testimony? 8 A Yes, sir. 9 Q And you were not employed there again 10 after that date until December of 2019? 11 A Yes, sir. 12 Q Are you aware that the answers that you 13 give to our questions today will be binding upon 14 Tall Sam I Am, LLC? 15 A Yes. 16 Q And do you agree to have your answers 17 to questions be binding upon Tall Sam I Am, LLC? 18 A Yes. 19 Q What has Tall Sam I Am, LLC done to 20 make sure you have all the knowledge with 21 respect to the topics listed on Exhibit 1? 22 MR. NEINAST: The same objection. 23 I am instructing the witness not to 24 answer with respect to any privileged 25 communications with an attorney. Any
Page 20 1 other preparation that was done you can 2 testify to. 3 THE WITNESS: Okay. 4 BY MR. LISKA: 5 Q Did you prepare for this with the 6 attorney? 7 A Did I prepare for this deposition with 8 the attorney? Yes. 9 Q And was that in part to make you 10 knowledgeable to be able to talk about and 11 answer the questions that would be asked of you 12 today? 13 MR. NEINAST: Objection. 14 Mike, you are getting into 15 attorney-client communications there. 16 I am instructing the witness not to 17 answer. The purpose of our meeting is 18 privileged. 19 MR. LISKA: Well actually if you 20 helped him prepare for a deposition, I 21 am allowed to find out anything that he 22 did to prepare himself to be able to 23 answer the questions as the corporate 24 representative today. 25 MR. NEINAST: No, that is not	Page 21 1 true. You are allowed to ask him what 2 documents he reviewed. You are not 3 allowed to ask him what communications 4 he had with an attorney to prepare for 5 the deposition. That is privileged and 6 I am instructing him not to answer on 7 that ground. You can ask him what 8 documents he looked at and what else he 9 did; but anything he communicated to or 10 from us is privileged, full stop. 11 BY MR. LISKA: 12 Q What has Tall Sam I Am, LLC done to 13 make sure you have all the knowledge available 14 to it with respect to the topics listed in 15 Exhibit 1? Other than with your attorney 16 because he won't let you answer that question 17 about what he may have told you? 18 A Tall Sam I Am provided me with the 19 video clip of the night or the day of the event. 20 Tall Sam I Am provided me with the Employee 21 Handbook for me to review our policies; and that 22 is it. 23 Q How much time did you spend preparing 24 to respond to the topics listed in Exhibit 1? 25 A The last 28/48 hours -- in the last 48



Page 22 1 hours probably three hours. 2 Q Are you fully prepared to provide all 3 the information available to Tall Sam I Am with 4 respect to the topics listed in Exhibit 1? 5 A I apologize. It is kind of breaking 6 up. Please one more time? 7 Q Are you fully prepared to provide all 8 the information available to Tall Sam I Am, LLC 9 with respect to the topics listed in Exhibit 1? 10 A Yes. 11 Q Are you fully prepared to provide the 12 position of Tall Sam I Am, LLC with respect to 13 those topics listed in Exhibit 1? 14 A Yes. 15 Q What did Tall Sam I Am, LLC do to 16 gather all the information reasonably available 17 to it to prepare you for this deposition? 18 A What did they do to gather the 19 information? 20 MR. NEINAST: And again, to the 21 extent that this would delve into any 22 actions or communications by Counsel, I 23 am instructing the witness not to 24 answer. I think he can testify as to 25 the actions of the company that were	Page 23 1 not privileged communications, but I do 2 want to draw the distinction there, 3 just so we are all on the same page. 4 Do you want to ask the question 5 again? 6 MR. LISKA: Sure. 7 BY MR. LISKA: 8 Q Did Tall Sam I Am, LLC gather all the 9 information reasonably available to it to 10 prepare for your deposition today? 11 A Yes. 12 Q And that would be the video clip and 13 the handbook? 14 A At least that, and anything else that 15 was requested in the topics that have been done. 16 Q What else would have been requested, 17 that is what I need to know? 18 A Can I see those topics? 19 Persons who direct or supervise the 20 business. 21 The location of storage of video or 22 digital images. 23 The identity of people involved in the 24 use of the surveillance system. 25 The name of the independent contractor.
Page 24 1 The Incident Report form. 2 That is it. 3 Q How was that information communicated 4 to you? 5 MR. NEINAST: Objection, that is 6 privileged. 7 Mike, why are you getting into 8 privilege here? That is a 9 communication from an attorney to a 10 client. What are we doing here? 11 You can ask him questions about 12 what he knows and what the corporation 13 knows, but asking him about our 14 communications during the preparation 15 of this deposition, that is privileged. 16 MR. LISKA: Do you agree that 17 information was communicated to you by 18 your attorney. 19 THE WITNESS: That is a question 20 for me? I am sorry, one more time? 21 BY MR. LISKA: 22 Q Yes, sir. 23 Do you agree with counsel's 24 representation that the information you just 25 identified was communicated to you by the	Page 25 1 attorney? 2 A The handbook we would have free access 3 to at any point. I don't need an attorney to 4 give me a copy of our handbook. The rest of the 5 items in the topic were communicated to me by 6 our controller, our CEO, through Email's, and 7 conversations with my attorney, yes, sir. 8 Q Okay. 9 So the controller's name again is who? 10 A Jenny Colvin C-o-l-v-i-n. 11 Q And the owner is Sam Mustafa? 12 A Yes, sir. 13 Q And I want to go ahead and attach as 14 Exhibit 1A the Email's that you received 15 concerning those, other than any Email's from 16 Counsel. 17 So if you could gather those, Will, for 18 me and we will attach those as Exhibit 1A, that 19 would be great? 20 MR. NEINAST: If there is anything 21 non-privileged and non-work product we 22 will take a look at it and produce it 23 if appropriate. But if it is 24 privileged, we will not produce it. 25 And if you want a privilege log, we



Page 26 1 will get a privilege log and gather 2 them, but full stop if one of us is on 3 it, it is privileged. 4 MR. LISKA: You can do a privilege 5 log, that will be fine. 6 (Whereupon, Plaintiff's Exhibit 7 Number 1A to be marked for 8 identification.) 9 BY MR. LISKA: 10 Q Going back to my original question, the 11 information that you itemized earlier, how was 12 that information communicated to you? Have you 13 answered that question for us now? 14 A The employee handbook, I just got a 15 copy of it from our office. 16 The video was shown to me by my 17 attorney. 18 And what was the last one? 19 The names of the people, the witnesses, 20 the names that were on the topics, that came 21 from my attorney. 22 Q Did you have any conversations with 23 Mr. Mustafa? 24 A No, sir. 25 Q Did you have any conversations with --	Page 27 1 I forgot her name -- Jenny? 2 A Yes, sir. 3 Q Other than taking a look at the 4 employee handbook and receiving communications 5 from Counsel, did you have any role in gathering 6 the knowledge that you would need to answer the 7 questions today? 8 A No, sir. 9 Q Other than your attorney, does anyone 10 outside the organization have information about 11 the topics listed in Exhibit 1? 12 A I don't, no. 13 Q Did you inquire of anybody to find out 14 if there was anybody outside the organization 15 that would have information about topics listed 16 in Exhibit 1? 17 A (No answer). 18 Q Do I need to repeat the question? 19 MR. NEINAST: We didn't hear 20 anything. 21 BY MR. LISKA: 22 Q The question was what did you do to 23 ensure or find out whether anyone outside the 24 organization has any information about the 25 topics listed in Exhibit 1?
Page 28 1 A I asked does anyone else have any 2 information about this, and Jenny and Sam both 3 said the only information that we have Will has, 4 the attorney has and is included in whatever 5 this is, the lawsuit. 6 Q I thought you said earlier you didn't 7 have any conversations with Mr. Mustafa or 8 Jenny? 9 A Oh, yeah, let me back up. Is there 10 anyone else that I spoke to in terms of the 11 content of this, no. 12 Jenny said through Email, Jeff, I need 13 you to be the designee. I responded, is there 14 anyone else that can help me with this? And she 15 said no. So that was through Email. 16 Q What were you told you needed to do 17 today? 18 MR. NEINAST: Objection, the same 19 objection. You are not to testify 20 about any communications from us, 21 meaning your attorneys. Anyone else 22 that is fine. 23 THE WITNESS: Got you. 24 BY MR. LISKA: 25 Q So what is your answer?	Page 29 1 A Repeat the question. I didn't know 2 that you were waiting for me. 3 Q What were you told you needed to do 4 today? 5 A Be here at 1:30 for a deposition. 6 Q Who told you that? 7 MR. NEINAST: Objection. He is 8 not going to answer that if it came 9 from us. 10 Any communications that were made 11 to you of being at this deposition or 12 testifying or any content of the 13 deposition and anything other than 14 through attorneys you can testify to 15 that, Jeff; but if it came from us I am 16 instructing you not to answer. 17 THE WITNESS: Okay. 18 MR. LISKA: It will probably be 19 the same objection, Will, but I will 20 ask -- 21 BY MR. LISKA: 22 Q Sir, tell me everything you discussed 23 with anyone on how to fulfill your duty today to 24 be able to answer the questions we are going to 25 ask you about topics 1 through 32 in Exhibit 1?



Page 30 1 MR. NEINAST: And I am going to 2 make the same objection. Mr. Diehl, 3 you are instructed not to provide any 4 testimony regarding your communications 5 with your attorneys. 6 Regarding any testimony or by 7 other measures you have taken, that is 8 fine. But I will instruct you not to 9 answer regarding any privileged 10 communications. 11 THE WITNESS: Okay. Well, then 12 all of the communication that I have 13 had was on an Email chain was cc'd to 14 Will and people from Will's firm with 15 Jenny and Sam. 16 BY MR. LISKA: 17 Q Who is your supervisor? 18 A Sam Mustafa. 19 Q Let me back up. So I assume the answer 20 to that question is you are not answering on 21 advice of Counsel, that last one about -- 22 MR. NEINAST: Right, Jeff? 23 THE WITNESS: Yes, the part -- 24 Not the Sam Mustafa question. 25 BY MR. LISKA:	Page 31 1 Q Thank you. So I am going to move on 2 then. 3 Tell me again who is your supervisor? 4 A Sam Mustafa. 5 Q What training did you receive when you 6 joined the Charleston Hospitality Group? 7 A That was a long time ago. 8 Specific training other than 9 orientation specifically from Sam or anyone that 10 I worked with was more support. My experience 11 lent itself to be able to help in a situation 12 where they had not had anybody with multiunit 13 experience before to come operate their 14 restaurants. So I would then receive as much 15 training here as I did unsupervised performance. 16 Q Did you receive any additional training 17 when you came back in 2019? 18 A No, sir. 19 Q Did you receive any training about 20 safety and premises safety? 21 A No, sir. 22 Q At any time? 23 A No. 24 Q I am sorry, what was your answer? 25 A No formal training. We have ongoing
Page 32 1 training -- I guess not training -- 2 communications with our repair and maintenance 3 teams for all of our stores, and our general 4 manager provided no formal training. There is 5 ongoing coaching and communications. 6 Q How do you receive those ongoing 7 coaching and communications? 8 A Text messages, Email's, and 9 conversations. 10 Q And who are those persons from whom you 11 would receive text messages, Email's, and 12 conversations? 13 A Our general managers of our stores. 14 Q Who is the general manager? 15 A One more time? 16 Q What is the general manager's name? 17 A Of what store? 18 Q Well, you were telling me this person 19 communicated to you about safety. So I am going 20 to guess that includes safety at Tall Sam I Am, 21 LLC d/b/a Tabbuli? 22 A So the general manager of Tabbuli at 23 that time was Jay Witkowski. 24 Q At what time? 25 A The time of the incident.	Page 33 1 Q But you weren't employed there at the 2 time of the incident, were you still receiving 3 communications at that time? 4 A No. 5 Q So I am asking you, sir, about your 6 safety training if any that you would have 7 received in your job working for Charleston 8 Hospitality Group at any time? 9 A Okay. You are asking me did I receive 10 any safety training from the Charleston 11 Hospitality Group when I returned to the 12 Charleston Hospitality Group in 2019, or any 13 time before then? 14 Q Correct. 15 A Yes, of course I did. Certified food, 16 certified alcohol certifications, Coronavirus 17 certifications from the Department of Health; 18 things like that, yes of course. 19 Q How about premises safety? 20 A Permits of safety, no. No permits of 21 safety. 22 MR. NEINAST: I think he said 23 premises safety. 24 THE WITNESS: Premises safety? No 25 formal premises safety training.



Page 34 1 BY MR. LISKA: 2 Q But you are saying you received 3 informal communications from the general manager 4 at some point while you worked there? 5 A General manager or our owner Sam 6 Mustafa, sure. 7 Q And you would have received those via 8 text, Email or other communications? 9 A Yes, sir. 10 Q So what would they have told you 11 informally via text, Email, or other 12 communications about premises safety? 13 A If we observed at any of our properties 14 something that was deemed to be hazardous or 15 dangerous, then we would talk about what a 16 solution is; and then we would fix it. 17 Q Is that across the board for all 18 employees? 19 A Say it one more time? 20 Q Is that across the board for all 21 employees or is that just you for some reason? 22 A All of our employees are trained on 23 general safety of restaurant operations. Food 24 safety handling, burns, first-aid, serving 25 alcohol safely and legally. But our general	Page 35 1 employee is not trained on facilities 2 maintenance, air-conditioning, safety, things of 3 that nature. 4 Q Well, how about hazardous conditions 5 that may exist on the premises that could hurt 6 somebody, are they trained to watch out for 7 those? 8 A Depending on what the hazardous 9 condition is, yes, absolutely, of course. 10 Q So number 1, topic number 1 talks 11 about: The identity of persons who direct 12 and/or supervise defendant's business functions. 13 So let me start there. 14 Who directed and/or supervises Tall Sam 15 I Am, LLC d/b/a Tabbuli's business functions? 16 A That would be the general manager of 17 Tall Sam I Am and Tabbuli. 18 Q Who is that person? 19 A Right now Tabbuli is not open for 20 business. 21 At the time of the event it was Jay 22 Witkowski. 23 Q And how do you spell Mr. Witkowski's 24 last name? 25 A W i t k o w s k i -
Page 36 1 Q And where is Mr. Witkowski today? 2 A I am not sure where he ended up going. 3 I think he left for a better opportunity over -- 4 I am not sure I know. 5 Q Is he still employed by Tall Sam I Am, 6 LLC? 7 A No. 8 Q Is that a no? 9 A No. 10 Q Who directs and/or supervises the 11 day-to-day operations of Tall Sam I Am, LLC 12 d/b/a Tabbuli? 13 A The general manager. The same answer 14 at the time it was Jay Witkowski. 15 Q Who directed and/or supervised premises 16 safety on the Defendant's premises on the date 17 of the incident? 18 A Same. The same answer. 19 Q Jay Witkowski? 20 A Yes, sir. 21 Q Who directed or supervised inspecting 22 hazardous, dangerous and defective conditions on 23 Defendant's premises on July 20, 2017? 24 A That would be the same answer, Jay 25 Witkowski.	Page 37 1 MR. NEINAST: Object to the form 2 of that question. 3 BY MR. LISKA: 4 Q Who directed and/or supervised 5 discovering hazardous, dangerous, and defective 6 conditions on the premises on July 20, 2017? 7 MR. NEINAST: Object to the form, 8 but you can answer. 9 THE WITNESS: That would be the 10 same person of our property, Jay 11 Witkowski. Our general manager is 12 responsible for anything that involves 13 our property, that involves our 14 employees, that involves our equipment 15 or business. 16 BY MR. LISKA: 17 Q So in topic number 1 is it the same 18 answer across the board, Jay Witkowski? 19 A Yes, sir. 20 Q So Jay Witkowski would have directed 21 the business functions, the day-to-day 22 operations, the premises safety, inspecting for 23 hazards, discovering hazards, preventing 24 hazards, correcting hazards, warning about 25 hazards, and supervising the policies and



Page 38 1 procedures concerning premises safety? Topic 2 number 1? 3 A Yes. 4 Q Topic number 1? 5 A (No answer.) 6 Q Is that a yes? 7 A Yes. 8 MR. NEINAST: Object to the form. 9 (Whereupon, Plaintiff's Exhibit 10 Number 2 was marked for 11 identification.) 12 BY MR. LISKA: 13 Q Let me show you what we will pull up 14 and identify as Plaintiff's Exhibit Number 2 15 today. 16 Sir, do you have a document that has a 17 document entitled, "Lease", on it in front of 18 you on your screen? 19 A Yes. 20 Q Have you seen this document before? 21 A Yes. 22 Q When did you see this document? 23 A I don't have a specific date, but I 24 have seen our leases before. 25 Q And what is this document exactly?	Page 39 1 A The lease is what we used to occupy the 2 property on 6 North Market Street. 3 Q Is this the lease between the owner of 4 the property and Tall Sam I Am, LLC that was in 5 place on July 20, 2017? 6 A Yes, sir. 7 Q I am sorry, you said the address, I am 8 going to pull it out here, did you say 6 Market 9 Street? 10 A Yes, you see right there, 6 Market 11 Street, premises. 12 Q And then it has got you see this 13 permitted uses. It says: Sale of food, 14 beverages and related activities? 15 A Uh-huh. 16 Q One thing in depositions, if you can do 17 a favor for us and give a verbal response 18 instead of like a grunt or a shake of the head? 19 A Oh her, got you. Yes, that is what it 20 is used for. 21 Q So what are the related activities? 22 A Related activities that we can -- that 23 are permitted uses? 24 Q Well, yes, that you are allowed under 25 this lease?
Page 40 1 A Well, we can do a lot of things. Play 2 music, use the bar, have bands, have DJ's, play 3 cornhole, use the parking lot for volley ball. 4 Anything related or to use to sell food and 5 beverages. 6 Q What is the purpose of the lease? I 7 didn't ask you that question. 8 A What is the purpose of the lease? 9 MR. NEINAST: Object to the form. 10 MR. LISKA: What is wrong with the 11 form, Will, just out of curiosity. 12 MR. NEINAST: To the extent that 13 it calls for any kind of legal 14 conclusion or impact of the lease I 15 think it is an improper question. It 16 is fine if he testifies to his 17 understanding of why the lease is 18 entered or what it does, but as far as 19 how it operates legally, I have an 20 objection on the record as to that. 21 THE WITNESS: So the question was 22 what is the purpose of the lease? 23 BY MR. LISKA: 24 Q Yes, sir. 25 A It gives us the right to use that	Page 41 1 property to sell food, beverages and conduct 2 business. 3 Q Does it set forth the tenant's duties 4 that is expected as part of this contract? 5 A It may. I am not familiar with exactly 6 what they are if it does. 7 Q So what did you do to prepare yourself 8 to answer questions about this lease today? 9 A I reviewed the lease, of course. 10 Q Yeah, and when did you review the 11 lease? 12 A I have seen the lease prior to this 13 day. I don't know, a couple of times in the 14 past few months up to a year when we reviewed it 15 during Coronavirus and with the stipulations of 16 whether or not we could avoid paying rent during 17 the Coronavirus pandemic; so I am familiar with 18 the lease. 19 Q So as the officially designated 20 corporate representative, Rule 30(b)(6) 21 corporate representative today on behalf of the 22 Defendant Tall Sam I Am, LLC d/b/a Tabbuli you 23 cannot tell us whether or not this lease sets 24 forth the duties that are expected of the tenant 25 pursuant to the lease?



Page 42 1 A How many pages is this lease? Because 2 in my history of running and owning operations 3 and restaurants I have never memorized a lease. 4 Certainly if I am provided one I will be happy 5 to take a look at it real quick and refresh my 6 memory with what our specific duties of this 7 lease require. 8 Q Right. My only question right now is 9 does it set forth the duties that are expected 10 of Tall Sam I Am, LLC pursuant to this contract? 11 A Sure. Pay rent on time. 12 Q Yeah, I wasn't asking you specific 13 duties yet. 14 A Got you. 15 Q I was just asking does it set forth 16 what is expected as tenant's duties? 17 A Got you. 18 Q So is that correct, it sets forth what 19 is expected of the tenant pursuant to this 20 contract? 21 A Yes. 22 Q Let us go down to the covenants. 23 THE WITNESS: It has been an hour. 24 Can I take a break. 25 MR. NEINAST: We have been going	Page 43 1 an hour, Mike. Why don't we take a 2 five-minute break. 3 MR. LISKA: Sure. 4 (Whereupon, a short break was 5 taken.) 6 BY MR. LISKA: 7 Q So Mr. Diehl, before we took a break -- 8 and I will share the screen with you again. 9 But we were talking about this lease 10 that I am attaching as Exhibit 2 to today's 11 deposition. 12 A Uh-huh. 13 Q And I think you had mentioned that this 14 sets forth Tall Sam I Am, LLC's duties as the 15 tenant concerning the premises? 16 A Yes. 17 Q Okay. So I have scrolled down to a 18 section entitled, "Covenants". You see there 19 where it says: Tenant covenants with and for 20 the benefit of landlord. And that first one 21 says: To comply with all requirements of any 22 state or federal statute or local ordinance or 23 regulation. 24 What does that mean? 25 A To comply with all --
Page 44 1 (Whereupon, a discussion was 2 held off the record.) 3 THE WITNESS: Now I can see it. 4 To comply with all requirements of any 5 state or federal statute or local 6 ordinance or regulation applicable to 7 tenant or its use of the premises, and 8 to save landlord harmless from 9 penalties, fines, costs, expenses, or 10 damages resulting from failure to do 11 so. 12 That means we are to comply with 13 all requirements of any state or 14 federal statute or local ordinance. 15 BY MR. LISKA: 16 Q Then I am going to scroll down to 17 letter i. 18 Do you have that there in front of you 19 as well? 20 A Yes. 21 MR. NEINAST: Mike, just for our 22 record and purposes, what is your Bates 23 Number here? 24 MR. LISKA: I don't have a Bates 25 Number.	Page 45 1 MR. NEINAST: What is the page of 2 the lease. 3 MR. LISKA: I am sorry, there is. 4 There is a Bates Number at the bottom. 5 This is from you, so the first Bates 6 Number was SWB40 and the next page is 7 SWB 41. 8 Does that help. 9 MR. NEINAST: Yes. 10 BY MR. LISKA: 11 Q Sir, I am going back to letter i there 12 under these covenants. 13 Have you had a chance to read that? 14 A Yes. 15 Q So what I want to do is I am going to 16 -- I don't know if I can highlight it or not -- 17 I guess I can't highlight it. But to make it 18 easier for you -- that won't work. 19 But it says: Keep the premises in 20 first class condition in accordance with the 21 highest standards of operation of similar 22 businesses, maintaining at all times during the 23 term of this lease a full staff of well trained 24 and high grade personnel. 25 What does that mean as far as Tall Sam



Page 46 1 I Am, LLC's duties? 2 A That means we are to keep the premises 3 in first class condition in accordance with the 4 highest standards of an operation of a similar 5 business. Maintaining at any all times a full 6 staff of well trained and high grade personnel. 7 Q Let me go down to Covenant r, and it 8 has a few sub covenants underneath there. But 9 you see r it says: Tall Sam I Am, LLC is to 10 refrain from doing each and every one of the 11 following. 12 Do you see that language there, sir? 13 A Yes. 14 Q And then on subcategory 2 there, it 15 includes: Causing or permitting any noxious, 16 disturbing or offensive odors, fumes or gases, 17 or any smoke, dust, steam or vapors, or any loud 18 or disturbing noise or vibrations to originate 19 in or be emitted from the premises. 20 A Yes. 21 Q What is that? Do you agree that that 22 is a duty of Tall Sam I Am? 23 A If it is in our lease it is a duty of 24 Tall Sam I Am. 25 Q So what does that mean exactly, number	Page 47 1 2 there? 2 A Causing or permitting any noxious, 3 disturbing, or offensive odors, fumes, or gases, 4 or any smoke, dust, steam or vapors, or any 5 loud, disturbing noise or vibrations to 6 originate in or be emitted from the premises, we 7 are not allowed to do that. 8 Q Okay. 9 And then you mentioned earlier about 10 what you are allowed to do at the premises, and 11 one of those I think was entertainment. You 12 mentioned some bands and stuff. And I think we 13 were provided a document this morning that had 14 some live bands listed on there as well from 15 Tall Sam I Am, LLC. 16 Have live bands played at the business? 17 A Yes. 18 Q And if a band is playing music too 19 loud -- well let me ask you, are those bands 20 independent contractors or are they employees? 21 A No, they are independent contractors. 22 Q And if they are playing their music too 23 loud, does Tall Sam I Am, LLC have control to 24 either let or not let them play that music too 25 loud?
Page 48 1 A If they are playing their music too 2 loud, does Tall Sam I Am have the ability to 3 control how loud they play their music? 4 Q Sure. Can you tell them to turn it 5 down? 6 A Yes, we can request that it be turned 7 down of course. 8 Q And then they would have to turn it 9 down if you told them to do it, correct? 10 A They would -- yeah, if they wanted to 11 continue ever working for us again they would 12 have to turn it down. 13 Q And does Tall Sam I Am, LLC have the 14 power or the control to tell people not to sit 15 by the loud music if they felt the loud music 16 was going to harm them? 17 A Do we have the power and control to 18 tell a guest? 19 Q Yes, sir, a patron, you could tell them 20 to move, could you not? 21 A We could ask them if they wouldn't mind 22 moving for a variety of reasons, as long as it 23 is not something that is illegal. We can't ask 24 them to move for something that would be covered 25 by the Civil Rights Act, but if we were looking	Page 49 1 for comfort or a more comfortable table, or if 2 they requested it, yes, of course we can request 3 that they move. 4 Q Let me go down to number 3 there. This 5 says: Causing or suffering to be done, any act, 6 matter or thing objectionable to insurance 7 companies, whereby any hazard insurance, or any 8 other insurance now in force or hereafter to be 9 placed on the premises, or on any part thereof 10 may become void or be suspended, or whereby the 11 insurance premiums payable by landlord, or by 12 any tenant of landlord, may be increased. 13 What does that mean? 14 A Causing or suffering to be done, any 15 act, matter or thing objectionable to insurance 16 companies, whereby any hazard insurance or any 17 other insurance now in force or hereafter to be 18 placed upon the premises or on any part thereof 19 may become void or be suspended, or whereby the 20 insurance premiums payable by the landlord or by 21 any tenant of the landlord may be increased. 22 That is what that means. We can't do that. 23 Q Let us scroll down to -- you see these 24 signatures down here at the bottom? 25 A On the bottom right or bottom --



Page 50 1 Q Bottom right, sir, under tenant? 2 A Yes. 3 Q Is that just Sam Mustafa signing on 4 behalf of Tall Sam I Am, LLC? 5 A Yes. 6 Q Okay. 7 Where is Mr. Mustafa today? 8 A I am not sure where he is today. 9 Q So going back to the topics on 10 Exhibit 1, the Notice of Deposition number 2 was 11 you were going to address: Defendant's duty and 12 efforts to have, implement, and ensure 13 compliance with proper and adequate safety 14 policies, procedures, and protocols at 15 Defendant's premises. 16 A Yes. 17 Q What does Tall Sam I Am, LLC do to 18 have, implement and assure compliance with 19 proper and adequate safety policies, procedures, 20 and protocols at its premises? 21 A So at Tabbuli we would -- our employees 22 go through training at orientation where we 23 describe and show them how to watch out for 24 things that would potentially be dangerous as 25 far as their safety is concerned as an employee	Page 51 1 or as a guest. 2 Q So you are training them to watch out 3 for safety hazards that might be dangerous to a 4 guest? 5 A We teach them, yes, safety hazards that 6 might be dangerous to a guest within the scope 7 of running a restaurant. 8 Q What does that mean exactly? 9 A Well, you know, if we spill something, 10 then we put out wet floor signs as an example. 11 If they see that there is a fellow employee who 12 is not wearing gloves while they are preparing 13 food, they would say hey, you need to put on 14 some gloves; or hey watch out, I am coming 15 around the corner, I have a hot pan. So that 16 kind of training. 17 Q How do they know to be putting out wet 18 floor signs if there is a spill on the floor? 19 A So during orientation we show a brief 20 training slide show on what happens if something 21 is spilled. This is where you will find the wet 22 floor signs. 23 If you notice food is not being stored 24 at the proper temperature, here are the proper 25 temperatures to store food.
Page 52 1 Q And was that the case back in July 20th 2 of 2017 that the employees would receive that 3 training? 4 A Yes. 5 Q And how do you know that? 6 A Well, we have done that training for 7 years, every employee that has ever come 8 through. 9 Q But you weren't there in 2017, so I am 10 just asking you how do you know they did that in 11 2017? 12 A Nothing would have changed since the 13 time I was there in 2012 until the time I came 14 back. We use the same materials to this day. 15 Q But I am asking you, how do you know 16 that was the case in 2017? 17 A How do I know they were using those 18 materials in 2017? 19 Q And how do you know those employees 20 were receiving the training that you described? 21 A I guess I don't have proof that they 22 received training. 23 Our employees since I was here in 2012 24 and since they worked for Sam in 2006 all the 25 way until the present day would have received	Page 53 1 the same training under Sam Mustafa's 2 supervision of his company. 3 Q So do you know what employees were 4 there in July 20th of 2017? 5 A Out of memory, no; but I do have a list 6 of people who were on-site. 7 Q So the list of people that you have 8 there who were on-site, I will attach as 9 Exhibit 1C today. 10 (Whereupon, Plaintiff's Exhibit 11 Number 1C to be marked for 12 identification.) 13 BY MR. LISKA: 14 Q Is everybody on that list that we are 15 going to attach as Exhibit 1C, were they 16 employed by Tall Sam I Am, LLC back in 2006 as 17 you represented? 18 MR. NEINAST: Are you sharing the 19 screen there, Mike. 20 MR. LISKA: No, he said he had a 21 list of the employees that were there 22 that day. He said he had a list of the 23 persons that were there that day. He 24 didn't say employees. 25 MR. NEINAST: Give us just a



Page 54

1 second, Mike.
2 BY MR. LISKA:
3 **Q While he is looking for that, has Tall**
4 **Sam I Am, LLC ever employed any cooks that were**
5 **independent contractors?**
6 A No.
7 **Q How about bartenders?**
8 A No.
9 MR. NEINAST: Let me see if I can
10 pull up a digital copy for us, Mike.
11 (Whereupon, a discussion was
12 held off the record.)
13 MR. NEINAST: Let's go off the
14 record for a second, and I will pull it
15 up.
16 (Whereupon, an off-the-record
17 discussion was held.)
18 BY MR. LISKA:
19 **Q So going back, Mr. Diehl, I think the**
20 **question was you said that everybody that was**
21 **there that day had received that training**
22 **because they were employed in 2006?**
23 A Not in 2006, no, sir. They were
24 employed on that day. I don't know whether they
25 were employed in 2006.

Page 56

1 **there were hired?**
2 A What training did they receive?
3 **Q Yes.**
4 MR. NEINAST: Objection.
5 THE WITNESS: They would have
6 received whatever was in that employee
7 handbook and whatever items were
8 provided at orientation.
9 BY MR. LISKA:
10 **Q That is what I need to know.**
11 **Were there items provided at**
12 **orientation or anything shown to them at**
13 **orientation concerning premises safety?**
14 A In 2017?
15 **Q Or any time before that when any of**
16 **those employees would have been hired?**
17 A Yes.
18 **Q And what are those documents so I can**
19 **request those?**
20 A You would like a copy of the
21 orientation slide show, we can of course get
22 that to you if you don't have it, sure.
23 **Q Well, if that was in place back before**
24 **July 20, 2017, yes.**
25 A Okay.

Page 55

1 **Q So backing up even further, you said**
2 **they would have received the training.**
3 **And my question to you was how would**
4 **you know that?**
5 A I would not know if they received that
6 training, but I think it is fair to believe that
7 any employee who had been hired within this
8 company from the years of 2006 until present day
9 under Sam's leadership would have received some
10 form of safety training for the restaurants
11 prior to beginning their employment.
12 **Q Okay.**
13 **And so when we asked for any and all**
14 **written materials pertaining to training**
15 **provided to employees for premises safety, the**
16 **only document we were provided was the employee**
17 **handbook that you keep mentioning?**
18 A Yes.
19 **Q And now you are telling me there is a**
20 **slide show and some other materials as well?**
21 A Yes, present day we use a slide show.
22 Orientation has evolved to include more
23 material, sure.
24 **Q But how about back in 2017 or when any**
25 **of those employees that are listed on that list**

Page 57

1 **Q Any other materials besides the slide**
2 **show?**
3 A No, sir.
4 **Q Are there certain hazards that**
5 **employees don't have to watch out for?**
6 A Well, of course we teach our employees
7 to focus on any obvious hazards that would be
8 relevant to their job, serving food, handling
9 food, serving alcohol, handling alcohol, guests
10 potentially slipping and falling or being burnt
11 by hot pans or hot items or hot coffee; sure, of
12 course.
13 **Q Well, my question was what hazards do**
14 **they not have to look out for?**
15 A What hazards do they not have to look
16 out for? Anything that wouldn't be indicative
17 of being a server or a bartender or a cook in a
18 restaurant.
19 Specifically I don't have a list, but
20 of course there is only so many things that
21 relate to their job that they would be
22 responsible, for being vigilant of.
23 **Q Who is looking out for the hazards that**
24 **aren't included in their job?**
25 A Reasonably related to their job, sure,



Page 58 1 of course. 2 Q My question is who is looking out for 3 the hazards that are not included in their job? 4 A Our general manager would be 5 responsible for watching out for hazards on the 6 whole property. 7 Q Okay. 8 So item or number 3, topic number 3, 9 you were going to address: Defendant's duty and 10 any efforts to inspect, discover, correct, 11 remedy, remove, and warn about, any hazardous 12 dangerous or defective conditions at Defendant's 13 premises. 14 A Yes, sir, I got it right here. 15 Q So number 3, do you have that in front 16 of you? 17 A Yes, sir. 18 Q What does Tall Sam I Am, LLC do to 19 inspect, discover, correct, remedy, remove, and 20 warn about any hazardous, dangerous or defective 21 conditions at its premises in general, and on 22 the date of the incident that we are here about 23 today? 24 A Sure. So our general manager, all of 25 our employees have a responsibility to look out	Page 59 1 for hazards. Our general manager would be 2 tasked with probably more responsibility than a 3 server or a dishwasher. 4 But they do constant circles through 5 the restaurant. They open up the restaurant. 6 They get it ready for service. They close the 7 restaurant throughout the day if they observe 8 something that they would deem potentially 9 hazardous, then they would address it and call 10 for help to remedy or address it. 11 Q Would that include a light that is not 12 properly secured? 13 A No. 14 Q Why not? 15 A A light that is not properly secured is 16 handled by our R&M team. 17 Q Who is R&M team? 18 A Repair and maintenance guys. So if we 19 call in repair and maintenance they are the 20 one's who would typically look at any kind of 21 ovens, stoves, things of that nature. 22 Q And falling lights? 23 A And falling light, if something that 24 was in our control on our property that belonged 25 to us, yes, of course.
Page 60 1 Q Are you allowed to have lights that 2 fall on people's heads even if it is not your 3 light inside the restaurant and endanger patrons 4 like that? 5 A Are we allowed to have a light that can 6 fall on someone's head and injure patrons? 7 Q Yes. 8 A Or something like that? 9 Repeat that question, please. 10 Q Yes. Well, it sounds like if it is a 11 light in your control, then you would do 12 something about making sure it doesn't fall on 13 somebody's head. But if it is not a light that 14 you claim is not in your control, they are 15 allowed to have a light in there and just let it 16 fall on somebody's head? 17 MR. NEINAST: Object to the form. 18 THE WITNESS: If we have anything 19 that belongs to us, so of course we 20 have light fixtures that belong to us 21 in our dining rooms and it is 22 responsibility to make sure those are 23 screwed into the ceiling or mounted 24 appropriately or correctly, of course. 25 If we have something that doesn't	Page 61 1 belong to us, in this case I think you 2 are referring to the light that fell on 3 Miss Stefani's head, no, that is not 4 our responsibility to take care of 5 that. 6 That is the duty and 7 responsibility of the DJ that was there 8 that night. 9 BY MR. LISKA: 10 Q So as the designated representative, 11 corporate representative of Tall Sam I Am, LLC 12 you are saying that Tall Sam I Am, LLC has 13 absolutely no duty to make sure a light does not 14 fall on a patron's head if they do not own the 15 light itself? 16 A Correct, yes. 17 Q Wonderful, thank you. That is what I 18 wanted to hear. 19 So let me ask you about these other 20 hazards, you said you would call maintenance. 21 Well, who would know to call 22 maintenance if none of the employees are 23 supposed to be looking out for the lights that 24 fall on somebody's head? 25 A Well of course, our general manager and



Page 62 1 employees are responsible for watching out for 2 anything that could be potentially hazardous. 3 But a light that would fall on somebody's head 4 is certainly one of them, if it is our lights. 5 Q Why if it is just your light? Why 6 can't it be somebody else's light? 7 A Well, somebody else that owns property, 8 that owns something that we paid them to come in 9 and set up, then we expect them to do that 10 safely and in a good manner. 11 Q But what if they don't? Are you not 12 responsible? 13 A No, of course not. Of course we are 14 not responsible. 15 Q So anybody could just come in that you 16 have hired to do something inside the restaurant 17 and do whatever dangerous activity they want, 18 you can invite patrons to come in and sit by 19 those persons you invite in to come in and do 20 whatever dangerous activity they want and you 21 are not responsible for the patron when they get 22 hurt? 23 A Help me understand. When you say 24 dangerous activity what does that mean? 25 Q Anything. What if they want to shoot	Page 63 1 guns inside your restaurant? 2 A In our 16 years of restaurants we have 3 never invited or paid anybody to come in and 4 shoot guns in the restaurants. 5 Q Okay. And why not? 6 A Because that would not be good for 7 business. 8 Q Why not? 9 A Because people would get shot. 10 Q Okay. 11 So what if they brought in a light that 12 they were having fall on people's heads, is that 13 good for business? 14 A If a vendor came in and said we are 15 going to be in here shooting guns, we would say 16 that is not a good idea. 17 If a vendor came in and said we are 18 going to be playing music and doing a light 19 show, and we are bringing lights in with us to 20 do that, we would say that sounds reasonably 21 safe. 22 Q Would you not have any duty at all to 23 check to make sure they set those lights up 24 properly so that they do not fall on your 25 patrons' heads that you invite into your
Page 64 1 restaurant and invite them to sit by them -- 2 A No, we don't inspect anyone else's 3 property or their tools or their equipment that 4 we have hired to bring in. We wouldn't inspect 5 the stage. We wouldn't inspect the lights or 6 speakers or anything else we don't own. 7 If I hire a plumber to come in and to 8 clean out our drains, I don't inspect his tools 9 before he does it. I have hired him believing 10 that he has the appropriate and safe equipment 11 to do the job. 12 Q So there are restaurants out there that 13 have axe throwing contests. So what if a person 14 came in and was going to have a axe throwing 15 contest, would you not do something to make sure 16 they are not throwing it in the vicinity of a 17 patron who might get hurt by an axe that has 18 been thrown? 19 A I don't have any idea how to operate an 20 axe throwing contest. What I do know how to do 21 is operate a bar and restaurant. 22 Q So I am just asking, you are telling us 23 it is okay for someone to bring in a light, not 24 set it up properly, you all not inspect the 25 lights and have it fall on somebody's head, and	Page 65 1 then wash your hands of that and not be 2 responsible for the injuries and harms it caused 3 the person whose head it falls on? 4 MR. NEINAST: Objection to form. 5 That is a mischaracterization of his 6 testimony. 7 MR. LISKA: I don't think it is. 8 I think he said exactly that. 9 THE WITNESS: So ask the question 10 one more time, Mike. 11 BY MR. LISKA: 12 Q As the corporate representative of Tall 13 Sam I Am, LLC here today -- 14 A Uh-huh. 15 Q -- You are telling us it is okay for 16 Tall Sam I Am, LLC to invite someone onto its 17 premises and in its premises set up dangerous 18 lights and allow them to fall on people's heads, 19 and Tall Sam I Am, LLC not be responsible in any 20 way, shape, or form for that? 21 A No, I am not saying that at all. 22 Q What are you saying then? 23 A In regards to what? 24 What is the question you want me to 25 answer?



Page 66 1 Q Well, apparently you are saying then 2 that Tall Sam I Am, LLC would be responsible if 3 they invited somebody in there who set up a 4 dangerous light and did not properly secure the 5 light and allowed that light to fall on 6 somebody's head? 7 A No, we would not be responsible for 8 that if we paid them to bring in their own 9 equipment and set it up in a safe manner. 10 Q So what is the difference? 11 A Because it is their job to inspect 12 their equipment, their job to make sure it is 13 set up safely and appropriately for the job that 14 they are being paid to do. 15 Q Is it not Tall Sam I Am, LLC's job to 16 make sure its premises are safe for the patrons 17 that they invite into their premises? 18 A Of course it is safe. Of course it is 19 our job to make sure our premises is safe for 20 our guests coming into our restaurants, of 21 course it is. 22 Q Okay. 23 So I asked you earlier in number 3 24 there -- I am not sure you told me exactly, but 25 what does Tall Sam I Am, LLC do exactly to	Page 67 1 inspect, discover, correct, remedy, remove, warn 2 about any hazardous, dangerous or defective 3 conditions at its premises? 4 A In general and on the date of the 5 incident? 6 Q Yes, sir. 7 A So our general manager or servers or 8 cooks or bartenders as they arrive into the 9 building are vigilant in spotting anything that 10 they would see as a danger or that they have the 11 ability to identify as a danger. 12 A server or a floor person may notice 13 that there is a leak in the bathroom and the 14 floor could potentially be slippery, so they 15 would put out a wet floor sign and they would 16 notify the manager. 17 A cook might notice that the hot water 18 in the dishwasher is scalding, over 120 degrees; 19 and he would say hey listen, we need to have 20 this temperature of the water reduced so none of 21 us get burnt. 22 The general manager might notice in the 23 parking lot some broken glass and say I need to 24 sweep this up, so nobody gets cut. 25 That is what typically happens as you
Page 68 1 said item 3 here, our duties and efforts to 2 inspect, discover, correct, remedy, remove, and 3 warn about any hazardous or dangerous or 4 defective conditions at our premises. 5 Q Okay. 6 So what if somebody brought their own 7 glass onto your premises and they dropped it all 8 over the floor and there was broken glass all 9 over the floor and that was a dangerous, 10 hazardous condition -- 11 A Okay. 12 Q -- would Tall Sam I Am, LLC not 13 inspect, discover and correct that dangerous 14 condition? 15 A Of course. That is reasonable. Any 16 reasonable employee at any skill level, at any 17 skill set can recognize that broken glass on the 18 floor presents a danger and would do something 19 to correct it. Anybody knows that. 20 Q Well, why is a light any different? 21 A Because a light that is done by an 22 outside vendor and a DJ, they are not trained on 23 how to set up lights. How to safely inspect 24 lights. How to look at whether or not a light 25 is located somewhere safely. That is not their	Page 69 1 skill set. That is not their level of training. 2 Q So you can wash your hands of anything 3 else other than glasses that somebody else might 4 bring onto the property? 5 MR. NEINAST: Object to the form. 6 THE WITNESS: I think that is a 7 pretty unreasonable statement. 8 Can we wash our hands of anything 9 and everything other than glass, of 10 course not. Can we -- 11 BY MR. LISKA: 12 Q How about a band that is shooting off 13 pyrotechnics and fireworks -- 14 MR. NEINAST: Mike, he has got a 15 right to finish his answer. 16 MR. LISKA: I am sorry to 17 interrupt. I apologize. You can 18 finish your answer. 19 THE WITNESS: That is okay. I was 20 done. 21 BY MR. LISKA: 22 Q That is what I thought. 23 So what about a band that shoots off 24 fireworks? 25 A What about a band that shoots off



Page 70 1 fireworks? 2 Q Would you be allowed to tell them not 3 to shoot off those fireworks because they are 4 not your fireworks, right? 5 A If the fireworks presented some sort of 6 danger or violated some sort of city code or 7 rule or a law that we were not allowed to do, 8 then yes, we could say please don't shoot those 9 fireworks off. 10 Now if they continued to shoot the 11 fireworks off, we would have to call the police. 12 We can tell them what to do all day long; that 13 doesn't mean they have to do it. 14 Q If they don't do it you can kick them 15 out, correct? 16 A Correct. 17 Q So how is a light any different if it 18 is violating some code or ordinance or some rule 19 of law -- 20 (Whereupon, a discussion was 21 held off the record.) 22 BY MR. LISKA: 23 Q So the question is why is a light any 24 different? What if they brought in a light that 25 was a dangerous condition, that was in violation	Page 71 1 of a code or an ordinance or a local rule or any 2 state or federal rule, why can't you tell them 3 to properly secure that light or remove that 4 light? 5 A Well, I don't know that any of us were 6 involved in inspecting any lights that they 7 brought in. It is not our property. It is not 8 our scope of trying to inspect their equipment 9 or what belongs to them. 10 Q Well, neither would pyrotechnics from a 11 band be your -- 12 A Correct. You are absolutely right. 13 Q And neither would a glass that some 14 patron brought in and dropped on a floor? 15 A Correct. 16 Q Let us go to number 4. Did you read 17 Kate Chapin's deposition? 18 A Did I read Kate Chapin's deposition? 19 No. 20 Q Because she testified that if an 21 employee saw a light that was not properly 22 secured, it would be common sense and that they 23 should tell a manager who would go do something 24 about it, would you agree with that testimony? 25 A If they saw a light that was not
Page 72 1 properly secured, they should go tell a manager 2 about it? And then do something about it? 3 Q Yes, sir. She said that would be 4 common sense. 5 A That it would be common sense? If our 6 employees who are used to coming in our building 7 every single day and seeing a light in our 8 bathroom or our dining room that looked like it 9 could potentially be unsafe, something that 10 belonged to us, of course it would be common 11 sense for an employee to know to look for that 12 and then to say hey, this might look dangerous. 13 Anything else that doesn't belong to 14 us, that is not set up by us, that isn't used by 15 us on a frequent basis is not something that 16 they are responsible for bringing to our 17 attention. 18 Q Miss Chapin testified that if one of 19 the DJ's had a light that was dangerous, she 20 would have expected one of her employees to come 21 tell her and management would have done 22 something about it, do you disagree with that? 23 A Can you help me understand what is a 24 dangerous light? 25 Q One that is not properly secured that	Page 73 1 is going to fall on somebody's head? How about 2 that? Let us start with that. 3 A I don't know that any of our employees 4 would be able to identify a light that belongs 5 to somebody else that a DJ brought in that they 6 are unfamiliar with, where it was placed, or why 7 it was placed there to be a potential hazard. 8 Q So you disagree with Miss Chapin's 9 testimony about it being common sense? 10 A I disagree with Miss Chapin's testimony 11 about any light. Specific to our business I 12 agree with. Not our equipment, I disagree with. 13 Q So let us talk about the lights. What 14 if you had a light that was like one used by the 15 DJ and you actually owned it, why would that 16 situation be any different? 17 A Because if we owned that particular 18 piece of equipment, we would be responsible for 19 making sure that it was safely installed or 20 utilized. 21 Q Why is that different than anybody who 22 comes onto your property and sets up shop? Why 23 would it be any different as far as the patron's 24 safety is concerned? 25 A So it wouldn't be our responsibility at



Page 74 1 any level to inspect equipment or anything else 2 brought in by an outside vendor. 3 Q I understand that is your position. 4 So when Miss Chapin says -- here is the 5 question: 6 "If your staff had noticed a potential 7 problem with one of these lights, would they 8 have brought that to your attention? 9 Answer: Absolutely, instantly. I am 10 sure they would have taken care of it themselves 11 and then come and gotten me and showed me." 12 And that is on page 90 of her 13 deposition. 14 A Okay. 15 Q Do you disagree with that? 16 A If someone on our staff had the ability 17 to identify a particularly hazardous situation 18 and even if it was a little bit hazardous, 19 possibly hazardous and they were able to 20 recognize it, then it would be reasonable that 21 they would say something about it. 22 But one employee being able to 23 recognize the safety of a professional DJ's 24 equipment and another employee's ability of 25 being able to recognize the safety or condition	Page 75 1 of a professional DJ's equipment is nothing we 2 teach them. They would be information they 3 would get on their own accord or try to make 4 their own judgment. 5 Q So the rule at Tall Sam I Am, LLC is 6 that you have to make sure there are no safety 7 hazards for its patrons involving anything it 8 owns, but that same rule does not apply to 9 anything else anybody else owns? 10 A That is correct. 11 Q I just wanted to make sure I got that 12 down in the record. 13 So number 4, do you have that in front 14 of you? Topic 4? 15 A Yes, sir. 16 Q What does Defendant do to comply with 17 federal, state, county, and local safety codes 18 and industry standards at its premises in 19 general and on the date of the incident? 20 A So federal, state, county, and local 21 safety codes are enforced by either the fire 22 marshal, the zoning inspector, the visibility 23 officers; and so the Department of Revenue or it 24 used to be called SLED -- or it is ABC -- used 25 to be called SLED, liquor service. We comply
Page 76 1 with any laws that they require us to follow. 2 Fire suppression systems, the correct 3 capacity for the dining room. Do you have your 4 license to sell alcohol. That is how we comply 5 with it. 6 Q What about premises safety codes and 7 regulations? 8 A Of course. 9 Q How about lighting safety codes and 10 regulations? 11 A Lighting safety codes and regulations? 12 Help me understand specifically what 13 you mean. 14 Q I don't know. I am just saying if 15 there is a code or regulation dealing with 16 lighting, would you have to comply with that? 17 A Of course. 18 Q And you mentioned earlier that when 19 your managers and employees come in in the 20 morning and set up and do their thing, does 21 their duty end when they come in the door in the 22 morning, or do they have a continuing duty to 23 watch out for safety hazards throughout the day 24 and into the night? 25 A Oh, during their entire shift of course	Page 77 1 they have that responsibility. 2 Q Does that include the manager? 3 A Of course. 4 Q Let me ask you, how do you know it was 5 a DJ's light? 6 A How do I know it was a DJ's light? 7 Q That fell on Miss Eddins's head? 8 A Because it is the DJ brought it in with 9 him that night and took it home with him when he 10 left. 11 Q How do you know that? 12 A How do I know that? I assume he took 13 all of his equipment in and took it all home 14 with him. 15 Q How do you know who the DJ was even? 16 A It is listed in one of these pieces of 17 paper. 18 Q Who was the DJ? 19 A Who was the DJ? I can't remember her 20 name. 21 Q Let us get past the name. 22 How do you know a DJ light fell on my 23 client's head? 24 A That light did not belong to us. It 25 wasn't in our inventory. It wasn't handled by



Page 78 1 us. It was never there before this event. It 2 was never there after this event. 3 Q How do you know? 4 A I don't have any proof. 5 Q Well, how do you know? 6 A I don't know. 7 Q Okay. 8 Let us talk about the video 9 surveillance system? 10 A Okay. 11 Q That is down on number 13 on your list 12 there. 13 So describe for us the systems that was 14 in place on July 20, 2017 with respect to Tall 15 Sam I Am, LLC's video surveillance system. 16 A That was a Lorex video system. It was 17 a 16 camera video system. As I understand it 18 only six of those cameras were working at the 19 time. And it is on a 14-day -- what do you call 20 it -- like a loop. I can't remember the name of 21 it. 22 Every 14 days it overrides itself. It 23 is a DVR 14-day retention is what it is. It is 24 a pretty basic system. 25 Q How do you know all that?	Page 79 1 A That is a standard system that we use 2 in all of our restaurants. 3 Q And you are absolutely 100 percent that 4 was the system that was used at Tabbuli on 5 July 20, 2017? 6 A Yes. 7 Q And you are absolutely positive that 8 only 6 of the 16 cameras worked that day? 9 A Yes. 10 Q How do you know that? 11 A Christina who is in charge of our IT 12 when she was pulling that video footage said at 13 the time that only 6 of those cameras were 14 working at the time. 15 Q How do you know that Christina said at 16 the time that only 6 of those cameras were 17 working? 18 A She told me yesterday. 19 Q So you spoke with more than Mr. Mustafa 20 and Jenny and your attorney apparently to 21 prepare for your deposition today? 22 A Oh, got you. I thought that was in the 23 attorney-client thing. She sat with us in this 24 room. 25 Q And you mentioned you saw the video
Page 80 1 that was supplied to us showing a light falling 2 on Stefani's head, correct? 3 A Yes. 4 Q When did you see that video? 5 A Yesterday. 6 Q Who was with you when you saw that 7 video? 8 A Will, Mark I believe is the other guy's 9 name and that is it. Just the three of us. 10 Q Who captured that video? 11 A Who captured it? Who retrieved it from 12 the DVR? 13 Q Yes. 14 A Christina. 15 Q And how do you know that? 16 A She is the only person that has ever 17 done IT camera service for this company in the 18 16 years we have been here. 19 Q Is she an employee? 20 A Yes. 21 Q So tell me how that works? Does it 22 just continuously videotape everything all day 23 long? 24 A The camera system will -- it is always 25 on. It is always recording, and then anything	Page 81 1 that it captures it saves for about 14 days and 2 then it starts to rewrite over itself. 3 Q So why if it captured the whole day's 4 activities were only about 20 seconds provided 5 to us in Discovery in this case? 6 A That I don't know. 7 Q Did you ask Christina why? 8 A No. 9 Q Did you ask Mr. Mustafa why? 10 A No. 11 Q Did you ask Jenny why? 12 A No. 13 Q Did you ask your attorneys why? 14 MR. NEINAST: Objection. He is 15 not going to answer that, Mike. 16 MR. LISKA: So you are instructing 17 him not to answer, correct? 18 MR. NEINAST: I am, yes. I am 19 instructing him not to answer what he 20 asked his attorneys. 21 MR. LISKA: That is fine. I am 22 just making sure I can move on. 23 BY MR. LISKA: 24 Q Where were those cameras located, the 6 25 that were actually working that day?



Page 82

1 A So it would be hard to describe.
2 Clearly one was pointing at the -- you see where
3 one was located here at the end of the bar.
4 There is one at the front door. One in the
5 parking lot. One in the kitchen and one in the
6 side entrance.
7 **Q You said one is at the front door?**
8 A Yes.
9 **Q Does that record people coming in the**
10 **door?**
11 A Yes.
12 **Q Let me ask you again, how do you know**
13 **where those cameras were all located, the one's**
14 **that worked? That day, July 20, 2017?**
15 A I don't know that that is where they
16 were -- how they were working or where they were
17 located, other than what Christina said at the
18 time those were where the cameras were.
19 **Q She told you that yesterday?**
20 A Yes.
21 **Q I am sorry, what is Christina's last**
22 **name?**
23 A I think it is pronounced Tsang, but it
24 is T-s-a-n-g.
25 **Q Is she still employed by Tall Sam I Am,**

Page 84

1 **Q Did any claims management or insurance**
2 **person have any involvement in capturing the**
3 **video that day?**
4 A Any claims management for insurance
5 companies have -- no, no.
6 **Q How do you know?**
7 A Christina is the only one that does our
8 video surveillance.
9 **Q But how do you know that insurance**
10 **wasn't involved with what was captured?**
11 A They have never been involved.
12 Insurance doesn't get involved with capturing
13 any information on our system. Like nobody
14 does.
15 **Q How do you know if you weren't back**
16 **there in 2017 that wasn't the case back in 2017?**
17 A Understood. I don't know about 2017.
18 Historically no one gets access to our videos
19 except for Christina through the direction of
20 Sam.
21 **Q Going down to 25: Are there any**
22 **agreements, contracts, written or oral, with any**
23 **person that Tall Sam I Am, LLC maintains with an**
24 **independent contractor at its premises on**
25 **July 20, 2017?**

Page 83

1 **LLC?**
2 A She is employed by Charleston
3 Hospitality Group.
4 **Q Okay. So who has access to the video**
5 **that is captured?**
6 A Only Christina.
7 **Q Christina is the only one that does**
8 **anything at all with the video surveillance**
9 **system, or are there other employees that also**
10 **have something to do with it?**
11 A In the past 16 years she has had some
12 helpers that have helped along the way. I don't
13 know their level of access to recorded
14 information. Maybe they would help with
15 maintenance or positioning or something along
16 those lines.
17 **Q Does Tall Sam I Am, LLC have written**
18 **policies and procedures in place with respect to**
19 **the video --**
20 A You cut out there at the end. One more
21 time, please.
22 **Q Does Tall Sam I Am, LLC have any**
23 **written policies or procedures regarding its**
24 **video surveillance system?**
25 A No.

Page 85

1 A Any and all agreements, contracts, and
2 arrangements, written or oral with any person or
3 entity Defendant maintains was an independent
4 contractor on July 20, 2017 for the purposes of
5 which such person was at Defendant's premises
6 and the identities, including addresses and
7 telephones numbers of such persons and entities.
8 This is for the DJ? What is the DJ's
9 name and what was the agreement?
10 **Q You can start with the DJ, but it is**
11 **not limited to the DJ.**
12 A I don't know the arrangement or
13 agreement on that particular evening of how much
14 they were to be paid, what time they were to
15 start, or what time they were to stop.
16 **Q Did you ask anybody about that?**
17 A No, sir.
18 **Q So so you could testify today about**
19 **that?**
20 A No.
21 **Q Did you bring with you any agreements,**
22 **contracts, or anything written involving any**
23 **alleged independent contractors that were on**
24 **your premises on July 20, 2017?**
25 A No.



Page 86 1 Q Did you ask anybody if there were any 2 such agreements or contracts or written 3 documentation? 4 A No, I didn't ask anybody. 5 Q So sitting here today you cannot tell 6 us who the independent contractors were, if any, 7 that were on the premises on July 20, 2017? 8 A Sitting here today, no, I cannot tell 9 you who the independent contractors were on that 10 day. 11 Q You can't tell us the purpose for which 12 they may have been on Defendant's -- 13 A Oh, sure, the DJ who is an independent 14 contractor. We don't have a written or oral 15 agreement with that I am a party to, that I know 16 what the exact details were. But that would be 17 the only independent contractor on the premise 18 that day. 19 Q Okay. 20 Well, how about models that may have 21 been on the premises that day? Would they be 22 independent contractors or would they be 23 employees? 24 A Were there models on the property that 25 day? If there are models on the property, then	Page 87 1 yeah we don't employ models at Tabbuli or Tall 2 Sam I Am, LLC; so they would have been an 3 independent contractor. 4 Q How about hair stylists? 5 A If we hired a hair stylist, that would 6 definitely be an independent contractor. 7 Q How about a fashion show host? 8 A The same. 9 Q So you mentioned that there was a DJ 10 that would have been an independent contractor 11 on the premises on July 20, 2017. How do you 12 know that? 13 A The question was how do I know that? 14 Q Yes, sir. 15 A No DJ -- we don't employ DJ's or 16 entertainers or anything else either at Tall Sam 17 I Am or anywhere else through our company. So 18 any DJ is always an outside vendor. 19 Q How do you know there was a DJ on the 20 premises that day? 21 A Because I saw a video of a DJ on the 22 premises that day. 23 Q You did? 24 A Uh-huh. 25 Q Is that video available?
Page 88 1 THE WITNESS: Isn't that the video 2 that I saw with the -- I only video I 3 have seen? 4 MR. NEINAST: I am sorry, hold on 5 a second. Jeff, are you saying 6 the video we have been talking about 7 with the light? 8 9 THE WITNESS: Yes. 10 MR. NEINAST: Okay. 11 MR. LISKA: There was a DJ in that 12 video? 13 THE WITNESS: Is there not a DJ in 14 that video? 15 I don't know. Let me see the 16 video real quick. 17 MR. LISKA: Well, why don't we 18 look at the video that you looked at 19 yesterday. 20 THE WITNESS: Okay. 21 MR. LISKA: If you can pull that 22 up and show us, that would be great. 23 THE WITNESS: Can we do that? 24 MR. NEINAST: I don't have the 25 vide here. We can get a digital copy I	Page 89 1 guess, but not on the laptop he is 2 using for Zoom. If you want to share 3 your screen, Mike, and show it to him 4 you can do that. 5 MR. LISKA: Well, I don't know 6 what video he looked at yesterday. I 7 didn't give him a video to look at 8 yesterday. 9 But apparently he has a video that 10 has a DJ in it, which I don't have. 11 THE WITNESS: Well, I can be 12 mistaken for sure. It has happened. 13 The brief video produced by the 14 Defendant in Discovery herein showing 15 the events that occurred after the 16 light fixture fell and struck the 17 Plaintiff's head. That is 18 the only brief video I have seen. 19 BY MR. LISKA: 20 Q I did not see a DJ in there -- 21 A Okay. 22 Q -- that you are referring to? 23 A Okay, perfect. 24 Q So my question is, how do you know 25 there is a DJ there?



Page 90

1 A I mean I guess I don't have proof that
2 there was a DJ there right in front of me. We
3 have been talking about a DJ that came in and
4 set up lights the whole time so --
5 **Q Well, you have been talking about that**
6 **and Tall Sam I Am, LLC has been talking about**
7 **that. But it is just one-sided so far. So I am**
8 **trying to find out proof?**
9 A Got you. I don't have any proof as of
10 this moment that there was a DJ on our premises
11 on that day.
12 **Q So if one of these models that you say**
13 **was an independent contractor came onto the**
14 **premises and they started squirting around**
15 **noxious chemicals in the air, would Tall Sam I**
16 **Am, LLC be allowed to tell them to stop doing**
17 **that if it was endangering the patrons?**
18 A If I hired -- say that question again.
19 MR. LISKA: Madam Court Reporter,
20 can you read that back to us, please.
21 (Whereupon, the record
22 was read back as requested.)
23 THE WITNESS: What kinds of
24 noxious liquids would they be squirting
25 around? Could you give an example?

Page 92

1 forcing them out.
2 **Q Can you talk about the corporate**
3 **management structure for Tall Sam I Am.**
4 A Which number is that, sir?
5 **Q Number 32.**
6 A Defendant's corporate management
7 structure.
8 We have Sam Mustafa, who is I believe
9 the registered agent on the LLC. And I believe
10 either the managing member or the sole member or
11 whatever it is, it is a hundred percent Sam
12 Mustafa. No one else.
13 And then we have the general manager on
14 the property, and then assistant managers under
15 them.
16 **Q Does Tall Sam I Am, LLC have incident**
17 **reporting requirements?**
18 A Yes.
19 **Q Explain those and describe those for**
20 **us.**
21 A So if something happens on our property
22 and that would be a potentially -- something we
23 need to deal with at a higher level or be
24 prepared for in the future, we fill out an
25 Incident Report. If someone is fired, if

Page 91

1 BY MR. LISKA:
2 **Q No, anything that might endanger a**
3 **patron?**
4 A If they were squirting around liquids
5 that would endanger a patron, then we would
6 likely ask them to please stop doing that.
7 If they came and started squirting
8 bubbles and soap, which is pretty typical, it is
9 kind of fun, we wouldn't ask.
10 If they started squirting gasoline all
11 over everybody, we would probably ask them to
12 stop.
13 **Q Thank you, and I was going back to the**
14 **lease where it says Tall Sam I Am, LLC is to**
15 **refrain from allowing or doing any of the**
16 **following. And one of those was as you read**
17 **earlier: Causing or permitting any noxious,**
18 **disturbing, or offensive odors, things or gases.**
19 **So I am assuming you would be allowed**
20 **to tell that model to stop doing that?**
21 A We could request that they stop doing
22 that, and they would have the choice whether or
23 not they wanted to stop or not; and then we
24 would be presented with a choice on whether or
25 not we wanted to take corrective action on them

Page 93

1 somebody is caught drinking underage. If
2 somebody is using profanity or something like
3 that or something -- not profanity as much as
4 something that would be racial or something like
5 that, we would ask that an Incident Report be
6 filled out.
7 **Q Why do you do that?**
8 A So we could take the necessary action
9 we had to.
10 **Q And what necessary action would you**
11 **take?**
12 A So let's just say that someone is
13 caught drinking underage. Then the manager
14 would say you know, Jeff, I just want you to be
15 aware that we caught this person at this time on
16 this day drinking underage in our restaurant.
17 We told the bartender that was unacceptable, and
18 that the bartender is no longer working here, an
19 example.
20 **Q What about injuries to patrons?**
21 A If someone is injured, then we will
22 have them -- let's just say they have an
23 accident, maybe they slip and fall in some water
24 or something, then we will offer them help. You
25 need some help? And they will say no, I don't



Page 94 1 need any help; or yes, I do need some help. 2 And then we would fill out an Incident 3 Report that says on this date at this time this 4 particular person experienced this particular 5 event, just so we all know. 6 Q Why do you do that? 7 A Just to set a time stamp on something. 8 Q What is done with those reports? 9 A They are sent to the office. 10 Q What is the purpose? 11 A I am sorry? 12 Q For what purpose? 13 A Just retention. Document retention. 14 Q Why are they retaining those documents? 15 A If we ever needed to go back and find 16 out what happened on a particular day or a 17 particular event. 18 Q Are they maintained in part to help 19 determine a root cause of what caused that 20 incident? 21 A Possibly, although not primarily. 22 Q Has Tall Sam I Am, LLC ever done a root 23 cause analysis to find out what caused an 24 incident to occur? 25 A Not that I am aware of.	Page 95 1 Q Are those Incident Reports used to help 2 to establish corrective actions? 3 A An Incident Report could be used to 4 establish corrective actions, yes. 5 MR. NEINAST: Object to the form. 6 BY MR. LISKA: 7 Q Has Tall Sam I Am, LLC ever used an 8 Incident Report to help establish a corrective 9 action following an incident? 10 MR. NEINAST: The same objection. 11 THE WITNESS: Not that I am aware 12 of, although I am sure we have. 13 BY MR. LISKA: 14 Q Are those Incident Reports used to help 15 prevent future incidents from occurring? 16 MR. NEINAST: Object to the form. 17 THE WITNESS: Depending on the 18 nature of the incident, it possibly 19 could be used to prevent something; 20 although generally speaking we would 21 have taken corrective action 22 immediately depending on what the event 23 was. 24 BY MR. LISKA: 25 Q What corrective action was taken
Page 96 1 immediately following this light falling on 2 Stefani's head on July 20, 2017? 3 MR. NEINAST: The same objection. 4 THE WITNESS: I don't know that 5 anything was wrong that we had the 6 ability to correct, that wouldn't have 7 been within the control of the DJ. So 8 I am not sure what corrective action 9 they took with their equipment. 10 BY MR. LISKA: 11 Q Well, I know you told me you did not 12 read Miss Chapin's deposition. She told us that 13 they took they being Tall Sam I Am, LLC took the 14 light down, would you disagree with that or just 15 have no opinion? 16 A That I don't know. They took it down? 17 Q Yes, sir. 18 A When did they take it down, and who 19 took it down? 20 Q My understanding was that night after 21 it happened, because somebody else put it back 22 up? 23 A I don't know about that, no, sir. 24 Q They said that is dangerous and they 25 took it back down.	Page 97 1 You have no knowledge of that? 2 MR. NEINAST: Object to the form. 3 THE WITNESS: I don't know 4 anything about that happening. That I 5 have no idea. 6 BY MR. LISKA: 7 Q Did you talk to Miss Chapin at all in 8 order to prepare for your deposition? 9 A No, sir. 10 Q Does Tall Sam I Am, LLC have a system 11 set up for its employees, including managers and 12 even its Director of Operations, to report 13 safety concerns? 14 A We would use an Email or a text message 15 or a phone call to make anyone aware of 16 something that we might think is potentially 17 dangerous. 18 Q Where would those Email's or texts or 19 phone calls go? 20 A Depending on the nature of the 21 situation it could go to myself, it could go to 22 our vice-president. It could go to our RM team. 23 It could go to Sam himself. It could really go 24 to a variety of places. 25 Q Does Tall Sam I Am, LLC have a duty to



Page 98 1 comply with OSHA's safety rules and regulations? 2 A Yes. 3 Q And does Tall Sam I Am, LLC have a duty 4 to comply with federal, state, and local safety 5 laws, rules and regulations? 6 A Yes. 7 Q Does Tall Sam I Am, LLC have a duty to 8 make sure lighting inside its premises complies 9 with local codes, safety rules and regulations? 10 A Any lighting that belongs to us that is 11 our property we are responsible for making sure 12 it is safe that follows any codes, any safety 13 codes. 14 Q If you don't own the light, then you 15 have no obligation in that regard? 16 A Correct. 17 Q Would you agree that a light that is 18 not secured and can fall on a person's head 19 would be a hazard which may cause a death or 20 serious physical harm? 21 A Do I agree that a light which is not 22 secured could fall on someone's head and cause 23 harm? 24 Q Would be a hazard which may cause death 25 or serious physical harm?	Page 99 1 A I don't know that I can answer that. 2 At what height is the light located? How heavy 3 is the light? What is the light made of? So I 4 don't know if it is -- I don't have an answer to 5 that. 6 Q So is it Tall Sam I Am LLC's position 7 that there are certain lights that can fall on 8 somebody's head that is not a hazard that might 9 cause serious physical harm? 10 A Is it Tall Sam I Am's position that 11 there are certain lights that exist that can 12 fall on someone's head and not cause physical 13 harm? 14 Q Yes. 15 A I don't know. 16 Q Well, you said you saw the video of a 17 light falling on Stefani's head, right? 18 A Yes. 19 Q And would that be a hazard which may 20 cause death or serious physical harm? 21 A The light in the video that fell on 22 Stefani's head, could it cause potential harm? 23 That is the question? 24 Q Sure. 25 A I guess. I don't know.
Page 100 1 Q So would the light that you saw in that 2 video, if it were not secured and fell on 3 Stefani's head be a hazard which may cause 4 physical harm? 5 A I don't know. I don't know what that 6 light -- how much it weighs. I don't know what 7 the safety requirements are for it to be 8 secured, or how high or how low it can be 9 secured. I don't know what it is made of or the 10 size or the shape of it. If it has sharp edges 11 or if it is round. I have no idea what happens 12 if it falls on someone's head. 13 Q You are here as the corporate designee 14 for Tall Sam I Am, LLC correct? 15 A Correct. 16 Q And Tall Sam I Am LLC's testimony and 17 answer to that question is that it does not know 18 whether a light like the one shown in the video, 19 if it was not properly secured would be a hazard 20 when it falls on somebody's head? 21 MR. NEINAST: Mike, which topic is 22 this under? 23 MR. LISKA: It goes to about 13 24 different topics. 25 THE WITNESS: I am sorry, Mike,	Page 101 1 say that one more time. You were 2 saying something and I got confused. 3 BY MR. LISKA: 4 Q Is it Tall Sam I Am, LLC's position 5 that the light that you saw in the video that 6 fell on Stefani's head if it was not properly 7 secured was not a hazard which might cause death 8 or serious physical harm? 9 A No. My testimony in specific regards 10 to that light is that I don't know if that 11 specific light at whatever specific height fell 12 on someone's head, whether or not it would cause 13 harm or injury or death, I don't know. 14 Q Okay. 15 When would a light at whatever weight 16 and whatever height be a hazard if it fell on 17 somebody's head? 18 A That would depend on the instructions 19 that you would receive with that light on how to 20 mount it, with what to mount it with, and what 21 to mount it to, what you can and cannot use to 22 secure it. Anything of that nature. 23 Q Let us say it wasn't mounted, it was 24 not secured. 25 What would have to be the weight of the



Page 102 1 light or the size of the light or the distance 2 of the light falling before it becomes a hazard? 3 A I don't know. I have no idea. 4 MR. NEINAST: Object to the form. 5 BY MR. LISKA: 6 Q Would you agree that lights inside a 7 restaurant are not supposed to fall on a 8 patron's head? 9 A I agree that lights inside of a 10 restaurant are not supposed to fall on a 11 patron's head. 12 Q What would be the danger in that 13 happening? 14 A What would be the danger in a light 15 falling on someone's head? 16 I will speculate there could be a 17 variety of things that could happen. 18 MR. NEINAST: Object to the form. 19 BY MR. LISKA: 20 Q Do you agree that somebody could get 21 hurt? 22 A I agree that if a light fell on 23 someone's head that was a specific weight or 24 size or height or sharpness or whatever, that of 25 course they could get hurt.	Page 103 1 Q Mr. Diehl, those are all the questions 2 I have for you right now. I appreciate your 3 time. 4 A Hey man, thank you. I appreciate you 5 as well. 6 CROSS-EXAMINATION 7 BY MR. NEINAST: 8 Q I have some questions for you as well. 9 I am going to take a quick bathroom 10 break. 11 MR. NEINAST: Why don't we take 12 about five and I should not have too 13 much, Mike. 14 MR. LISKA: Okay. 15 (Whereupon, a short break was 16 taken.) 17 BY MR. NEINAST: 18 Q Jeff, thank you for being here today. 19 Thank you for your time, and I will try to keep 20 things as brief as we can here. 21 I want to lead off by saying earlier we 22 talked about Sam Mustafa. I will represent to 23 you it is my understanding that Sam was flying 24 back in from out of state this morning and that 25 we communicated to Plaintiff's Counsel that we
Page 104 1 will get them our earliest possible availability 2 for Mr. Mustafa's deposition. 3 Do you disagree with either of those 4 statements? 5 A No. 6 Q And you were aware that Mr. Mustafa was 7 out of state for the past several days? 8 A Yes. 9 Q You mentioned that there was a female 10 patron that was burned I believe you said at 11 another location. 12 Did you mean Tabbuli? Was that at 13 Tabbuli? 14 A It was at Tabbuli, the new location on 15 King Street. 16 Q And that is why I asked just to make it 17 clear for us. 18 Where is Tabbuli currently located? 19 A It is currently closed. 20 Q Where was Tabbuli most recently located 21 before it closed? 22 A 529 King Street. 23 Q When did it move to King Street? 24 A March 2020. 25 Q Was it previously located at the	Page 105 1 location that is at issue in this case? 2 A Yes. 3 Q What is that location now? Is that 4 another Tabbuli location? 5 A No, sir, Queology Barbecue. 6 Q Remind me, Jeff, what your bachelor's 7 degree was obtained in? 8 A Hotel restaurant management. 9 Q As part of your Bachelor's in hotel 10 restaurant management, did you receive any 11 training in premises safety? 12 A Of course. 13 Q What training did you receive in 14 premises safety? 15 A Classes on facility maintenance, 16 classes on food safety, classes on patron 17 safety, serve safe food service, alcohol; things 18 like that. 19 Q Have you used that training that you 20 received as part of your Bachelor's Degree in 21 the course and scope of your duties as the 22 Director of Operations for Charleston 23 Hospitality Group and the restaurants that it 24 manages? 25 A Yes, of course.



Page 106 1 Q How exactly have you used that 2 training? 3 A Just general observations of 4 potentially hazardous situations. Anything from 5 burns, to food safety, slipping, being cut, 6 running into somebody, slips and falls; things 7 like that. 8 Q How much experience total do you have 9 in the restaurant hospitality industry? 10 A 2-1/2 decades. Over two decades, 11 26 years. 12 Q Is premises safety important to you? 13 A Yes. 14 Q Is premises safety important to Tall 15 Sam I Am? 16 A Yes. 17 Q Is premises safety important to 18 Charleston Hospitality Group? 19 A Yes. 20 Q Why is that important? 21 A Because we want both our guests and 22 employees to always be safe. 23 Q Have you ever personally trained 24 employees in premises safety? 25 A Yes, coached, sure.	Page 107 1 Q There has been some discussion today 2 about an employee handbook that you provide to 3 employees of Tall Sam I Am when they are going 4 to work at Tabbuli. 5 What does that handbook require 6 employees to do with respect to premises safety? 7 A Just to be always be on the lookout for 8 general potentially hazardous conditions to be 9 familiar with. 10 Q If one of your employees encountered a 11 hazardous issue or something that had the 12 potential to become a hazardous issue, what 13 would you expect that employee to do? 14 A Well, they would take what immediate 15 action they could to either fix it or prevent 16 someone, prevent it from causing a problem. And 17 then -- or then they would notify their manager. 18 And if it was the manager the same thing, and so 19 on and so forth. 20 Q And what would you expect your managers 21 to do if they were notified of a potentially 22 hazardous condition at one of your restaurants? 23 A If they were notified of a potentially 24 hazardous condition, they would if they could 25 take action to fix it; and if they were unable
Page 108 1 to, then they would ask for help from me or 2 someone else. 3 Q Is that how all of your employees are 4 trained? 5 A Uh-huh. 6 Q Is that how all of your managers are 7 trained? 8 A Yes. 9 Q Do you have any reason to believe that 10 that training as we described it today would 11 have been any different in 2017? 12 A No, sir. 13 Q And what are you basing that assertion 14 on? 15 A It is the same owner. It is the same 16 operator. It is the same operating style that 17 Sam has always had. 18 Q And just so we are clear, you have been 19 looking at some documents that you have right 20 here below the computer that we are using for 21 this Zoom deposition, what are these documents? 22 A This is a list of topics. 23 Q And this is the Notice of Deposition, 24 right? 25 A Uh-huh.	Page 109 1 Q You didn't look at any personal notes 2 or anything like that? 3 A No. 4 Q Have any of your employees that would 5 have been working at Tabbuli had any specific 6 training in lighting? 7 A No. 8 Q What about lighting installation? 9 A No. 10 Q If one of your employees -- scratch. 11 There has been some discussion about 12 the equipment of independent contractors in this 13 deposition, do you remember that? 14 A Yes. 15 Q If one of your employees viewed 16 equipment of an independent contractor that was 17 obviously in a hazardous condition, what would 18 you expect them to do? 19 A I mean they would -- if they could do 20 anything about it, they would. If they could 21 not do anything about it, then they would report 22 it to their manager. 23 Q If one of your employees viewed the 24 equipment of an independent contractor that was 25 not in an obviously hazardous condition by



Page 110 1 contrast, what would you expect them to do? 2 A Nothing. 3 Q Then why would you expect them to do 4 nothing? 5 A They wouldn't know to do anything. 6 Q Sure. Do you have any reason to 7 believe that this light was owned by Tall Sam I 8 Am? 9 A No. 10 Q Do you have any reason to believe that 11 this light was owned by Charleston Hospitality 12 Group? 13 A No. 14 Q Why do you not believe that? 15 A Because It wasn't owned by us. 16 Q And what do you base that statement on? 17 A The DJ brought it in, the DJ took it 18 with him. It was in the DJ's control. It is 19 the DJ's equipment. 20 Q Is that typical practice for the DJ's 21 that are brought in to your restaurants that 22 they bring their own lighting? 23 A Yes, the stores don't have their own 24 light shows. We have lights for our dining 25 room, regular lights; but we don't have light	Page 111 1 show lighting. 2 Q Are you aware of any light show 3 lighting in the possession of Tall Sam I Am? 4 A None. 5 Q Has Tall Sam I Am ever provided any 6 specific light show lighting to your knowledge 7 to a DJ or other performer at Tabbuli? 8 A No. 9 Q Let me show you what has been 10 previously produced as SWB 66, and I will 11 represent to you that this is a photo that 12 appears to show a light placed on top of a 13 speaker. 14 What exactly are we looking at here? 15 A It looks like a speaker and it looks 16 like it has a light on top of it like a canned 17 light. 18 Q Does this photo appear to have been 19 taken at the old Tabbuli premises? 20 A Yes. 21 Q So this would have been the premises 22 upon which Tabbuli operated in July 2017? 23 A Yes. 24 Q Is that a light in that photo that Tall 25 Sam I Am, LLC owns?
Page 112 1 A No. 2 Q Is that a light in that photo that Tall 3 Sam I Am, LLC controls in any way whatsoever? 4 A No. 5 Q Is it your understanding that that 6 light would have been owned by a third party? 7 A Yes. 8 Q Do you know if that specific light was 9 owned by the DJ in question in this case or not? 10 A I don't know. 11 Q Is anything whatsoever about this photo 12 show you a hazardous or otherwise dangerous 13 condition that you would recognize one of your 14 employees to bring to the attention of 15 management or rectify themselves? 16 A No. 17 Q Why not? 18 A I don't -- I don't know if it is 19 hazardous or not. They wouldn't either. 20 Q Does that light appear to be totally 21 stationary? 22 A Does it appear to be stationary? 23 Q Right. 24 A It doesn't look like it is moving. 25 Q That is a bad question, it is a photo.	Page 113 1 Does that light appear to be in any 2 imminent danger of falling off the speaker? 3 A No. 4 Q Do you know if Tall Sam I Am owns that 5 speaker? 6 A I don't know. 7 Q Do you know if the DJ brought it in? 8 A I don't know. 9 Q Who would know that? 10 A The general manager. 11 Q Bear with me just a second. 12 A Uh-huh. 13 Q And your copy won't have the number. I 14 will represent to you that it is a document that 15 was produced Bates labeled 1 today. 16 MR. NEINAST: Mike, we will get 17 you a more specific -- I guess a 18 supplemental Bates Number for that. I 19 don't know why it is Bates 1. 20 BY MR. NEINAST: 21 Q But we can see it appears to say 22 Entertainment Sign In Sheet here at the top, do 23 you recognize that? 24 A That is a question for me? 25 Q Yes.



Page 114 1 A Yes. 2 Q What is this document that I just 3 handed you, Jeff? 4 A So anyone that comes in and is going to 5 be performing in a show or used as stages, 6 equipment, anything like that, then has to sign 7 in saying they were here and then the manager 8 has to write in how much they are going to be 9 paid. 10 Q Is it your understanding that all of 11 the entities listed on this list were to perform 12 their services at the old Tabbuli location? 13 A Yes. 14 Q Is it your understanding that based on 15 this list all of the individuals listed would 16 have been independent contractors? 17 A Yes. 18 Q Are any of them to your knowledge right 19 here today employees of Tall Sam I Am, LLC? 20 A No. 21 Q Do you see that arrow down there on the 22 left-hand side of the margin? 23 A Uh-huh. 24 Q What is the name that is listed besides 25 that arrow?	Page 115 1 A Beck Danger. 2 Q It looks like Danger to me. 3 A Okay. 4 Q It is a little hard to read. 5 What is the rate of compensation that 6 Beck Danger was supposed to be paid for -- 7 A \$250. 8 Q And what is the role that this sheet 9 lists for Beck Danger? 10 A A DJ. 11 Q And what is the date of Beck Danger's 12 services to be performed? 13 A 7/22. 14 Q Do you have any reason to believe that 15 Beck Danger was the DJ in question on July 20, 16 2017 for Tabbuli? 17 A No. 18 Q Or 22, excuse me. 19 22? 20 A No, I am sorry, I am looking at the 21 wrong line. There is a line right below that. 22 Yes, sorry, 7/20. 23 Q Okay. Do you have any reason to 24 believe whatsoever that Beck Danger as the DJ 25 for Tabbuli on the date we have been talking
Page 116 1 about in this case was a Tall Sam I Am employee? 2 A No. 3 Q What about Charleston Hospitality 4 Group? 5 A No. 6 Q So Beck Danger was not one of your 7 all's employees? 8 A No. 9 Q Is it your understanding that this DJ 10 would have been an independent contractor? 11 A Yes. 12 Q When your general managers hire DJ's to 13 perform at your restaurants, do they give the 14 DJ's a specific list of songs to play? 15 A No. 16 Q Do they give the DJ's a specific volume 17 at which they may play those songs? 18 A No. 19 Q Do they give in any other way control 20 the work of the DJ's? 21 A No. 22 Q So you all hire them and expect them to 23 do the job that you hire them to do, right? 24 A Yes. 25 Q And you expect them to do that job in a	Page 117 1 safe and reasonably prudent manner? 2 A Yes. 3 Q You expect them to install and maintain 4 all of their equipment in a safe and reasonably 5 prudent manner? 6 A Yes. 7 Q We discussed some video footage that 8 was produced in this case and I just want to be 9 clear, Jeff, how many videos have you looked at 10 with respect to this lawsuit? 11 A One. 12 Q And what does that video appear to 13 show? 14 A What does it appear to show? It 15 appears to show a light falling down. People 16 sitting at a bar. People sitting on a couch and 17 people laughing. 18 Q Was that video ever showed to you 19 during the course of this deposition? 20 A No. 21 Q And you testified that it is your 22 understanding that Christina Tsang, I hope I am 23 pronouncing that correctly, retrieved this video 24 from the video storage system at Tabbuli? 25 A Yes.



Page 118 1 Q Is it your understanding that Christina 2 in the usual course and scope of her employment 3 would pull videos of relevant incidents at your 4 restaurants? 5 A Yes. 6 Q When she does that does she pull all 7 the relevant footage that she sees and reviews? 8 A Yes, she would pull anything that would 9 show that particular person or that particular 10 event. 11 Q Do you have any reason to believe that 12 there is any video footage of this incident 13 other than what has been produced in this case? 14 A No. 15 Q If there was any other video would you 16 expect Christina to retrieve and preserve that? 17 A Yes. 18 Q Why would you expect that? 19 A Because that is what we would want to 20 do. We would want to find out if there was 21 something that happened that we can prevent or 22 figure out or fix. 23 Q Now, you were questioned regarding a 24 topic that was in the Notice of this deposition 25 regarding written and oral agreements with	Page 119 1 independent contractors, is it your 2 understanding that any written agreement 3 whatsoever exists between Tall Sam I Am and the 4 DJ in question on the night that Miss Eddins was 5 allegedly injured? 6 A I don't believe a written contract 7 exists. 8 Q Is that your all's customary practice 9 at Tabbuli or any of your other restaurants to 10 engage only in oral agreements with independent 11 contractors like this? 12 A Very common. 13 Q Why is that common? 14 A Commonplace in all restaurant industry. 15 Hey, I will play for you for 200 bucks, or can 16 you guys come and play tonight for 300 bucks or 17 200 bucks? Yeah, we will be there. Okay, 18 great. That is the extent of the transactions. 19 Q Okay. Do you dispute in any way that 20 an oral contract existed between someone with 21 the authority to bind Tall Sam I Am and this DJ 22 who goes by Beck Danger? 23 A Do I agree that it existed? 24 Q Yes. 25 A Yes, there was an oral contract with
Page 120 1 the DJ and the general. 2 Q You were asked some questions regarding 3 whether or not Tall Sam I Am has ever performed 4 what is called a root cause analysis of any 5 premises incidents, do you recall that question? 6 A Yes. 7 Q Now, when a premises incident of any 8 kind occurs at one of your restaurants do you 9 investigate the cause of that incident? 10 A Yes. 11 Q Why do you do that? 12 A To see if it is something that we could 13 have been prevented and how do we prevent it in 14 the future. 15 Q What is involved in those 16 investigations? 17 A So you would invite people who saw what 18 happened, who were familiar with the workplace, 19 and ask them what they saw and what did they 20 think happened; and then what could have been 21 done to prevent it, and then do whatever is 22 necessary to prevent it in the future. 23 Q Does the procedure of that 24 investigation vary with respect to the exact 25 nature of the hazard or the potential issue we	Page 121 1 will call it that is identified in a given 2 scenario? 3 A It would change in -- in function 4 wouldn't change too much. Maybe in speed that 5 we might -- so if you know someone could get -- 6 someone could slip and fall again on this 7 particular thing, you know immediately and we 8 might rope it off. 9 Q Okay. 10 A No one is allowed to go there. 11 If it is something that, you know, 12 every time it is wet it gets slippery, but it is 13 not wet today then we can afford to wait until 14 this afternoon; and that would be an example of 15 the speed, but the function is the same. 16 Q Do you know with any degree of 17 certainty why this light fell? 18 A No. 19 Q Do you expect any of your restaurant 20 staff or managers to have knowledge regarding 21 the lighting codes? 22 A No. 23 Q What about any state or federal law or 24 regulations regarding lighting? 25 A No.



Page 122 1 Q Or how that lighting should be secured? 2 A No. 3 Q Or how that lighting should be 4 installed? 5 A No. 6 Q Why do you not expect that? 7 A Their job is to run daily operations of 8 the restaurant, serving the food and drinks and 9 staffing, and completing financial functions; 10 not facilities. 11 Q Every time a DJ comes into one of your 12 restaurants and sets up lights, do you have a 13 code inspector come out and check those lights? 14 A No. 15 Q Have you ever experienced that in your 16 20-some years in the restaurant industry? 17 A No. 18 Q Is that something you would expect to 19 ever happen? 20 A No. 21 Q Why not? 22 A It is not commonplace. 23 Q If someone had informed you that there 24 was a code violation of any kind with this 25 specific light, what would you have done?	Page 123 1 A We would have found out what the code 2 was and either taken steps to fix it or we would 3 have not used it. 4 Q If someone had informed you that there 5 was any other hazardous condition whatsoever 6 with this particular light, what would you have 7 done? 8 A Taken whatever steps necessary to fix 9 it. 10 Q And would you expect the same of your 11 employees and managers? 12 A Yes. 13 Q Do you have any specific knowledge 14 whatsoever of whether or not this light existed 15 in any kind of hazardous condition prior to it 16 falling? 17 A No, sir. 18 Q Would you expect any staff at Tabbuli 19 to be able to take that light and move it into 20 the back of the restaurant? 21 A No. 22 Q Would you expect your staff at Tabbuli 23 to be able to take that light and bring it home 24 with them? 25 A No.
Page 124 1 Q Or put it in their cars? 2 A No. 3 Q Or unplug it? 4 A No. 5 Q Why not? 6 A It is not theirs. 7 Q Has any claims management agent or 8 insurance agent or adjustor or anyone like that 9 ever provided any direction to you, Tall Sam I 10 Am, Charleston Hospitality Group or anybody to 11 your knowledge, with respect to the retention of 12 video footage in this case? 13 A No. 14 Q You would agree with me that all of 15 your answers have been provided in the scope of 16 your testimony as a corporate representative for 17 Tall Sam I Am, LLC, right? 18 A Yes. 19 Q Do you believe that you have had all 20 the requisite information and knowledge to be 21 able to answer the questions that were asked of 22 you today? 23 A Yes. 24 Q Do you have anything you want to add? 25 A No.	Page 125 1 Q Do you want to change any of your 2 answers? 3 A No. 4 MR. NEINAST: That is all I have 5 for you, Jeff. 6 Mike may have something else, but 7 thank you. 8 REDIRECT EXAMINATION 9 BY MR. LISKA: 10 Q At any time today during any break did 11 you speak with any attorney? 12 A That is a question for me, Mike? One 13 more time, you cut out. 14 Q Yes. At any time today during any 15 break did you speak with an attorney? 16 A No, sir. 17 Q Did you speak with any paralegal? 18 A No. 19 Q Did you speak with any other attorney 20 office personnel? 21 A No. 22 Q Who owns Queology? 23 A That is -- what is the name of the LLC? 24 Hold on a second. Let me look at my phone. 25 I am pretty sure it is Slammin Sam,



Page 126 1 LLC. 2 Q And is Slammin Sam, LLC part of 3 Charleston Hospitality Group? 4 A Yes, sir. 5 Q And is Slammin Sam the same Sam as in 6 Tall Sam I Am, LLC? 7 A Yes, sir. 8 Q Let me show you what we will attach as 9 Exhibit 3 to your deposition today, but do you 10 have an Employee Handbook on your screen? 11 (Whereupon, Plaintiff's Exhibit 12 Number 3 was marked for 13 identification.) 14 THE WITNESS: Yes. 15 BY MR. LISKA: 16 Q And you have seen this before, correct? 17 A Yes. 18 Q And is this the Employee Handbook you 19 were referencing earlier today? 20 A Yes. 21 Q Tall Sam I Am, LLC does control what 22 DJ's are allowed to come onto its premises, 23 correct? 24 A Tall Sam I Am would control what DJ's 25 we contract with and are allowed to come on the	Page 127 1 premises, yes. 2 Q And do they also control where any 3 particular DJ sets up its equipment? In other 4 words, if they didn't want the DJ to put a piece 5 of equipment in any particular spot, they could 6 tell that DJ not to do it since they were the 7 tenant of the premises, correct? 8 A We could advise them and say we don't 9 like that piece of equipment there. We don't 10 want that stage blocking a fire exit, so we need 11 to move that stage; and the DJ or the contractor 12 can say okay well, let's move the stage. 13 So we have influence on that and we 14 have the ability to cancel their event if they 15 don't want to comply with what we are saying. 16 Q And that is not just for stages, that 17 is for any piece of equipment, correct? 18 A Yeah, that is for any piece of 19 equipment. 20 Q And then does Tall Sam I Am, LLC 21 control where tables and chairs where patrons 22 sit are located in proximity to the DJ's 23 equipment? 24 A Yes. We would control tables and 25 chairs as located to any equipment in the
Page 128 1 building. 2 Q And if an employee saw something that 3 did not look safe, they could tell them correct 4 it? 5 A If an employee saw something that 6 didn't look safe, if they couldn't take the -- 7 if they couldn't take action themselves to 8 correct it or to stop it, then they would report 9 that to their manager, if it is something that 10 they are typically able to identify as 11 potentially dangerous. 12 Q When Tall Sam I Am, LLC tells patrons 13 where to sit does Tall Sam I Am, LLC have a duty 14 to make sure it is safe for the patron to sit 15 there? 16 A We have the ability to tell people 17 where to sit in terms of is this okay with you, 18 is this table okay? Do you mind sitting here? 19 We can't force anybody to sit anywhere. 20 Q Let me re-ask my question because I am 21 not sure you answered it. Maybe you didn't 22 understand it. 23 But when Tall Sam I Am, LLC tells a 24 patron where to sit, does Tall Sam I Am, LLC 25 have a duty to make sure it is safe for that	Page 129 1 patron to sit there? 2 A Of course, sure. 3 Q And then are all employees TIPS 4 trained? 5 A Oh, alcohol serviced trained? 6 All of our employees are not certified 7 by the Serve Safe Program. However, all of our 8 employees do go through the alcohol awareness at 9 orientation. 10 Q Was that the case back in 2017? 11 A I don't know. 12 Q How about Safe Serve, are all employees 13 Safe Serve trained? 14 A All employees are not Serve Safe 15 trained, which is food handling; although many 16 are. 17 Q Do any employees have any special 18 training on floor surfaces? 19 A None, not from our company we don't 20 train on floor surfaces. 21 Q And you mentioned earlier and I know 22 when Mr. Neinast was asking you questions, but 23 you don't know that any DJ brought in the light 24 that fell on Stefani's head? 25 A I don't know of any DJ and did not



Page 130

1 witness myself, any DJ bring that light into the
2 building.
3 **Q And you did not see any DJ take it home**
4 **with him or her?**
5 A And I did not witness any DJ take it
6 home.
7 **Q Right. You didn't witness I know**
8 **because you weren't there.**
9 **But I am asking you don't know that a**
10 **DJ brought it in there? You are today Tall Sam**
11 **I Am, LLC, you understand that, correct?**
12 A Correct. No, I get it. I follow you,
13 yes, sir.
14 **Q And I am saying you do not know that**
15 **any DJ brought that light in there, you can't**
16 **say that?**
17 A No, I guess I can't say that.
18 **Q And you can't say that any DJ took that**
19 **light home with him or her?**
20 A No, I don't know that they took it home
21 with them.
22 **Q And the event that night, do you know**
23 **what it was?**
24 A White Haute Nights.
25 **Q And that is a Tall Sam I Am, LLC event,**

Page 132

1 A When did I what the photo?
2 **Q When did you first see that photo?**
3 A Within the last two days.
4 **Q And you were not there in 2017,**
5 **correct?**
6 A Correct.
7 **Q So you can't say from where that light**
8 **fell?**
9 A From where the light fell? From that
10 picture? Help me understand the
11 question.
12 **Q Yes, you cannot sitting here today tell**
13 **us from where the light that fell on Stefani's**
14 **head fell? Where was it located before it fell,**
15 **you cannot answer that question?**
16 A Well, from that video was it not on top
17 of a speaker?
18 I mean the video I saw showed it fall.
19 **Q You didn't see it fall off the speaker,**
20 **though?**
21 A What did I see?
22 **Q You just saw it fall.**
23 A How did I not see it fall off of the
24 speaker?
25 **Q You just saw something in the dark,**

Page 131

1 **correct?**
2 A Correct.
3 **Q Tall Sam I Am, LLC, if it did have a --**
4 A I apologize. I didn't mean to
5 interrupt, I am sorry. Let me rephrase the
6 answer.
7 White Haute Nights is an independent
8 event done by White Haute Nights. We hire them
9 to come in and they promote the event. So we
10 promote it on our Facebook. The brand White
11 Haute Nights belongs to I believe the Charleston
12 Fashion Company, so they are one of the
13 providers.
14 The event itself we advertise as
15 happening on our property, but it is not our
16 event. It doesn't belong to us.
17 **Q Part of that is to attract patrons to**
18 **come to the restaurant?**
19 A Yes, sir.
20 **Q And Tall Sam I Am is the one who had**
21 **the DJ come in as part of that event?**
22 A Yes, sir.
23 **Q So the photo that you were shown**
24 **earlier of this light on top of the speaker when**
25 **did you --**

Page 133

1 **which was a light. What I mean by a light is a**
2 **bright spot going through the air and hit**
3 **Stefani on the head?**
4 MR. NEINAST: Object to the form.
5 BY MR. LISKA:
6 **Q You saw that on that video, am I**
7 **correct?**
8 MR. NEINAST: Object to the form.
9 THE WITNESS: So I saw something
10 that was a bright light drop and hit
11 somebody in the head?
12 BY MR. LISKA:
13 **Q That is all that video showed, am I**
14 **correct? It didn't show from where it fell?**
15 A I am pretty sure it showed that
16 speaker, but now that you mention it I am not
17 sure if that was the light in question. I don't
18 know.
19 **Q So this Entertainment Sign In Sheet**
20 **that I think you were just shown a little bit**
21 **earlier?**
22 A Uh-huh.
23 **Q There was a red arrow on that, do you**
24 **know who wrote that red arrow?**
25 A Red arrow? Can I see it?



Page 134 1 I have a black arrow. Maybe mine is 2 just a black and white copy. 3 Q Okay. 4 Do you know who wrote that black arrow 5 on there? 6 A No. 7 Q And you don't know whether that black 8 arrow would have been there originally? 9 A No. 10 Q And do you see that it looks like all 11 this handwriting on there is the same 12 handwriting? 13 A All of the handwriting of all the 14 names? 15 Q Yes. 16 A Does it all look the same? 17 Q Yes. 18 A I mean it is all in English. I don't 19 know what you mean by the same? Is it written 20 by the same person? 21 Q Yes, what I am asking you is these 22 people didn't actually sign in on the Sign In 23 sheet? 24 A I understand what you are saying. 25 Okay. Got it. Understood.	Page 135 1 Q Do you agree with that, that they 2 didn't actually -- 3 A No, I would agree that the people that 4 signed -- that the names written it looks very 5 similar. 6 Q Yeah, and so those aren't different 7 people coming in and signing their own name in 8 that column under names, correct? 9 A Yeah, I wouldn't think so. 10 Q And this isn't actually a sign in 11 sheet, it is just a sheet trying to show checks 12 that were paid to various persons? 13 A I would agree with that. 14 Q All right. 15 And it doesn't say what year, correct? 16 A Correct. 17 Q So you can't based on this even say for 18 sure that a DJ was even there that night on 19 July 20, 2017? 20 A Based on this piece of paper I cannot 21 say that a DJ was there on July 17, 2017. 22 Q Now, over there under initials, do you 23 know whose initials those are in the initial 24 column? 25 A No, I don't know.
Page 136 1 Q And you don't know who is Beck Danger? 2 A Beck Danger, no, I don't know who that 3 is. 4 Q Because when I read that it looks to me 5 like it says Beck D something. I can't tell 6 what the rest of that says. 7 A Okay. 8 Q So you don't really know that it says 9 Beck Danger, do you? 10 A No, it could say Beck Doubter it could 11 say Book Dinger. It could say a lot of things. 12 Q What was done to investigate the July 13 20, 2017 incident where the light fell on 14 Stefani's head that we are here about today? 15 A What was done to investigate the event? 16 Q Yes, sir. 17 A The outcome of the event or the event 18 in its entirety? Nothing more than to report 19 that a light fell and a lady was threatening to 20 sue, and that we pulled the footage, that was 21 about 30 seconds or so that showed the event, 22 that showed the light falling; and then that was 23 the end of our investigation. 24 Q Then would you expect the Director of 25 Operations to have any knowledge about lighting	Page 137 1 codes and ordinances? 2 A I would expect the Director of 3 Operations to have limited understanding of 4 codes and safety standards. 5 Q I think those are all the questions I 6 have for you right now. Maybe it depends on 7 what Mr. Neinast has to ask you. 8 MR. NEINAST: Well, I think mine 9 will be pretty short, so we might be 10 able to wrap this up. 11 I think I missed getting my 12 exhibits in actually, so just for the 13 record for clarity what is introduced 14 the photo as SWB 66 as Defendants 1, 15 and the Entertainment Sign in Sheet 16 that was produced as Bates labeled 1 as 17 Defendant's Exhibit 2. 18 (Whereupon, Defendant's Exhibit 19 Numbers 1 and 2 were marked for 20 identification.) 21 RE-CROSS-EXAMINATION 22 BY MR. NEINAST: 23 Q Now, Jeff, you have seen this video 24 that we are discussing, right? 25 A Uh-huh.



Page 138 1 Q And you are familiar with the premises 2 at the old Tabbuli location, right? 3 A Yes. 4 Q And that video appears to show a light 5 falling adjacent to a -- we will call it a 6 support pole, right? 7 A Yes. 8 Q And this appears to be some kind of 9 metal pole that holds up a structure? 10 A Yes. 11 Q You are familiar with where that pole 12 would have been located at the Tabbuli premises, 13 right? 14 A Yes. 15 Q Where would that pole have been 16 located? 17 A Facing the back courtyard. 18 Q And this photograph that we have been 19 talking about that we just introduced as 20 Defendant's Exhibit 1, what does this photo 21 appear to show? 22 A A speaker and a light on top of it. 23 Q Does this photo appear to show a 24 speaker attached to a support pole? 25 A Yes.	Page 139 1 Q Where would this support pole in the 2 photograph be located at the old Tabbuli 3 premises? 4 A Under the roof. 5 Q Would it also have been in the same 6 location behind the bar facing the stage? 7 A Yes. 8 Q So is it your understanding that this 9 photo appears to depict the support pole that is 10 present in the video? 11 A Yes. 12 Q Is it your understanding based on 13 review of that video that Miss Eddins would have 14 been seated underneath or adjacent to this 15 speaker? 16 A Yes. 17 Q And by adjacent let's just say in the 18 general vicinity, is that your understanding? 19 A Yes, sir. 20 Q Do you have any reason to disbelieve 21 that DJ Beck Danger was the DJ at Tabbuli on the 22 night in question? 23 A No. 24 Q Was it your understanding that he was 25 the DJ?
Page 140 1 A Yes. 2 Q You mentioned that there is no specific 3 training provided regarding floor surfaces, 4 right? 5 A Correct. 6 Q But you have also discussed some 7 training about wet floor signs, right? 8 A Correct. 9 Q Are your employees trained to recognize 10 potential slip and fall hazards? 11 A Yes. 12 Q Are they trained on how to remediate 13 those hazards? 14 A Yes. 15 Q So what exactly do you mean there is no 16 specific training on floor surfaces, or was that 17 testimony provided in error? 18 A They are not trained on floor surfaces 19 of what they are composed of, how they are 20 applied, what the weight threshold is. That 21 would be construction work. 22 They are taught that if water goes on 23 any surface to put a wet sign out and then dry 24 it up. 25 Q And your employees are not construction	Page 141 1 workers, are they? 2 A No. 3 Q They are not electricians, are they? 4 A No, sir. 5 Q They are restaurant staff, right? 6 A Correct. 7 Q And you expect them to run a 8 restaurant, right? 9 A Yes. 10 Q And you expect your waiters to wait 11 tables? 12 A Right. 13 Q And you expect your managers to manage 14 the restaurant? 15 A Yes. 16 Q Do you have any reason whatsoever to 17 believe that this light was owned by a Tabbuli 18 employee? 19 A No. 20 Q Do you know where that light is today? 21 A No idea. 22 Q Is it in the inventory of Tall Sam I 23 Am? 24 A No. 25 Q Is it at Tabbuli?



Page 142 1 A No. 2 Q Is it at Queology? 3 A No. 4 Q Is it in the possession of Charleston 5 Hospitality Group? 6 A No. 7 Q Have you ever personally seen this 8 light? 9 A No. 10 Q White Haute Nights, let me make sure I 11 am pronouncing it correctly with the -- is it 12 H-a-u-t-e? 13 A Yes, sir. 14 Q Do you know the corporate structure of 15 that entity? 16 A I don't. 17 Q Do you know whether they engaged in any 18 independent contracts with anyone on the day of 19 July 20, 2017? 20 A That they engaged in any contracts with 21 anyone else? 22 Q Yes, other than Tall Sam I Am? 23 A No, sir, I don't know. 24 Q Was there a written agreement with this 25 organization to your knowledge between Tall Sam	Page 143 1 I Am and White Haute Nights? 2 A Not to my knowledge. 3 Q Who would have paid that DJ? 4 A Tall Sam I Am. 5 Q Do you know what the manufacturer of 6 that light recommended with respect to attaching 7 that light to a surface? 8 A No. 9 Q Who would you expect to have that 10 knowledge? 11 A The DJ. 12 Q Would you expect the DJ to have greater 13 knowledge than a Tabbuli employee of how to 14 install that light? 15 A Yes. 16 Q What how about to maintain that light? 17 A Yes. 18 Q What about how to safely operate that 19 light? 20 A Yes. 21 Q What would you have expected one of 22 your employees to do if they had noticed frayed 23 wiring insulation on that light? 24 A If one of my employees noticed frayed 25 wiring on that light?
Page 144 1 Q Yes. Would that be an obvious hazard 2 to you? 3 A I guess to our typical employee, if 4 they saw exposed wires they might say hey, this 5 looks dangerous, because my mom and dad always 6 taught me exposed wires were dangerous, sure. 7 Q What about if one of your employees saw 8 that light catch fire? 9 A Yes. 10 Q What about if one of your employees saw 11 that light vibrating off the edge of a speaker? 12 A Yes. 13 Q Are you aware of whether or not any of 14 your employees saw that light move at any point 15 prior to it falling on Miss Eddins' head? 16 A I am not aware. 17 Q If your employees had seen that, what 18 would you have expected them to do? 19 A That they would mention it, stop it, 20 tell the DJ. Alert somebody. Have the lady 21 move out of the way. Say hey, it looks like 22 this light is about to fall. 23 Q Would those actions have been in 24 accordance with the training that Charleston 25 Hospitality Group provides employees for	Page 145 1 Tabbuli? 2 A Yes. 3 Q That is all I have for you, Jeff. 4 Thank you. 5 MR. NEINAST: Mike, do you have 6 anything? 7 REDIRECT EXAMINATION 8 BY MR. LISKA: 9 Q Mr. Diehl, you told us earlier you 10 don't know who is Beck Danger, is that still 11 true? 12 A Correct. 13 Q And you don't know if that is the 14 actual name of the DJ on that sheet that was 15 shown earlier by your attorney? 16 A Do I know that that is their name? 17 Q You don't know if that actually says 18 Beck Danger? You mentioned it can say a whole 19 bunch of different names earlier. Are you 20 changing that testimony? 21 A I see what you are saying. So to me 22 this looks like Beck B-e-c-k Danger D-a-n-g-e-r. 23 That is what it looks like to me. 24 Q But you don't know if that person was 25 there that night?



Page 146

1 A No, I don't know if that person was
2 there that night.
3 Q And do you know this person's real
4 name?
5 A I don't know this person's real name.
6 Q Do you know where this person lives?
7 A I don't.
8 Q Do you know this person's address?
9 A No.
10 Q Do you know this person's telephone
11 number?
12 A No.
13 Q That is all I have got. Thank you.
14 **RECROSS-EXAMINATION**
15 BY MR. NEINAST:
16 Q I have got just a couple more and let's
17 wrap it up.
18 Jeff, do you have any reason to believe
19 that there was another DJ other than the one
20 listed on this sheet, whatever their name may
21 be, present at Tabbuli on the night this light
22 fell on Miss Eddins' head?
23 A No.
24 Q Is it very common in your experience as
25 a restaurateur for what is called word-of-mouth

Page 148

1 Jeff, you have the opportunity to
2 read and sign the transcript. Most
3 people waive that right. It is your
4 right to read and review and make sure
5 it is accurate.
6 THE WITNESS: I am good.
7 MR. NEINAST: We will waive.
8 (WAIVED SIGNATURE.)
9 (Whereupon, the 30(b)(6) videotaped
10 deposition of Defendant TALL SAM I
11 AM, LLC, d/b/a TABBULI, by
12 Corporate Designee, JEFF DIEHL
13 Was concluded at
14 approximately 4:51 p.m.)
15
16
17
18
19
20
21
22
23
24
25

Page 147

1 **agreements to be entered into between**
2 **restaurants and DJ's for the provision of DJ**
3 **services?**
4 A Yes.
5 Q That is all I got.
6 **REDIRECT EXAMINATION**
7 BY MR. LISKA:
8 Q Do you know if this DJ is even a man or
9 a woman?
10 A I don't know if it is a man or a woman.
11 Q That is all I got. Thank you.
12 **MADAM COURT REPORTER:** Do you need
13 an electronic copy?
14 **MR. LISKA:** I want and you can
15 send it electronically if you want; but
16 I want a miniscript and a regular hard
17 copy and a copy of the video.
18 **THE VIDEOGRAPHER:** Do you want the
19 video synched or just regular video?
20 **MR. LISKA:** Let us get it synched.
21 **MADAM COURT REPORTER:** Will, you
22 need an electronic copy?
23 **MR. NEINAST:** We will take
24 condensed, full Etran, and a hard copy,
25 and synched video.

Page 149

1 **C E R T I F I C A T E**
2
3 **STATE OF SOUTH CAROLINA:**
4 **BEAUFORT COUNTY:**
5
6 I, Ceil Weser, CSR and Notary
7 Public in and for the above county and state, do
8 hereby certify that the foregoing testimony was
9 taken before me at the time and place
10 herein before set forth; that the witness was by
11 me first duly sworn to testify to the truth, the
12 whole truth, and nothing but the truth, that
13 thereupon the foregoing testimony was later
14 reduced by computer transcription; and I certify
15 that this is a true and correct transcript of my
16 stenographic notes so taken.
17 I further certify that I am not of
18 counsel to either party, nor interested in the
19 event of this cause.
20
21
22 *Ceil Weser*
23 Ceil Weser, CCR
24 Notary Public
25 Beaufort, South Carolina



Deposition of Stefani Eddins

1 STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS

2 COUNTY OF CHARLESTON THE NINTH JUDICIAL CIRCUIT

3 STEFANI EDDINS,

4 Plaintiff,

5 vs.

CASE NO. 2020CP1002481

6 TALL SAM I AM, LLC d/b/a TABBULI,

7 Defendant.

8
9
10 DEPOSITION OF: STEFANI EDDINS

11 DATE: December 16, 2021

12 TIME: 10:10 a.m.

13 LOCATION: The Nye Law Group
402 West Trade Street
14 Charlotte, NC

15 TAKEN BY: Counsel for the Defendant

16 REPORTED BY: Sherri L. Puleo, Court Reporter
17
18
19
20
21
22
23
24
25

1 APPEARANCES OF COUNSEL:

2

3

ATTORNEYS FOR THE PLAINTIFF
STEFANI EDDINS:

4

5

6

7

8

9

ATTORNEYS FOR THE DEFENDANT
TALL SAM I AM, LLC d/b/a TABBULI:

10

11

12

13

14

SWEENEY, WINGATE & BARROW, P.A.
BY: WILLIAM A. NEINAST
1515 Lady Street
Columbia, SC 29201
803-256-2233
wan@swblaw.com

15

16

17

18

19

20

21

22

23

24

25

(INDEX AT REAR OF TRANSCRIPT)

* * * * *

STEFANI EDDINS

being first duly sworn, testified as follows:

EXAMINATION

BY MR. NEINAST:

Q. Ms. Eddins, we met just a minute ago off the record, but again, my name's Will Neinast. I'm an attorney based out of Columbia, South Carolina. I represent Tall Sam I Am, LLC, which is an entity that you brought a lawsuit against.

You understand that you're here today to give a deposition, right?

A. Yes.

Q. Okay. And you understand that you are under oath to provide truthful testimony?

A. Yes.

Q. The process here looks a little bit different than a typical court of law. We don't have a judge or a jury, but it's much the same process. Your attorney's probably explained these rules to you already, but I'll go over them again just for the sake of clarity for the record.

If you have any questions about any of my questions, just direct them to me, I'll be glad to clarify or rephrase my questions if you don't

1 understand them. By the same token, if you answer
2 any of my questions I'm going to assume that you've
3 understood them; does that make sense?

4 A. Yes.

5 Q. We can take any breaks you want at any
6 point. I'm actually expecting a call from a client
7 on an urgent matter. Shouldn't take more than
8 about 10 minutes. But if you need water, coffee,
9 use the restroom or anything like that, just let me
10 know, glad to accommodate you.

11 A. Okay.

12 Q. You may hear some objections by either
13 myself or your attorney at some point during the
14 proceedings today. Unless you're instructed not to
15 answer, you still have to answer my questions.
16 Okay?

17 A. Okay.

18 Q. Is there anything today that would
19 prevent you from understanding my questions or
20 providing truthful testimony?

21 A. No.

22 Q. Okay. You're doing a good job of this so
23 far. In everyday conversation we sort of shake our
24 heads or say "huh-uh," things like that. Our Court
25 Reporter is taking down a written record of

1 everything we're saying, and if we make those kind
2 of non-verbal answers those don't really show up in
3 the record. So to the extent that you can, just
4 please make sure that you are giving verbal answers
5 and responses to my questions. I'll try to do the
6 same for you. Okay?

7 A. Okay.

8 Q. Again, by the same token, the record
9 becomes kind of confused if we talk over each
10 other. So to the extent we can, let's try to
11 finish our questions and answers.

12 A. Okay.

13 Q. Have you ever been deposed before?

14 A. Have I ever been where?

15 Q. Deposed before.

16 A. No.

17 Q. Have you ever done this before?

18 A. No.

19 Q. Okay. Can I get your full name for the
20 record.

21 A. Stefani Tramaine Eddins.

22 Q. Is that S-T-E-F-A-N-I?

23 A. Yes.

24 Q. Teremaine, T-E-R-E --

25 A. T-R-A-M-A-I-N-E.

1 Q. Okay. And Eddins is with two Ds?

2 A. Yes.

3 Q. Have you ever gone by a nickname or any
4 other names?

5 A. No.

6 Q. What is your date of birth?

7 A. 10/26/83.

8 Q. And what is your current address?

9 A. 4818 Palustris Court.

10 Q. You're going to have to spell that for
11 me.

12 A. P-A-L-U-S-T-R-I-S Court.

13 Q. Court.

14 A. Charlotte, North Carolina 28269.

15 Q. My understanding was you lived in
16 California previously?

17 A. I did.

18 Q. Okay. When did you live in California?

19 A. December 2019, through June 2021, this
20 year.

21 Q. So you just moved back to Charlotte --
22 well, I say "just," it's been six months now, but
23 the year's flown by.

24 A. Yeah, that's my home address.

25 Q. And you lived in the Charlotte area prior

1 to 2019?

2 A. Yes.

3 Q. Okay. When did you first move to the
4 Charlotte area?

5 A. 2020 -- or well, Charlotte area, no --
6 well, yeah, 2020. I came to school.

7 Q. Okay.

8 A. So in 2020. 2002, sorry.

9 Q. Gotcha.

10 A. 2002.

11 Q. Little confused there. Okay.

12 A. I came to school in North Carolina.

13 Q. Tell me about your educational
14 background.

15 A. Undergrad, and I have a masters.

16 Q. Where did you go to undergrad?

17 A. A&T.

18 Q. North Carolina?

19 A. Uh-huh. And NC State.

20 Q. What's your undergrad degree in?

21 A. Parks, Recreation and Tourism Management.

22 Q. Okay. That's a mouthful.

23 A. I know. Concentration Program
24 Management.

25 Q. Okay. And what is your masters from NC

1 State in?

2 A. No, my masters is in UNC Charlotte.

3 Q. Okay. So you went to undergrad at NC/A&T
4 and then transferred to NC State.

5 Did you graduate from NC State?

6 A. I did.

7 Q. Okay. And do you have a masters from
8 UNCC?

9 A. Yes.

10 Q. And what is your masters in?

11 A. Social Work.

12 Q. Do you have any professional licensing or
13 certification?

14 A. Yes.

15 Q. And what are your licenses or
16 certifications?

17 A. LCSW.

18 Q. And that stands for?

19 A. Licensed clinical social worker.

20 Q. Do you have any other licenses or
21 certifications?

22 A. Same thing but in South Carolina.

23 Q. Okay. Is your license as a social worker
24 in good standing in both North and South Carolina?

25 A. Yes.

1 Q. Have you ever been the subject of any
2 disciplinary hearing?

3 A. No.

4 Q. Has your license ever been suspended or
5 revoked for any reason?

6 A. No.

7 Q. Okay. Where did you live before 2002?

8 A. Texas.

9 Q. Did you live with your parents in Texas?

10 A. No.

11 Q. Do you have any relatives over the age of
12 18 in South Carolina?

13 A. No.

14 Q. How about North Carolina?

15 A. Yes.

16 Q. Okay. What are the last names of your
17 relatives over the age of 18 in North Carolina?

18 A. Eddins.

19 Q. All Eddins?

20 A. Yes.

21 Q. Okay. And the reason I ask is not to
22 pry, it's so if we pick a jury in this case we
23 don't consider your relatives in the jury box.

24 A. Makes sense.

25 Q. Our Court Reporter will only take the

1 last four of this in the record, but what is your
2 full social security number?

3 A. 8572.

4 Q. And you're currently engaged?

5 A. Married.

6 Q. Married. Okay.

7 And what is your wife's name?

8 A. Ashley.

9 Q. Is her last name also Eddins?

10 A. Huh-uh, Haynes.

11 Q. Haynes.

12 Does she have any relatives over the age
13 of 18 in South Carolina?

14 A. Not that I know of.

15 Q. Okay. You do you have any children?

16 A. No.

17 Q. Do you own or rent any property in South
18 Carolina?

19 A. No.

20 Q. Are you a member of clubs, churches or
21 civic organizations?

22 A. Yes.

23 Q. Which ones?

24 A. I have a church home here in Charlotte.

25 Q. Which church is that?

1 A. The Park Church.

2 Q. Just called Park Church?

3 A. The Park Church, Baptist Church, yeah.

4 Q. Okay. You ever serve in the military?

5 A. No.

6 Q. Have you ever been arrested or charged
7 with a crime?

8 A. No.

9 Q. What is your current cell phone number?

10 A. 215- --

11 MR. LISKA: Let's not put it on the
12 record though.

13 MR. NEINAST: Sure, we can go off the
14 record.

15 (Off-the-record conference.)

16 BY MR. NEINAST:

17 Q. Do you have any other post-graduate
18 education in any way?

19 A. No.

20 Q. Any training?

21 A. Sure, yes.

22 Q. Did you go through continued education?

23 A. Education, uh-huh.

24 Q. What kind of continuing education do you
25 go through as a social worker?

1 A. All kind: Ethics, we go through trauma
2 focus, LGBTQ plus. I have to do 40 hours, so every
3 two years.

4 Q. Forty hours over two years?

5 A. Yes. It's a variety.

6 Q. Where are you currently employed?

7 A. Pinnacle Point Supportive Services.

8 Q. And tell me about your job. What do you
9 do day to day?

10 A. I'm an outpatient clinical therapist, so
11 I see clients for mental health.

12 Q. Do you provide therapy and counseling to
13 those clients?

14 A. Yes.

15 Q. Do you have any specific demographic
16 focus for your clients: Children, adults or just
17 anyone who comes in?

18 A. Five to 99.

19 Q. Okay. How long have you been working for
20 Pinnacle Point?

21 A. September 2016.

22 Q. Did you also work for them in California?

23 A. Tele.

24 Q. Tele. Okay.

25 Are you presently back in person or --

1 A. No.

2 Q. -- still doing --

3 A. More or less tele.

4 Q. Okay. When you say "more or less," what
5 do you mean?

6 A. I mean, we try to go in the office, it's
7 difficult with COVID.

8 Q. Because of COVID restrictions?

9 A. Yes.

10 Q. Okay. Where did you work before Pinnacle
11 Point?

12 A. Trust Point maybe. I was there maybe six
13 months. Mental health.

14 Q. Okay. Doing kind of the same thing?

15 A. Yes.

16 Q. Okay.

17 A. Outpatient.

18 Q. And was that a company based out of
19 Charlotte or...

20 A. They're in Statesville.

21 Q. What about before then?

22 A. School.

23 Q. Okay. When did you graduate with your
24 masters?

25 A. 2014.

1 Q. What did you do between undergrad and
2 getting your masters?

3 A. Some promotional modeling, volleyball.

4 Q. Professionally?

5 A. Yes.

6 Q. What sort of professional volleyball did
7 you play? Who'd you play with?

8 A. Okay. I played overseas in Europe, so...

9 Q. Where all did you get to go?

10 A. Indonesia, Spain, Switzerland, France,
11 Austria and Finland.

12 Q. How did you like Austria?

13 A. I liked it.

14 Q. That's one of my favorite countries.

15 A. Is it?

16 Q. Yeah.

17 A. Innsbruck.

18 Q. Yeah, I stayed in Innsbruck.

19 Well, good for you. Sounds like you've
20 kind of been all over the place. I'm jealous.

21 A. Yes, my twenties were good.

22 Q. What's your current job title?

23 A. Outpatient therapist, I think.

24 Q. Are you W-2 or 1099?

25 A. 1099.

1 Q. And are you paid by the hour for clients
2 that you see?

3 A. No, per session.

4 Q. Per session. That's a flat rate however
5 long the session takes?

6 A. Yeah.

7 Q. How long is your typical session?

8 A. Typically 55 -- 53 minutes makes it an
9 hour.

10 Q. Okay.

11 A. Family sessions can be less.

12 Q. And what is your hourly rate?

13 A. Thirty-five and 60, North Carolina; 45/75
14 South Carolina.

15 Q. Okay. When you say "and," why are there
16 two different rates?

17 A. Assessment versus regular sessions.

18 Q. So you charge a lower rate for initial
19 consultation with a patient or --

20 A. We charge a higher rate for initial
21 consultation --

22 Q. Okay.

23 A. -- and a lower rate per session.

24 Q. So the first time I come in to see you
25 it's 70 bucks in South Carolina and 45 after that?

1 A. Yes. Seventy-five.

2 Q. Seventy-five.

3 Do you negotiate that rate or is that
4 negotiated by your employer?

5 A. Some of both. It's a rate I get paid,
6 so...

7 Q. Okay. Does your employer bill out at a
8 higher rate and that's your take home or is that
9 the rate actually billed to the client?

10 A. I would assume they bill out more. I
11 can't be 100 percent sure.

12 Q. Okay. Do you have any personal
13 involvement in billing for your clients or is that
14 all done by your office?

15 A. That's done by the office.

16 Q. Okay. How many clients are you seeing a
17 week these days?

18 A. These days maybe 20.

19 Q. Has that number decreased during COVID?

20 A. Various reasons it decreased.

21 Q. What are those various reasons?

22 A. I had surgery and I just can't see
23 back-to-back clients like I used to be able to, so
24 I have to take more of a break in-between, and
25 COVID.

1 Q. Right. Has the volume of patients that
2 Pinnacle Point --

3 I say "patients," is that the right term?
4 Clients?

5 A. You could use either one, yeah.

6 Q. Okay. Has the volume of patients that
7 Pinnacle Point has seen as a practice decreased
8 during COVID?

9 A. No.

10 Q. Okay. Has it increased during COVID?

11 A. Yes.

12 Q. Why has it increased during COVID, to
13 your knowledge?

14 A. Because more people need mental health.

15 Q. Because of COVID?

16 A. Yeah. Grief --

17 Q. Sure.

18 A. -- BEING locked in the house, so...

19 Q. Do you have any other sources of income?

20 A. No.

21 Q. Have you ever filed a workers'
22 compensation claim?

23 A. No.

24 Q. Other than the case for which we're here
25 today, have you ever been a plaintiff in a lawsuit?

1 Have you ever sued anyone before?

2 A. No.

3 Q. Have you ever been sued?

4 A. Yes.

5 Q. Okay. Tell me about that.

6 A. At NC State I was in an accident, and the
7 girl who hit me parents sued me.

8 Q. Okay. This was a car accident?

9 A. Yes.

10 Q. And your vehicle was struck?

11 A. Yes.

12 Q. Tell me about the facts of that
13 collision. What happened?

14 A. To my recollection, right, I was pulling
15 out, and she came out of traffic and was in the
16 turning lanes and hit me.

17 Q. Were you injured in that collision?

18 A. No.

19 Q. Okay. What year did that occur?

20 A. Maybe 2004. Maybe 2004.

21 Q. Give or take?

22 A. Yeah.

23 Q. I know I'm asking you to go back. What
24 was the result of that lawsuit? Did it settle?
25 Did it go to court?

1 A. It went to court.

2 Q. Okay. And there was a trial?

3 A. Yeah.

4 Q. What was the result of that trial?

5 A. She lost.

6 Q. There was a verdict for the defense?

7 A. Yes. Both liable, so...

8 Q. Both liable, right, North Carolina.

9 And you said you were not injured in that
10 collision, right?

11 A. No.

12 Q. Have you ever hired a lawyer for any
13 other reason?

14 A. No.

15 Q. Okay. Stefani, the way I like to do this
16 is now that we're kind of, you know, past all the
17 biographical information, I like to let you tell
18 your story in your own words, you know, throw in as
19 much or as little detail as you want, and then
20 we'll go back through. And I'm sure I'll have some
21 questions about what happened, and then we'll talk
22 about your medical treatment.

23 But just in your own words, explain for
24 me what happened, why we're here.

25 A. Okay. Me and my wife -- was she my wife

1 at the time? I don't think so. Me and my fiance,
2 we're on vacation in South Carolina and we stumbled
3 upon Tabbuli. Did I say that right?

4 Q. Tabbuli, yeah. At least that's the way
5 I've been pronouncing it. They haven't corrected
6 me on it yet, so...

7 A. And went in hoping for food. The kitchen
8 was closed or whatnot. And so we sat down, decided
9 to get a drink anyway. The waitress came over and,
10 you know, helped us. And then said, "We're having
11 a fashion show tonight, it starts at 10:00." So
12 I'm assuming this was nine something, 'cause it was
13 shortly after. "It starts at 10:00 and it will be
14 in the back of the restaurant." And we were like,
15 "Okay." And then she checked on us a little later,
16 and we proceeded back there to the stage for the
17 show.

18 And there was some reserved seating,
19 couches or chairs with cushion, and she said the --
20 I want to say she said the like management or some
21 of their team wasn't coming so we could sit there
22 for the show. So she removed the reserved boards
23 and we sat there. So we were front row in front,
24 front row from the stage.

25 I want to say halfway through, 'cause I

1 remember an intermission, so right before the
2 second part of the show started I saw light.
3 That's how I would describe it, there was a light.
4 So I thought, I thought, that they were like
5 putting the spotlight on us. So I'm like "Okay, it
6 was a spotlight." And then I just remember Ashley
7 asking me was I okay. And I heard some commotion.
8 And I was like, "Yeah, I'm fine." And she's like,
9 "You're crying." And I'm like, "What?" And then I
10 just felt pain.

11 And then I remember a light being on the
12 back of the chair/couch. And then I remember a guy
13 picking it up and putting it on top of a speaker.
14 And then I remember a manager coming over and
15 asking was I okay. And I remember her taking that
16 same light down and getting me ice for my head,
17 'cause I got hit in the head.

18 And then we left the couches and went
19 over to the table. We were in -- I'm assuming
20 that's the front of the restaurant. And then
21 Ashley and the manager, I could not tell you her
22 name, filled out an incident report. And I was
23 just laying -- I was sitting -- laying on the table
24 with my head down, and then signed the incident
25 report. We left, went to the ER that was near our

1 hotel. So that's how Ashley knew where to go
2 because we had seen a 24 hour by our hotel earlier
3 that day.

4 Went into the ER. It was rough. And I
5 was there it felt like hours. I have no idea how
6 long I was there. And I did some tests, CAT scan
7 or something, various things. Yeah, that's pretty
8 much that night.

9 Q. Okay. You understand that I have a job
10 to do, and just as your lawyer has a job to do and
11 we may differ about, you know, opinions of the
12 facts or, you know, other aspects of this lawsuit,
13 but I want you to know that I'm sorry this happened
14 to you. I mean that very genuinely.

15 A. Thank you.

16 Q. How long had you been at Tabbuli before
17 you sat down, give or take?

18 A. Before I sat down in which location?

19 Q. You said the hostess or whoever came back
20 to get you, so were you waiting for a while before
21 you sat down?

22 A. So we were sitting down at just regular
23 tables in the front of the restaurant. So when
24 you're coming from the boardwalk area I'm assuming
25 that is the front. So we were sitting there, which

1 is the back of the stage. So the stage is in the
2 back, so we were sitting in the front.

3 So sat down, she said there wasn't any
4 food, we got a drink, she came back -- well, she
5 told us about the fashion show, then she came back,
6 and then that's when we went.

7 So to the couch part, how long before we
8 sat down at the couch part?

9 Q. Uh-huh.

10 A. It was before the show. The show was at
11 10:00.

12 Q. Okay.

13 A. We got there around nine something, so
14 less than an hour before we sat on the couches.

15 Q. Okay. You think probably closer to an
16 hour or closer to half an hour?

17 A. I don't know.

18 Q. Okay. Did you just have one drink at
19 Tabbuli before you went back to the couches or two?

20 A. Yes, I carried my drink.

21 Q. So you got a drink at the tables, then
22 you moved back to the couches?

23 A. Yes.

24 Q. And just for the sake of clarity, we'll
25 refer to the couch and stage area as the back of

1 the restaurant, and the other end, you know,
2 towards the main entrance as the front.

3 A. Okay.

4 Q. And it was just you and Ashley in the
5 restaurant, right?

6 A. Yes.

7 Q. Nobody else?

8 You didn't arrive at Tabbuli with anyone?

9 A. No.

10 Q. Where had you been before Tabbuli?

11 A. That day?

12 Q. Uh-huh.

13 A. The hotel. We went, ate at a restaurant
14 earlier.

15 Q. And was that Bone Fish Grill?

16 A. Yes.

17 Q. That was in Charleston?

18 A. Area.

19 Q. Okay. Are you very familiar with the
20 Charleston area?

21 A. Not at all.

22 Q. It's a complicated state.

23 How long had you been in Charleston
24 before this day?

25 A. This was the first day.

1 Q. Okay. How long did you plan on staying
2 in Charleston?

3 A. Three.

4 Q. Kind of a long weekend?

5 A. Yes.

6 Q. Did you stay -- end up staying in
7 Charleston as long as you planned to stay in
8 Charleston?

9 A. Yeah, we finished out our stay.

10 Q. What did you do the rest of the stay?

11 A. Well, the next day not much because I had
12 to get my medication, and I just laid in the bed
13 most of the morning, afternoon. And when my
14 headache started feeling better we went back to the
15 scene.

16 We went back to Tabbuli and one of the
17 management there got my ID and information from me.
18 And then we just walked along the -- I think
19 there's a pier or something where you go out to the
20 water right next to Tabbuli, if I recall, up some
21 steps. So we just walked around that area.

22 Q. Do you recall if that pier was off Bay
23 Street maybe?

24 A. Is that the main area? I don't know.
25 I'm sorry, I don't know.

1 Q. That's all right.

2 Did you go to the beach at all the rest
3 of the weekend?

4 A. No.

5 Q. Did you all do anything else on the trip?

6 A. I don't remember.

7 Q. Okay. What hotel did you stay at?

8 A. The Hyatt, I believe.

9 Q. So the one downtown?

10 A. See, I don't -- what is downtown? I
11 don't -- is Tabbuli downtown?

12 Q. Uh-huh.

13 A. Okay. So no, we were a little drive from
14 there.

15 Q. Okay. And did you drive to Tabbuli that
16 day?

17 A. Yes.

18 Q. You drove or Ashley drove?

19 A. I have no idea.

20 Q. Okay. Did you drive to the ER?

21 A. No.

22 Q. Ashley drove you to the ER?

23 A. Yes.

24 Q. All right. Had you taken any medication
25 that day?

1 A. No.

2 Q. Okay. How long were you sitting on the
3 couch before the light fell?

4 A. The intermission of the fashion show.

5 Q. Okay. But you have no idea?

6 A. No idea.

7 Q. Okay.

8 A. Honestly.

9 Q. Give me a rough guess; I mean, more than
10 an hour? More than two hours?

11 A. Definitely not more than two hours.

12 Q. Okay.

13 A. So maybe 45 minutes.

14 Q. Okay. Did you see the light at any point
15 before it fell?

16 A. No.

17 Q. Did you see if it was attached to
18 anything?

19 A. No.

20 Q. Okay. Do you have any idea why the light
21 fell?

22 A. I have no idea why the light fell.

23 Q. Do you have any idea who owned that
24 light?

25 A. I do not.

1 Q. Do you have any idea who put that light
2 near that speaker?

3 A. I do not.

4 Q. Do you have any idea who organized the
5 fashion show?

6 A. I do not.

7 Q. Okay. Tell me about the fashion show
8 itself.

9 A. We were told it was a local artist, so a
10 local artist's boutique fashion show. So sounded
11 cool.

12 Q. Okay. The process of it though, what did
13 you see? Was it just models coming out in
14 different clothes?

15 A. Yes.

16 Q. Did you see a deejay there that night?

17 A. I did not.

18 Q. Okay. Was there music playing?

19 A. Yes.

20 Q. How did you first become aware of
21 Tabbuli?

22 Why did you select Tabbuli to go to that
23 night?

24 A. I didn't know anything about Tabbuli. I
25 think Ashley saw it and was like, "Hey, try this

1 spot out." LGBT friendly; if not LGBT, I'm not
2 sure exactly. So that's how.

3 Q. "Saw it" as in walking down the street
4 and saw it or on the internet?

5 A. I believe she saw it when we were -- I
6 don't know. I guess walking. I really don't
7 recall, but I remember her saying, "Let's go."

8 Q. Had you been there before?

9 A. No.

10 Q. Do you know if she had ever been there
11 before?

12 A. I do not.

13 Q. Had you been there since?

14 A. No.

15 Q. Other than the next day?

16 A. Yeah, other than the next day.

17 Q. Tell me about going back the next day.
18 What time did you go back, give or take?

19 A. Late afternoon. And there was somebody
20 outside, I want to say.

21 Q. Okay.

22 A. Maybe they have a hostess or something, I
23 don't know. But the people inside were like, "Hey,
24 we need to get some information from you about last
25 night," X, Y and Z, so... I gave them my ID. And

1 I don't know whatever else they needed.

2 Q. Did they recognize you?

3 A. I feel like they did. If I'm recalling
4 now, I feel like the person in front did, but...

5 Q. Okay.

6 A. Maybe not. I don't know.

7 Q. Okay. And they told you, "We need to get
8 information from you"?

9 A. Yeah.

10 Q. Okay. Did anyone ask you for that
11 information the night of the incident?

12 A. I do not know.

13 (DFT. EXH. 1, INCIDENT REPORT, was marked
14 for identification.)

15 Q. Okay. I'm going to pull up -- and I
16 apologize for not having a paper copy. I'll email
17 this around, but I think we've all seen it. I'll
18 mark this as Defendant's one. I'll represent to
19 you this appears to be an incident report.

20 Is this what you --

21 Well, first of all, is that your
22 signature there at the bottom?

23 A. Yes.

24 Q. Did you write anything on this page?

25 A. My signature.

1 Q. Okay. Just your signature?

2 A. Yes.

3 Q. Did you tell Tabbuli staff any
4 information to be able to fill out those sections
5 there?

6 A. Between me and Ashley.

7 Q. Okay.

8 A. Yes.

9 Q. So you had a conversation with staff at
10 Tabbuli, they filled this sheet out, then you
11 signed it?

12 A. Yes.

13 Q. And your signature you understood to be
14 an adoption of the facts as they're stated in this
15 sheet?

16 A. Yes.

17 Q. Anything about this sheet appear to be
18 changed or altered in any way?

19 I'll scroll up and down so you can see
20 all of it.

21 A. Not that I recall.

22 Q. Okay. So you went to, looks like, Centre
23 Pointe Emergency ER?

24 A. Yes. I was trying to read that.

25 Q. All right. It's a little hard to read.

1 And the time that's listed on here is
2 10:20 p.m.; does that sound about right for you?

3 A. Yes. It seems early.

4 MR. LISKA: Can I ask, time for what?
5 I'm not sure what time we're talking about.

6 MR. NEINAST: It's just the top line
7 here, it just says, "Date of incident 7/20/17, time
8 10:20 p.m."

9 MR. LISKA: Okay. I didn't know if you
10 meant incident time or ER time or what.

11 BY MR. NEINAST:

12 Q. My understanding, that's incident time;
13 does that sound about right for when the light
14 fell?

15 A. I don't know. That would be a short
16 first half of a fashion show, but maybe my time is
17 off. So we'll go with what the incident report
18 says.

19 Q. Gotcha. Okay.
20 Did you seek any medical treatment the
21 day after the light fell on your head?

22 A. Ashley picked up my scripts that they
23 prescribed at the ER.

24 Q. Do you remember what those scripts were
25 for?

1 A. I was having headaches, so I'm assuming
2 it was that.

3 Q. When did you first start developing a
4 headache?

5 A. Right after.

6 Q. Okay. How soon do you mean by "right
7 after"?

8 A. So maybe within three to five minutes
9 from being hit with the light.

10 Q. Okay. Did you tell anyone at the ER you
11 were having headaches?

12 A. Yes.

13 Q. What else hurt at the ER?

14 A. My neck some. My head and my neck.

15 Q. What part of your neck?

16 A. The right side.

17 Q. The back or the front?

18 A. The back.

19 Q. Did you have any tingling or numbness?

20 A. Currently?

21 Q. After the light fell on you that night.

22 A. I do not remember.

23 Q. Okay. What did they tell you at the ER
24 about your medical condition?

25 A. I do not remember. I was really out of

1 it. I do know that they said 'cause I'm not from
2 South Carolina to follow up with my provider within
3 a week for concussion symptoms, I do remember that.
4 And I know I got a CAT scan or something where I
5 went under.

6 Q. Okay. By "went under," you mean?

7 A. The machine.

8 Q. Not under as in anesthesia?

9 A. No.

10 Q. That's new. Scared me for a second.

11 A. Yes. And they gave me a shot in my butt.

12 Q. Okay.

13 A. And --

14 Q. Is that like a painkiller shot?

15 A. No. It hurt. I can't remember what the
16 shot was for.

17 Q. Okay.

18 A. And I feel like I was there a long time.
19 It had to be hours. And then they had the lights
20 off. But the bright lights bothered me. That's
21 all I remember.

22 Q. Okay. Is that a complete list of your
23 symptoms that you suffered on the day of the
24 incident: That you had a headache, your neck hurt,
25 your head hurt, you were photosensitive to light?

1 A. Noise.

2 Q. Noise?

3 A. Yes.

4 Q. Any others. Felt kind of out of it?

5 A. Yeah.

6 Q. Have you had concussions before?

7 A. Yes. I played volleyball, had a mild one
8 in Switzerland.

9 Q. Okay. Any others?

10 A. Not that I recall.

11 Q. Any other head or neck injuries?

12 A. No.

13 Q. When was the concussion in Switzerland,
14 what year?

15 A. I was in Switzerland about 2009, 2010
16 maybe; '10 '11. 2010, 2011.

17 Q. What symptoms did you experience as a
18 result of that?

19 A. The concussion?

20 Q. Uh-huh.

21 A. I was just a little dizzy. I tried to
22 keep playing and I was kind of dizzy.

23 Q. Were you told not to play volleyball?

24 A. Yes. I think they kept me out for a
25 couple days from practice.

1 Q. Did you see a physician?

2 A. I saw the team doctor.

3 Q. Did you follow up with anybody else for
4 treatment for that?

5 A. I probably went to our physio, which is a
6 doctor, so...

7 Q. Okay. Did you see a neurologist?

8 A. No.

9 Q. Any other prior injuries?

10 A. With my head or neck or just...

11 Q. In general.

12 A. In general, yes, I have a -- I had a torn
13 Achilles tendon.

14 Q. Is that recently what you had surgery
15 for?

16 A. No.

17 Q. Okay. Why did you recently have surgery?

18 A. I had fibroids.

19 Q. It's fair to say that that surgery was in
20 no way related to this incident?

21 A. Fair, yeah.

22 Q. You didn't call 911, did you?

23 Nobody called 911 that night?

24 A. I don't think so.

25 Q. Okay. When did you next seek medical

1 treatment after going to the ER?

2 A. Within a week I saw my -- I believe I saw
3 my primary care, then referred me to a neurologist.

4 Q. And who's your primary care?

5 A. Jill Rabassa.

6 Q. Rabassa?

7 A. Rabassa.

8 Q. You still seeing Dr. Rabassa?

9 A. Off and on.

10 Q. Okay.

11 A. Her staff, her office I'm still a part of
12 there, but she's busy so I don't always see her.

13 Q. Right. You have any kind of regular or
14 standing appointment with her office?

15 A. Not with Jill Rabassa. I have my
16 neurologist now.

17 Q. And who's your neurologist?

18 A. My current head specialist, neurologist
19 is Dr. Gordon.

20 Q. Where does Dr. Gordon practice?

21 A. Here in Charlotte.

22 Q. What's the name of his practice or her
23 practice?

24 A. Carolina Neuro Specialist. I'm not sure.
25 Don't quote me on that. His office did move to

1 south Charlotte, I can say that, so...

2 MR. NEINAST: Let's go off the record for
3 just a second.

4 (A recess transpired.)

5 BY MR. NEINAST:

6 Q. Stefani, I'm going to list -- and I
7 apologize, this is a long list -- I'm going to list
8 the medical providers for whom we've been provided
9 records by your attorneys relating to this
10 incident.

11 A. Okay.

12 Q. Some of these providers you might not
13 have heard of. Occasionally a hospital will have
14 somebody else, an entity who does imaging or
15 something like that. But what I want you to do is
16 listen to this, tell me if you think there are any
17 providers that I left out.

18 A. Okay.

19 Q. Trident Medical Center, ACS Primary Care
20 Physicians, Charleston Radiology, Med Quest Imaging
21 Centers, Mecklenburg Radiology, Novant Health Dr.
22 Karan P. Shukla, Charlotte Eye Ear Nose and Throat,
23 Queen City Chiropractic, Carolina Neuro Services,
24 Carolina HS Rehab, All PRO Sport Massage, Phoenix
25 Rehab, Novant Health Neurology and Sleep, Acute

1 Billing, Ambulatory Billing, Novant Health Speech,
2 CVS, Vision Works, Queen City Chiropractic. And
3 that's the end of my list.

4 Am I forgetting anybody, to your
5 knowledge?

6 A. I don't think so.

7 Q. Okay. Tell me about your treatment,
8 first of all, with Dr. Shukla. Who is Dr. Shukla?

9 A. Dr. Shukla, he was the first neurologist
10 I saw.

11 Q. Okay. Why are you seeing multiple
12 neurologists?

13 A. Dr. Gordon is a head specialist,
14 apparently.

15 Q. Okay. Why were you referred to a
16 specialist, to your knowledge?

17 A. Because after two years I still was
18 having headaches very frequently.

19 Q. Did you have headaches before this light
20 fell on you?

21 A. No, not really.

22 Q. Never had a headache in your life?

23 A. Yeah, sure. I have sinuses, so I have
24 some sinus pressure sometimes.

25 Q. Are you saying you have them more

1 frequently now?

2 A. Definitely.

3 Q. Are they more severe now?

4 A. Both.

5 Q. How often do you have a headache?

6 A. Currently?

7 Q. Uh-huh.

8 A. Currently. So I define headache when I
9 have to take medication, so that I'm clear on that.

10 Q. Okay.

11 A. So maybe one to three times, four times
12 -- one to three, four times a month consistently I
13 may take my neuro medication. Headaches where I
14 work through it maybe two to three times a week.

15 Q. How often do your headaches usually last?

16 A. Sometimes an hour, sometimes it's a
17 continuum for days.

18 Q. Okay.

19 A. Very regular.

20 Q. Would you characterize these as migraine
21 headaches?

22 A. Sure.

23 Q. Okay.

24 A. Yes.

25 Q. Where in your head does it hurt when you

1 have a headache; what part of your ahead?

2 A. It varies, but I usually have spot
3 headaches, that's what I call them. I don't know
4 if that's real. It's usually on the right side.

5 Q. Okay. And by "spot," you mean it's
6 located in one particular point?

7 A. Yes.

8 Q. Okay.

9 A. Or sometimes I'll have a -- it will feel
10 like, I don't know, I have a headache in my neck.
11 That doesn't make sense, but...

12 Q. Just kind of neck pain?

13 A. I feel pain with the headaches
14 occasionally.

15 Q. Is that more of a muscle pain when it's
16 in your neck or it feels like a headache?

17 A. It feels like a headache.

18 Q. How severe are your headaches?

19 Tell me about what you experience when
20 you get one.

21 A. My worst I usually have to lay down, turn
22 the lights off and then I'll take my medication. I
23 will say the medication has -- this last set of
24 medication's done a really good job, at least in my
25 opinion, to managing. I can function, more or

1 less, but I can't think. I'm kind of cloudy. I
2 can't process very well, so...

3 Q. Is that just during the course of your
4 headaches or is that in general?

5 A. To that magnitude it's when I have a
6 severe headache.

7 Q. Okay.

8 A. And I usually can lay down and feel
9 better in an hour or two.

10 Q. What medication are you referring to
11 that's been helping recently?

12 A. I'm on Methocarbamol and Flurbiprofen.
13 It's like ibuprofen but flur.

14 Q. How have those medications alleviated
15 your symptoms recently?

16 A. The sharpness tends to go away.

17 Q. Okay.

18 A. And I can manage with a mild.

19 Q. Are you having headaches less frequently
20 because of the medication now?

21 A. Yes.

22 Q. Okay. How else has medical treatment
23 abated your symptoms?

24 A. My chiropractor is a lifesaver. The
25 pressure from apparently my head going forward and

1 it having an impact on my neck, the pressure that I
2 felt and feel sometimes in my neck, he had been
3 able to adjust and treat and alleviate some of the
4 pressure in my head for my headaches to decrease.
5 That was the only thing that was working three
6 years ago. None of the medication really was at
7 that time.

8 And the noise, the over sensory in my
9 hearing. And my eyesight, chiropractor helped with
10 that as well. So the noise aspect of my symptoms
11 are decreased.

12 Q. How is going to a chiropractor helped
13 with the noise aspect of your symptoms?

14 A. I think it's the pressure. Whatever's
15 going on in my brain and head when you have a
16 headache, you know, everything irritates you, so...
17 But that was the last thing to go, the last thing
18 to get better was the noise and my ability to deal
19 with light.

20 Q. Okay.

21 A. He had to turn one of the lights down.
22 Fluorescent lights bother me. I cannot drive at
23 night currently. That has not changed.

24 Q. Okay. That you still can't drive at
25 night?

1 A. Still cannot drive at night.

2 Q. Okay. Has any physician told you not to
3 drive at night?

4 A. So yes, in the beginning. I have the --
5 or one of the doctors I went for my vision, I have
6 -- we tried nightshades, I don't know, something
7 that doctors give. That doesn't work well.

8 Q. Was that a physician at Charlotte Ear
9 Nose and Throat?

10 A. Yes.

11 Q. Those are the only eye doctors you've
12 seen?

13 A. Ear Nose and Throat?

14 Q. Uh-huh.

15 A. Yes. I feel like I went somewhere else,
16 but... Maybe it's all still under Ear Nose and
17 Throat.

18 Q. How about noise, are you still sensitive
19 to noise?

20 A. Occasionally.

21 Q. Not all the time?

22 A. Base, the base more than anything it
23 still lingers.

24 Q. Okay. Has that gotten better?

25 A. No, the base -- the noise itself overall,

1 yes. The base still is a problem for me in music
2 and songs, or if too much is going on that's loud
3 around me I have a problem being able to focus
4 through that.

5 Q. Now, the physician that told you not to
6 drive at night, did that physician tell you that
7 you could never drive at night?

8 A. In life, no. We're hopeful that I will
9 be able to. No one can say.

10 Q. When was the last time you went to the
11 eye doctor?

12 A. An eye doctor I went in December.

13 Q. This December or last December?

14 A. December 2020, 'cause I wear contacts,
15 so...

16 Q. Did you mention driving at night with
17 that eye doctor?

18 A. I'm not -- maybe. I mentioned it often,
19 'cause I can't do it, so it's possible --

20 Q. Right.

21 A. -- I may have.

22 Q. What all have you tried to be able to
23 drive at night, just those shades? Anything else?

24 A. Yeah, I mean, my medical shades I have.
25 And I've tried to, you know, drive around the

1 block. The light is piercing from the street
2 lights, from headlights, from brake lights. I
3 cannot drive at night.

4 Q. Do you have any restrictions on your
5 driver's license?

6 A. I'm sure there is one. I think it's
7 something about glasses or contacts.

8 Q. Anything about driving at night?

9 A. No. I haven't gone to the DMV.

10 Q. Tell me about All Pro Sport Massage. Why
11 did you go get a sport massage?

12 A. Needling.

13 Q. Dry needling?

14 A. Uh-huh.

15 Q. Did a physician tell you to go do that?

16 A. Yes.

17 Q. Which physician told you to go do that?

18 A. Dr. Chad.

19 Q. Who's Dr. Chad?

20 A. Queen City Chiropractor doctor.

21 Q. Your chiropractor told you to go do that?
22 That's a "yes"?

23 A. Yes.

24 Q. Has this incident caused any sleep
25 trouble for you, sleep disturbances?

1 A. Occasionally.

2 Q. Why is that?

3 What prevents you from sleeping?

4 A. Headaches.

5 Q. Okay. So if you get a headache at night
6 it's difficult to sleep?

7 A. It is.

8 Q. Gotcha. Does it take you longer to fall
9 asleep?

10 A. Well, yes, but -- yes.

11 Q. Once you're asleep, does the quality --
12 has the quality of your sleep changed at all?

13 A. I wake up one to two times.

14 Q. Is that typical for you?

15 A. No.

16 Q. Have you ever seen a chiropractor before
17 this incident?

18 A. Yes.

19 Q. Okay. How many times?

20 A. I don't know. I mean, I'm an athlete, so
21 we did it a lot in Texas. My track coach had us go
22 to a chiropractor.

23 Q. How about let's say in the year before
24 this incident, how many times did you go to a
25 chiropractor?

1 A. The year before?

2 Q. Just rough estimate. So that be, what,
3 2016.

4 A. 2016.

5 Q. Five times? Ten times?

6 A. Did I even? I don't -- chiropractor
7 isn't something I usually go to. So 2016, I don't
8 know if I did or not.

9 Q. Okay. Have you been to any other
10 chiropractors in Charlotte other than Queen City
11 Chiropractor?

12 A. Yes.

13 Q. Okay. Which ones?

14 A. I've been to one, couldn't tell you the
15 name. Anderson something.

16 Q. Okay. Is that in Charlotte?

17 A. Yes.

18 Q. Do you know if it was uptown?

19 A. University area.

20 Q. Okay.

21 A. It was a while back, so I don't...

22 Q. Any others?

23 A. No.

24 Q. Okay. Had you ever sought treatment for
25 difficulty sleeping before this incident?

1 A. No.

2 Q. What about difficulty with your vision?

3 A. No.

4 Q. Ever undergone surgery for anything other
5 than your Achilles and fibroids?

6 A. No.

7 Q. Are you aware of any other witnesses
8 other than the individuals who we've already spoken
9 to the light falling on your head?

10 A. I'm not sure who you spoke to.

11 Q. Right. And what I'm asking is: Do you
12 know of anybody who saw it happen?

13 A. I don't know them personally, but I mean,
14 a ton of people saw it happen.

15 Q. Do you have contacts for anybody who saw
16 it happen?

17 A. I do not.

18 Q. Okay. Do you know the names of anyone
19 you spoke to at Tabbuli?

20 A. No.

21 Q. Okay. Did anyone from Tabbuli make any
22 statements to you?

23 A. No, but the COO called me.

24 Q. The COO called you?

25 A. Uh-huh.

1 Q. Who's the COO?

2 A. I don't know. I can't recall now, but he
3 did identify himself as that.

4 Q. When did he call you?

5 A. About a week or so after the incident.

6 Q. What did you all talk about?

7 A. He just said that he was checking on me,
8 see if I was okay, and that we would get things
9 taken care of or something like that.

10 Q. How did you interpret his statement, "We
11 would get things taken care of"?

12 A. That he knows that something happened at
13 the establishment, and that I was injured, and that
14 they would, you know, I guess make sure that I was
15 okay and --

16 Q. Okay.

17 A. -- you know, medical bills or anything
18 that...

19 Q. Did he offer to pay your medical
20 business?

21 A. Sure not he didn't say, "I will pay your
22 medical bills."

23 Q. Okay. Did he say anything about why the
24 light fell?

25 A. He didn't talk about the light.

1 Q. Okay. He just said something to the
2 effect of "We'll get things taken care of"?

3 A. And I'm sorry this happened, yes.

4 Q. What did you tell him?

5 A. I just thanked him and -- I got his name,
6 I feel like it, but I can't...

7 Q. You have that written down anywhere or...

8 A. I feel like I did, but I can't recall. I
9 can't recall.

10 Q. You don't know if there's a note anywhere
11 out there with this guy's name out there?

12 A. I'm sure maybe there is or in a phone,
13 but I'm sure we can find out who the COO was at the
14 time --

15 Q. Okay.

16 A. -- 'cause he did identify himself as
17 such.

18 Q. Other than that call and going back the
19 next day, have you had any subsequent contacts with
20 anyone from Tabbuli or Tall Sam I Am, LLC?

21 A. I had a phone call or something where
22 someone took my statement.

23 Q. When did someone take your statement?

24 A. I don't know, months after.

25 Q. Other than what we've already discussed,

1 how has this incident impacted your life?

2 A. Well, I couldn't pick my mother up from
3 the airport when she came for Thanksgiving. That's
4 not fun.

5 Q. Why not?

6 A. 'Cause she flew in at night. Doesn't
7 feel good to tell your mom to take an Uber. Ashley
8 was at work, so... So that's frustrating. I'm a
9 night owl naturally, so I'm the one that drives at
10 night. My wife is not usually. So that has been a
11 hard adjustment.

12 Work is better because work was a
13 problem. I couldn't -- we were in the office in
14 2017, so I had to try to do therapy with the lights
15 off. I had to get dropped off to work or picked
16 up. I had to shorten my hours because, you know,
17 when it gets winter it gets dark at like 4:30.

18 I'm not a person that typically takes
19 medication, so to feel like I will be on this
20 medication till who knows when is a problem for me.

21 I don't know, you go on vacation, you get
22 hit in the head with a light, that's what happened.
23 And now we're four years later and we're still
24 dealing with this, that's a problem, so... Yeah, I
25 don't know. I am getting better, I do want to say

1 that.

2 Q. Yeah, I'm glad for you.

3 A. Yeah. It's just slower than I would
4 anticipate, I guess. My thought process isn't as
5 sharp as it used to be, but I'm assuming one day
6 that will come back too. That's all I have.

7 Q. Okay. I appreciate that.

8 Other than not seeing clients and
9 shortening your hours, has what happened in any way
10 caused you to -- well, I guess the better question
11 is: Are you going to claim that this has caused
12 you to miss out on any professional opportunities:
13 Promotions, events, anything like that?

14 Do you have any personal knowledge of
15 anything like that being a factor here?

16 A. I don't promotional-wise.

17 Q. Okay. You anticipate continuing to work
18 in your current position?

19 A. I do.

20 Q. Do you like what you do?

21 A. I do, yeah.

22 Q. I know that's a difficult job.

23 A. It is. It is difficult.

24 Q. Do you shorten the duration of your
25 sessions at all?

1 A. I try not to.

2 Q. Just kind of curtail how many sessions
3 you have in a day?

4 A. I try to, yes.

5 Q. How many other therapists work with you?

6 A. Oh, I do not know the number of
7 clinicians at the agency.

8 Q. Is it a fairly large agency or small?

9 A. No, there's a couple offices, maybe
10 there's more than ten.

11 Q. Okay.

12 A. Less than 20 maybe.

13 Q. Are there a lot of other staff, support
14 staff?

15 A. Repeat that.

16 Q. Are there a lot of staff, support staff?

17 A. Like office support?

18 Q. Sure.

19 A. Yeah, sure. There's three office
20 support, I do know that.

21 Q. Okay.

22 A. We have nurse practitioners, psychiatric
23 nurse practitioners on staff. I'm not in the
24 office and clinicians are always changing, so I
25 could not tell you clinician-wise.

1 Q. Right. Have any physicians mentioned a
2 -- medical providers mentioned a timetable for
3 recovery for you as far as...

4 A. No, unfortunately.

5 Q. Okay. Do you think your symptoms are
6 going to continue to get better?

7 A. I'm hopeful.

8 Q. Is it fair for me to say that they've
9 gotten better since the incident happened?

10 A. They have.

11 Q. Just as a general principle?

12 A. Yes, they've gotten better.

13 Q. And you have no reason to suspect that
14 that won't continue?

15 A. Exactly.

16 Q. Okay. In reviewing your medical records,
17 it seems like there's a lot of imaging that's been
18 done, CTs, MRIs, that kind of thing; have you
19 requested any of that?

20 A. No.

21 Q. Okay. All that's been directed by your
22 physicians?

23 A. Yes.

24 Q. Okay. Have any of your physicians told
25 you exactly what's wrong, as far as any injury

1 process, or anything that's abnormal inside your
2 head?

3 A. I don't know. I just know I had a
4 complex concussion, that's what they called it, and
5 then midway through, maybe 2018, I rebound,
6 whatever that means.

7 Q. But had they told you there's any
8 specific area of your brain that's damaged or
9 anything like that?

10 A. No.

11 Q. Okay. Just that you had a concussion?

12 A. A complex.

13 Q. Complex?

14 A. Yes.

15 Q. What makes it complex or a concussion
16 complex?

17 A. I guest the duration. I'm not sure. I'm
18 not a medical provider, so I'm not going to...

19 Q. I'm not either. I'm just asking, you
20 know, in your experience with your providers,
21 what's your understanding of what's concussion
22 complex?

23 A. Well, because the duration and the
24 various, I guess, symptoms that I was having.

25 Q. Do you know what part of the light struck

1 your head?

2 A. What part of the light, no.

3 Q. Okay.

4 A. Say that again.

5 Q. What part of the light struck your head.

6 A. No.

7 Q. Okay. Do you know what part your head
8 was struck by the light?

9 A. That's what I thought you asked at first.
10 Yes, the right side.

11 Q. Front? Back?

12 A. On top.

13 Q. On top. So kind of right on the middle
14 on the right side?

15 A. Yeah.

16 Q. Other than your medical expenses and
17 seeing your clients in your job, are you claiming
18 any other expenses as a result of this incident?

19 Have you incurred any expenses?

20 A. Can you explain that?

21 Q. Sure. Have you paid anything out of
22 pocket; I mean, how else has this incident damaged
23 you?

24 What else have you had to do as a result
25 of this incident happening?

1 A. Other than my medical bills and my --
2 just really my medical bills, co-pays.

3 Q. Okay. When did you get married?

4 A. 2018, September.

5 Q. Okay. Tell me how this incident impacted
6 your marriage.

7 A. Ashley's supportive, you know. I don't
8 always remember things, but I swear -- I don't
9 always remember things apparently or I don't always
10 recall what was said or my short-term is kind of --
11 it's not clear. So that's a little difficult, I
12 will admit. And just our differences that worked
13 for us at one point doesn't anymore, as far as
14 travel, you know.

15 Q. How so?

16 A. Well, because I can't drive.

17 Q. Right.

18 A. And it doesn't help in the winter, so...
19 But she is a morning person, she can take it in the
20 morning, and I usually take it at night. That has
21 been difficult. But other than those, I guess it's
22 nothing else.

23 Q. Okay. Tell me about your memory trouble.

24 A. I'm just, I guess, forgetful or I don't
25 -- I don't always process as fast as usual.

1 Sometimes it's cloudy my thoughts, I guess.

2 Q. Has that memory trouble impacted your
3 ability to do any tasks.

4 A. Sometimes.

5 Q. Okay. How so?

6 A. Just not remembering. Shouldn't take me
7 days to do laundry or, you know, little tasks like
8 that. Errands.

9 Q. Other than driving at night, are there
10 any tasks or activities of daily living that you're
11 now unable to do?

12 A. Completely?

13 Q. Uh-huh.

14 A. Other than driving at night, that's where
15 we are now.

16 Yeah. I was trying to think.

17 Q. Right. So other than driving at night,
18 there are no tasks that you're unable to do; is
19 that fair?

20 A. More or less. I can't sit in the front
21 row of a live show because it would be too loud,
22 things of that nature. Noise is still occasionally
23 an issue, concert, things like that. Obviously I
24 haven't gone since COVID, but prior to I could not.

25 Q. Is that something you used to like to do?

1 A. Of course, yes.

2 Q. Have any of your medical providers told
3 you why your recovery may be so slow from a
4 concussion?

5 A. They don't know. Matters of the brain.
6 I guess it does what it wants.

7 Q. It's just unknown?

8 A. To my knowledge.

9 Q. Have any of them made a guess or
10 hypothesis?

11 A. No.

12 Q. Okay. What medical treatment do you plan
13 on continuing to seek or plan on seeking in the
14 future?

15 A. I just saw my neurologist, so did a med
16 check-up. I did -- we talked about -- I have three
17 medications and we took one off the table. So I no
18 longer am taking one of them. And we're just using
19 the two I spoke about earlier.

20 Q. When did you see your neurologist?

21 A. September or October. Recently.

22 Q. Okay. And was that Dr. Shukla?

23 A. No, that was Dr. Gordon.

24 Q. Dr. Gordon. Are you now no longer seeing
25 Dr. Shukla?

1 A. Yes, I'm not. I am now under the head
2 specialist.

3 Q. You're only seeing Dr. Gordon?

4 A. Yes.

5 Q. What other physicians are you seeing
6 because of this still?

7 A. I still go to the chiropractor, but more
8 of like a wellness. Like I will go to him
9 tomorrow, but...

10 Q. It's a good way to end the week.

11 A. Definitely. Because that is still the
12 most consistent treatment outside of my medication
13 now.

14 Q. Okay. Any other physicians that are
15 medical providers that you're regularly seeing?

16 A. No.

17 Q. Just your neurologist and chiropractor?

18 A. Yeah. I still have my speech therapist
19 who is helpful, but I do have the -- she gave me
20 worksheets to continue to practice with for my
21 cognitive recall.

22 Q. Tell me about your speech therapist.
23 When did you first start going to a speech
24 therapist? A year ago? Two years ago?

25 A. I've gone two different times, but once

1 right in the middle of COVID or right in the
2 beginning of COVID, I don't know, I went back to
3 her. And then I saw her prior to. I'm sure it's
4 in the records somewhere. I'm sorry, I...

5 Q. No, it's okay.

6 A. Okay.

7 Q. I'm not trying to trick you or trap you
8 or anything. I'm just trying to get some
9 information.

10 Why did you first start going to a speech
11 therapist?

12 A. Because I was having a difficult time
13 recalling. And I wasn't clear, and that's not who
14 I am. I'm very clear usually and able to
15 articulate what I need, and I just couldn't do
16 that. So I went to speech therapy, which was, I
17 believe, a recommendation from one of my doctors
18 anyway, so...

19 Q. How many times have you been to a speech
20 therapist, give or take?

21 A. I had a treatment plan twice a week
22 for...

23 Q. You said you had some worksheets you do
24 at home?

25 A. Yes, she provided me with, you know.

1 Q. Some materials?

2 A. Homework, yeah.

3 Q. Okay.

4 A. For the duration of whenever, so...

5 Q. You plan on going back to that speech
6 therapist?

7 A. I love her, but I'm not sure. She had
8 her own medical things going on.

9 Q. Okay.

10 A. But I'm not sure. I do think I see the
11 benefits of speech therapy.

12 Q. How has it benefited you?

13 A. So even though I'm not where I want to be
14 now, I can recall things better. I have a process
15 of writing things down to help me remember. So she
16 helped me with that too, which I do that with my
17 clients, so... But sometimes hard to do for
18 yourself what you do for others. And the
19 exercises, I don't know, they're phenomenal, what
20 can you recall in X amount of time. So just
21 repetition of that.

22 Q. Did you experience any physical
23 difficulties with speech or was it solely -- this
24 treatment solely related to your recalling?

25 A. My mental, yes.

1 Q. Okay. So no physical difficulties?

2 A. No.

3 Q. Gotcha.

4 A. With speech therapy?

5 Q. Had you ever been to speech therapy
6 before this incident?

7 A. No.

8 Q. If you could give me a percentage of how
9 far you would say your memory and recall's
10 recovered as a result of going to speech therapy or
11 just in general since this incident, what would
12 that be with 100 being your baseline, you know,
13 before this happened?

14 A. I would say I'm at least at a C plus.

15 Q. Okay.

16 A. But what keeps me from being the B or A,
17 I'm forgetful. I have a hard time with that
18 short-term. Long-term's pretty good.

19 Q. Quantitatively 75, 80 percent, somewhere
20 around there?

21 A. Like C plus.

22 Q. Okay.

23 A. So, yeah.

24 Q. We'll go with that.

25 A. Yeah.

1 Q. What about in general your symptoms just
2 totally, how would you grade your recovery?

3 A. Outside of just my mental or...

4 Q. Uh-huh.

5 A. From right after the incident to now?

6 Q. Uh-huh.

7 A. Overall I'm probably at a B, yeah.

8 Q. Okay. How would you have graded that at
9 your worst?

10 A. Oh, my worst being --

11 Q. The worst day symptom-wise you ever had
12 after this incident.

13 A. Oh, it's been bad. I could do nothing
14 kind of thing. I just couldn't function.

15 Q. When those days would happen, would you
16 lay down with the lights off?

17 A. Yeah. Try not to talk to people. I felt
18 like I had turrets. I was very impulsive, is the
19 word. Not very nice probably. But my neuro helped
20 me with that, so...

21 Q. Good. Good.

22 Okay. Well, I think that's about all I
23 have for you, Stefani. Let me double-check, make
24 sure I've hit everything I need to hit.

25 I'm going to put this very bluntly:

1 Whose fault do you think this was?

2 A. Well, I don't know, right. Whoever owned
3 the establishment. It was not my fault.

4 Q. Okay.

5 A. I was just sitting.

6 Q. Why do you think -- and I didn't mean to
7 imply this was your fault in any way -- why do you
8 think that whoever owned the establishment is
9 responsible for this?

10 A. 'Cause they're in charge of the
11 establishment, so...

12 Q. You don't know who put the light there,
13 do you?

14 A. I do not.

15 Q. All right. Have you understood all my
16 questions?

17 A. I believe so.

18 Q. Have you answered fully and truthfully to
19 the best of your ability?

20 A. I believe so.

21 Q. Is there anything you'd like to add or
22 change to any of your previous answers?

23 A. No.

24 Q. Okay. This is your opportunity. What do
25 you want to add?

1 What do you think I need to know?

2 A. I think you asked good questions. I
3 think I'm okay.

4 MR. NEINAST: Okay. Great. That's all I
5 have for you. Your attorney may have a few for you
6 as well to follow up. I appreciate your time.
7 Again, I'm sorry we had to meet under these
8 circumstance. I wish the best for you.

9 THE WITNESS: Thank you.

10 EXAMINATION

11 BY MR. LISKA:

12 Q. Stefani, did you tell us earlier that the
13 waitress told you where to sit after removing a
14 reserved sign from that seating area?

15 A. Yes.

16 Q. And is it your position that the light
17 that fell on your head was not properly secured; if
18 it had been, it would not have fallen on your head?

19 MR. NEINAST: Object to the form.

20 BY MR. LISKA:

21 Q. You can answer.

22 MR. NEINAST: You can answer.

23 THE WITNESS: Yes.

24 BY MR. LISKA:

25 Q. Because he asked you, "Do you know why

1 the light fell." And I think you said you didn't.
2 But you know it wasn't properly secured, I assume
3 that.

4 A. Well, I mean, yes.

5 Q. Okay.

6 A. If it was secured it wouldn't have fell.

7 Q. And then you talked about -- he asked if
8 you ever had headaches before. Like normal people
9 you had headaches at times in your life before this
10 incident?

11 A. Right. Yes.

12 Q. It wasn't headaches where you had to take
13 medication, lay down, turn off the lights and all
14 that?

15 A. Correct.

16 Q. I think he asked you too, Mr. Neinast, if
17 you had problems with vision before this incident.

18 Just to clarify: Did you wear contacts
19 or anything before this incident?

20 A. Yes.

21 Q. Okay. So no vision problems like you
22 have now that were caused by the incident, but you
23 had to have --

24 A. I did need corrective lenses.

25 Q. Okay. Thank you.

1 And you're talking about that you have
2 gotten somewhat better since this originally
3 happened to you?

4 A. Yes.

5 Q. And is that because of the adjustments in
6 your life that you've had to make, the continued
7 treatment that you received and your medications?

8 A. Yes.

9 MR. NEINAST: Object to form
10 BY MR. LISKA:

11 Q. Is it your position that without the
12 adjustments you've had to make in your life, your
13 continued treatment and your medications, you would
14 not be any better?

15 MR. NEINAST: Same objection.

16 THE WITNESS: Yes, I wouldn't be.

17 BY MR. LISKA:

18 Q. Okay. And without continuing those
19 adjustments in your life, and your medications and
20 your treatment, do you think you would regress and
21 go back to being the way you were?

22 MR. NEINAST: Same objection.

23 THE WITNESS: It's possible.

24 BY MR. LISKA:

25 Q. And is that why you plan to continue your

1 treatments and your medications?

2 A. I do.

3 Q. And you were asked is there anything you
4 just can't do anymore. The things that you can do,
5 is that because you're making adjustments in your
6 life, you're taking medications and you're treating
7 for these problems?

8 A. Yes. And I'm pushing through certain
9 things.

10 Q. Okay. You were asked about if you were
11 injured I think in that car accident that happened
12 way back whenever it was?

13 A. Yes.

14 Q. I think we put in your answers to
15 interrogatories that you were involved in a car
16 accident around 2010, and you did go to a
17 chiropractor for your back and neck.

18 A. Okay.

19 Q. Do you recall that? I just want to make
20 sure we're clear on the record.

21 A. Okay. Yes, but that's not the same
22 accident.

23 Q. Okay. You were asked about what problems
24 you've had since this light fell in this restaurant
25 and hit you on the head.

1 Were you confused after this happened to
2 you?

3 A. Oh, yes. I thought they were putting a
4 spotlight on me.

5 Q. Okay. And then did you have pain on your
6 scalp?

7 A. Yes, I did.

8 Q. Did you --

9 A. Top of my head.

10 Q. Did you have photosensitivity?

11 A. I did.

12 Q. Irritability?

13 A. I did.

14 Q. Concentration problems?

15 A. Yes.

16 Q. Balance problems?

17 A. I had some.

18 Q. Headaches?

19 A. Yes.

20 Q. Problems with concentration?

21 A. Yes.

22 Q. Problems with word finding?

23 A. Yes.

24 Q. And does that cause you frustration?

25 A. It does.

1 Q. Do you have memory impairment for tasks,
2 trying to do tasks?

3 A. Sometimes, yes.

4 Q. How about locating objects?

5 A. Yeah. That's the forgetfulness.

6 Q. Okay. And conversations? Forget
7 conversations you've had?

8 A. Sometimes.

9 Q. How about trying to remember routes?
10 Getting to places?

11 A. Newly places more than places I've gone,
12 you know, all my life.

13 Q. Do you have sensitivity to noise?

14 A. Yes.

15 Q. Do you have problems with making
16 decisions and slow thinking?

17 A. Occasionally.

18 Q. How about anxiety and depression?

19 A. No. More frustration.

20 Q. Did you have issues with nausea following
21 this for a while, do you recall that? Or how about
22 loss of appetite and fatigue?

23 A. I don't recall much nausea. Well, I
24 don't know.

25 MR. LISKA: Okay. That's fair enough.

1 You don't remember.

2 Okay. I think that's all we've got till
3 trial.

4 EXAMINATION

5 BY MR. NEINAST:

6 Q. I have a couple of follow up based on
7 that. I'll be brief.

8 This car accident you were in in 2010,
9 tell me about that.

10 A. I got hit in the back -- no, it was a hit
11 and run. Same thing.

12 Q. You were rear ended?

13 A. Yes. I was at a stoplight.

14 Q. Were you a driver?

15 A. Yes. It was just me in the car.

16 Q. Okay. Where did this accident happen?

17 A. Charlotte.

18 Q. Were you wearing your seat belt?

19 A. Yes.

20 Q. Air bags go off?

21 A. No.

22 Q. How fast was the other guy going, do you
23 know?

24 A. I don't. He was coming to a stoplight.

25 Q. Gotcha.

1 A. Yeah.

2 Q. And the driver ran off?

3 A. Slowly.

4 Q. Slowly?

5 A. He went to pull over. Like he looked at
6 me, I looked at him, we went to pull in the gas
7 station, he slowly went down this --

8 Q. He just kept going?

9 A. Slowly went down this dark path.

10 Q. Oh my gosh.

11 A. So I called 911, said I was going to go
12 follow, and they told me not to.

13 Q. That's probably smart.

14 A. Yeah.

15 Q. Tell me about your injuries in that
16 wreck.

17 A. Maybe some whiplash. That's why I went
18 to Anderson. I don't know if that's the name.

19 Q. You didn't sue anybody?

20 A. No.

21 Q. Okay.

22 A. Wait.

23 Q. Sorry.

24 A. No, because it was a hit and run, so I
25 didn't know.

1 Q. Did you go to a hospital?

2 A. No.

3 Q. Did you see a doctor other than your
4 chiropractor?

5 A. Not that I recall.

6 Q. Okay. Other than whiplash in your neck,
7 did you have any symptoms after that wreck?

8 A. No. And I didn't -- yeah, no, I went to
9 the chiropractor for some adjustments, and then I
10 went back and played volleyball.

11 Q. Okay. You're diagnosed with ADHD, right?

12 A. Am I?

13 Q. Uh-huh.

14 A. I didn't know.

15 Q. Okay. My understanding, based on your
16 medical records, is that you have been.

17 A. So they've diagnosed me.

18 Q. Is that a surprise to you?

19 A. Yeah.

20 Q. Do you take any medications for ADHD?

21 A. I do not. Unless my neuro medicines help
22 with that.

23 Q. Were you ever diagnosed with that as a
24 kid?

25 A. I was not.

1 Q. How about ADD?

2 A. No.

3 Q. Okay. Tell me about your experience
4 testing with Dr. Ewert. I don't know if I'm saying
5 that right. E-W-E-R-T.

6 A. He's a neuro --

7 Q. Psychologist, I believe.

8 A. Yeah. We communicated about, you know,
9 what happened with the symptoms I had. And then I
10 go through like a three, four-hour test with a
11 technician, I think that's what they're called. My
12 apologies if they're not. And they take me through
13 a series of tests for my mind. So I've seen him.

14 Q. Who sent you to Dr. Ewert?

15 A. One of my doctors. I can't recall right
16 now who.

17 Q. Okay. How much time have you spent with
18 Dr. Ewert in total? Three, four hours?

19 A. I've seen him twice, so maybe.

20 Q. Okay. Have you seen any medical bills
21 from his office, to your best recollection?

22 A. I don't know actually. I don't know if I
23 paid or went straight to my lawyers.

24 Q. Okay. Going back to the light, do you
25 have any personal knowledge of how that light was

1 secured to the pole or to the speaker prior to the
2 fall?

3 A. I do not.

4 Q. Do you have any knowledge of whether it
5 was secured?

6 A. I do not.

7 Q. Do you have any knowledge of how that
8 light was designed or built?

9 A. I do not.

10 Q. Okay. So just to clarify, because it
11 seemed like we were kind of going the other way in
12 that line of questioning: Do you have any idea of
13 why this light fell?

14 You told me no earlier on; is that still
15 your answer?

16 A. Right. So I don't know why it fell.

17 Q. Right.

18 A. Right. But obviously it wasn't secured
19 how it was supposed to be because it fell.

20 Q. But you don't know how it was secured?

21 A. I don't.

22 Q. Okay.

23 A. Or if it was secured.

24 Q. Right. The couch that you all sat in,
25 did you all say, "Hey, we want to go sit there at

1 the fashion show" or "see the fashion show" or how
2 did you come to sit at that couch?

3 A. Our waitress, she told us we could sit
4 there. She said -- 'cause they were reserved, so
5 nobody was sitting there -- so she said that the
6 management -- I feel like that's what she said,
7 "Management, they're not coming, you guys can sit
8 here." She picked up the reserved and...

9 Q. Did you or Ashley ask her to remove those
10 reserved signs?

11 A. No, we did not.

12 Q. Do you recall that waitress's name at
13 all?

14 A. No, but I provided the ticket of the
15 bill, so her name's on there.

16 Q. That was your server the whole night?

17 A. Yeah.

18 Q. She brought you your drinks before?

19 A. She did.

20 Q. Have you had any vision trouble other
21 than photosensitivity and not being able to drive
22 at night as a result of this incident?

23 A. Possibly.

24 Q. Okay. What do mean by "possibly"?

25 A. Because I can't recall what it is, but my

1 doctor -- I don't know, I had something and they
2 had to do extra testing. It's probably in one of
3 the records, so...

4 Q. Okay.

5 A. Spots. I don't know. I'm not sure, but
6 it was something that made me have to go back for
7 additional testing, so...

8 Q. Right.

9 A. So after the incident that's what...

10 Q. Do you know of anyone with knowledge of
11 how the light was secured?

12 A. No.

13 Q. Do you know of anyone with knowledge of
14 who put the light there?

15 A. No.

16 Q. Do you know of anyone with knowledge of
17 who owned that light?

18 A. No.

19 MR. NEINAST: Okay. All right. That's
20 all I have for you. Thank you.

21 THE WITNESS: Okay. Thanks.

22 (The Witness, after having been advised of
23 her right to read and sign this transcript, does not
24 waive that right.)

25 (The deposition concluded at 11:40 a.m.)

CERTIFICATE OF REPORTER

I, Sherri L. Puleo, Shorthand Reporter and
Notary Public for the State of North Carolina at
Large, do hereby certify that the foregoing
transcript is a true, accurate, and complete record.

I further certify that I am neither
related to nor counsel for any party to the cause
pending or interested in the events thereof.

Witness my hand, I have hereunto affixed
my official seal this 7th day of January, 2022, at
Mecklenburg County, North Carolina.



Sherri L. Puleo, Shorthand Reporter
My Commission expires
February 26, 2022

INDEX

	PAGE
EXAMINATION BY MR. NEINAST	3
	73
EXAMINATION BY MR. LISK	67
CERTIFICATE OF REPORTER	80

REQUESTED INFORMATION INDEX
(No Information Requested)

EXHIBITS

DEFENDANT	PAGE
EXHIBIT 1, INCIDENT REPORT (Retained by counsel)	30

Deposition of Ashley Haynes

1 STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS

2 COUNTY OF CHARLESTON THE NINTH JUDICIAL CIRCUIT

3 STEFANI EDDINS,

4 Plaintiff,

5 vs.

CASE NO. 2020CP1002481

6 TALL SAM I AM, LLC d/b/a TABBULI,

7 Defendant.

8
9
10 DEPOSITION OF: ASHLEY HAYNES

11 DATE: December 16, 2021

12 TIME: 11:45 a.m.

13 LOCATION: The Nye Law Group
402 West Trade Street
14 Charlotte, NC

15 TAKEN BY: Counsel for the Defendant

16 REPORTED BY: Sherri L. Puleo, Court Reporter
17
18
19
20
21
22
23
24
25

1 APPEARANCES OF COUNSEL:

2

3

ATTORNEYS FOR THE PLAINTIFF
STEFANI EDDINS:

4

5

GARY C. JOHNSON, P.S.C.
BY: MICHAEL E. LISKA
110 Caroline Avenue P.O. Box 231
Pikeville, KY 41502
866-606-4316
mliska@garycjohnson.com

6

7

8

9

ATTORNEYS FOR THE DEFENDANT
TALL SAM I AM, LLC d/b/a TABBULI:

10

11

SWEENEY, WINGATE & BARROW, P.A.
BY: WILLIAM A. NEINAST
1515 Lady Street
Columbia, SC 29201
803-256-2233
wan@swblaw.com

12

13

14

ALSO PRESENT:
STEFANI EDDINS

15

16

17

(INDEX AT REAR OF TRANSCRIPT)

18

19

20

21

22

23

24

25

* * * * *

ASHLEY HAYNES

being first duly sworn, testified as follows:

EXAMINATION

BY MR. NEINAST:

Q. Ashley, we met a minute ago off the record, but again, my name is Will Neinast. I'm an attorney out of Columbia. I represent a company called Tall Sam I Am, LLC. And specifically, it's a company that owns a restaurant called Tabbuli.

You understand I'm here today because of a lawsuit that your wife has brought stemming from an incident I believe you were a witness to, right?

A. Yes.

Q. Have you ever had your deposition taken before?

A. No.

Q. Okay. We have a couple of basic ground rules. If you have any questions about the rules themselves, you know, just let me know, I'll be happy to answer them. Also that holds true for any of my questions, if you don't understand anything or if I phrase something in a strange way, just let me know, I'll be glad to clarify for you.

You're doing a good job of this so far,

1 but our Court Reporter is taking down a written
2 record of everything that we say. So in everyday
3 conversation we'll shake our heads or say huh-uh or
4 uh-huh. That doesn't show up well in the record.
5 So to the extent that you can, please try to give
6 me verbal answers.

7 Does that make since?

8 A. Yes.

9 Q. Okay. And along the same lines, if you
10 answer any of my questions, I'm going to assume
11 that you've understood them. Okay?

12 A. Okay.

13 Q. Now that the deposition's began, you may
14 not have any conversations about the substance of
15 your testimony with an attorney. If you do have
16 any conversations like that, then I'm entitled to
17 ask questions about them. Okay?

18 A. Understood.

19 Q. If you need any breaks -- I don't
20 anticipate your deposition running particularly
21 long, but if you need any breaks just let me know,
22 I'll be happy to accommodate you. Okay?

23 A. Okay.

24 Q. You said you've never been deposed
25 before, right?

1 A. No.

2 Q. Who did you speak with or did you speak
3 with anyone to prepare for deposition?

4 A. I consulted Stefani's attorney. We were
5 driving in the car together, but that was it.

6 Q. Okay. And does Stefani's attorney
7 represent you with respect to this deposition?

8 A. No.

9 Q. What did you talk about with that
10 attorney?

11 A. Just what the deposition would be like
12 here today.

13 Q. Got it. Just sort of the process of the
14 thing?

15 A. Yes.

16 Q. Did you discuss the substance of your
17 testimony in any way?

18 A. Yes, we discussed -- 'cause I wrote a
19 statement about it, so we talked about that. I
20 believe I sent in the pictures, we discussed that.
21 But other than it was very brief conversation.

22 Q. Okay. Did you review any documents to
23 prepare for this deposition, other than that
24 statement and the picture?

25 A. No, just the statement and the picture.

1 Q. Okay. Can we get your full name for the
2 record?

3 A. Ashley, A-S-H-L-E-Y; Ishia, I-S-H-I-A;
4 Haynes, H-A-Y-N-E-S.

5 Q. That's a very interesting middle name.
6 What's the origin of that?

7 A. My mama made it up.

8 Q. Cool.

9 Have you ever gone by any other names in
10 the past?

11 A. No.

12 Q. Any nicknames?

13 A. Ash.

14 Q. What's your date of birth?

15 A. January 30, 1984.

16 Q. What is your current address?

17 A. 450 North Washington Street, Apartment
18 502, Falls Church, Virginia.

19 Q. So you live up in Virginia and Stefani
20 lives down here?

21 A. Yes.

22 Q. Why is that?

23 A. Well, we live together in Virginia, but
24 her home address is here. I work for the State
25 Department, United States Department of State, and

1 we travel. Every two to three years we move from
2 post to post. We were in California starting
3 August 2019, and around the same time period, but I
4 bumped it up a month. We moved to D.C. 'cause I
5 got reassigned to a new unit.

6 Q. Okay. So are you presently living in
7 D.C. or living in Charlotte?

8 A. I'm presently living in D.C.

9 Q. Okay. If you can, tell me what do you do
10 for the State?

11 A. I'm a special agent with the State
12 Department.

13 Q. Have you been posted abroad before?

14 A. Not yet.

15 Q. How long have you been with the State
16 Department?

17 A. November 2018.

18 Q. What did you do before that?

19 A. I was a state trooper in Georgia.

20 Q. What made you decide to want to leave?

21 A. More money, and the chance to travel
22 abroad.

23 Q. Sure. Where were you born?

24 A. I was born in Fort Belvoir, Virginia.

25 Q. Do you have any children?

1 A. No.

2 Q. Do you have any relatives over the age of
3 18 in South Carolina?

4 A. Relatives over the age of 18 in South
5 Carolina. I have an aunt who lives in Columbia,
6 cousins.

7 Q. What are their last names?

8 A. Allen.

9 Q. A-L-A-N?

10 A. A-L-L-E-N. My cousin was married, but I
11 believe she's reverted to her mother's last name,
12 her maiden name. I have a couple first cousins
13 once removed. I don't know all their last names.

14 Q. That's all right. The reason I ask is
15 not to pry. If this case goes to trial we don't
16 want to seat any relatives on the jury.

17 Have you ever served in the military?

18 A. No.

19 Q. Are you a member of any clubs, churches
20 or civil organizations?

21 A. No. Does FLEOA count? Federal Law
22 Enforcement Officers Associates.

23 Q. Sure.

24 A. And then AFSA, it's the Foreign Service
25 Organization that helps represent foreign service

1 officers if there's some kind of issue.

2 Q. What's your cell phone number?

3 A. 931- --

4 MR. LISKA: Let's not --

5 MR. NEINAST: Sorry. Let's go off the
6 record.

7 (Off-the-record conference.)

8 BY MR. NEINAST:

9 Q. Is that the same cell phone you would
10 have had in 2017?

11 A. I believe so, yeah.

12 Q. Who's your service provider?

13 A. Verizon.

14 Q. Tell me about your educational
15 background.

16 A. Attended undergraduate at Austin Peay
17 State University, got at bachelors in Public
18 Management with a concentration in Criminal
19 Justice. Graduated from there in 2006. And in
20 2010, I returned for my master's degree. My
21 master's degree is in Health and Human Performance.
22 I completed that degree in August 2011.

23 Q. You said Health and Human Performance?

24 A. Yes.

25 Q. What is Health and Human Performance? I

1 haven't heard of that field.

2 A. It teaches you about anatomy and
3 physiology. I was getting that degree because I
4 thought I wanted to go into coaching after playing
5 professional basketball. So you learn about the
6 human body, you learn how to teach, you do a little
7 bit psychological stuff. But that's mainly what it
8 is.

9 Q. Okay. Was that also from Austin Peay?

10 A. Yes.

11 Q. Okay. Is that online or did you go back
12 in person?

13 A. I went back in person. I was a graduate
14 assistant coach while getting my master's degree.

15 Q. Where'd you play basketball?

16 A. Same university, Austin Peay State
17 University.

18 Q. Where did you play professional
19 basketball?

20 A. Finland.

21 Q. How'd you like Finland?

22 A. I loved it.

23 Q. My wife's been a couple times. She loves
24 it. Little chilly in the winter?

25 A. Little chilly, a little dark.

1 Manageable.

2 Q. As a state trooper were you ever subject
3 to any official discipline or reprimand?

4 A. No.

5 Q. What about as a special agent with the
6 State Department?

7 A. No.

8 Q. I'm assuming you have security clearance?

9 A. Yes.

10 Q. Has that ever been revoked?

11 A. No.

12 Q. Have you ever filed a workers'
13 compensation claim?

14 A. Yes.

15 Q. Tell me about that.

16 A. I was arresting a subject on a traffic
17 stop and broke my right knuckle on my ring finger
18 and had to be out for about three months, and filed
19 a work comp claim on that.

20 Q. Ever sued anyone?

21 A. No.

22 Q. Ever been sued?

23 A. No.

24 Q. Have you ever been arrested or charged
25 with a crime?

1 A. Yes.

2 Q. Tell me about that.

3 A. I was arrested for DUI in Finland in
4 2008, I believe it was.

5 Q. Okay. What was the outcome of that case?

6 A. I was found guilty and had to pay a fine.

7 Q. Gotcha. Anything else?

8 A. No.

9 Q. Do you have -- surprised you said you
10 never been deposed before, right?

11 A. No, I mean, I testified in criminal
12 proceedings, administrative proceedings, but I've
13 never been deposed.

14 Q. Never a civil case?

15 A. Well, administrative for DUIs in Georgia,
16 you know, you have the administrative license
17 suspension hearing, but that's it. Never been
18 deposed in like any other civil proceedings.

19 Q. Gotcha. Okay.

20 Ashley, I'll tell you the same thing I
21 told Stefani, which is you understand why we're
22 here today, right?

23 A. Yes.

24 Q. The way I like to do this is in your own
25 words just let you tell me what you think I need to

1 know in as much or little detail as you want, and
2 then we'll go back and we'll drill down on some
3 details. But I want to hear your story, right.

4 So what did you experience on the day
5 that this happened?

6 A. Okay. So we were on vacation in
7 Charleston. Had never been to Charleston and we'd
8 been sightseeing that day. I don't remember
9 specifically what we saw, honestly, but we came
10 across Tabbuli. We wanted to get a drink, some
11 food. We went inside. We were told about the
12 fashion show that was going on that night. So we
13 decided, hey, this might be something interesting
14 to stay and see.

15 We were seated at a table closer to the
16 entrance, and the fashion show was closer to the
17 back of the venue. And we sat down. We were at
18 our table and we inquired if there were any seats
19 closer to the fashion show so we can actually see
20 it. We went up there, nothing was open. There's
21 some reserved seating, but since it was reserved we
22 didn't sit there. The waitress said it was for the
23 managers or employees and they weren't coming, and
24 so she directed us to sit there. And we watched
25 the fashion show.

1 Sometime during the fashion show, I know
2 now it's a light, but I didn't when it happened,
3 fell, hit Stefani in the head. It hit my shoulder,
4 but it didn't really hurt me. And I remember a guy
5 coming back to pick up whatever it was and put it
6 back on what I think was a speaker behind us,
7 'cause we were sitting on a couch. And there was a
8 pole behind us, and trying to see if Stefani was
9 okay, 'cause she didn't seem like she realized she
10 gotten hit in the head. She was saying she was
11 okay, but she was crying, and I don't see her cry
12 often, especially not when she gets hurt or
13 anything like that. So she was crying. She didn't
14 realize she was crying. I'm like, "You're not
15 okay, you're crying."

16 The manager -- I think I went and got a
17 waitress honestly or the manager, and was telling
18 them about it. The manager was really helpful, she
19 offered to get ice. Fill like an incident report.
20 We eventually moved from where we're seated for the
21 fashion show almost back to our original table
22 towards the same area in the front. The manager
23 got ice for Stef. She helped fill out the report.

24 I found an emergency spot by our hotel
25 and told the manager I would take Stefani there.

1 Stefani was in pain and just constant, like it got
2 worse. She was sitting at the table and she needed
3 to sign the report, so I got her to sign the
4 report. The manager made a copy.

5 Q. This is the next day?

6 A. No, this is the same day. This is that
7 evening.

8 Q. Okay.

9 A. We didn't talk to anybody else at the
10 show, just the manager and our waitress initially.
11 But we were filling out the report, got Stef to
12 sign it. And then we left and went to the
13 emergency room.

14 We got to the emergency room. On our way
15 in -- it was either on our way in or walking down
16 the hallway Stef like almost fell, like almost
17 passed out, fell. She was in a ton of pain. And
18 they sat us in the emergency room. She was super
19 cold. I remember it was cold. And the lights were
20 too bright so we had turned off the lights. She
21 had to cover her face. We were there for a few
22 hours. They took her away to perform a test. I
23 don't remember specifically what test it was.
24 After a few hours we left and went back to the
25 hotel. I think they gave her some medicine for the

1 pain. And that's really all I remember from the
2 incident.

3 Q. Okay. Have you been to any of her other
4 medical appointments with her?

5 A. No.

6 Q. Have you ever seen any of her medical
7 records?

8 A. I'm sure I've seen them, but I don't know
9 what they say.

10 Q. Okay. How would you have seen those
11 medical records?

12 A. She would have shown them to me.

13 Q. Do you know if she has copies of them?

14 A. I'm sure she does.

15 Q. Okay.

16 A. If not, she can get them from the doctor.

17 Q. Tell me more about how the waitress I
18 believe your word was "directed" you to sit on that
19 couch.

20 A. She was like there was nowhere else to
21 sit and the seats were open. She removed the
22 reserved signs and said, "You guys could sit
23 there."

24 Q. Did either of you ask her if you could
25 sit there?

1 A. No, because it was reserved.

2 Q. About how long were you at the restaurant
3 before the light fell?

4 A. I don't remember.

5 Q. Do you recall seeing the light at any
6 point before it fell?

7 A. No.

8 Q. Do you recall seeing if it was attached
9 to anything?

10 A. No.

11 Q. Do you know who put the light there?

12 A. No.

13 Q. Do you know who owned the light?

14 A. No.

15 Q. And just so we're clear: Were you
16 injured at all?

17 A. No; I mean, it hit me, but it didn't
18 hurt.

19 Q. No pain, nothing like that?

20 A. Not for me, no.

21 Q. You didn't seek any medical treatment?

22 A. No.

23 Q. Tell me about the rest of your all's
24 vacation in Charleston. What did you do?

25 A. I don't remember, it's been four years

1 and...

2 Q. I know I'm asking you to go way back.

3 A. Yeah. I don't remember. We stayed
4 through the time we booked at the hotel. I know
5 she -- I remember she was in bed a lot the next
6 day. We did go back to the restaurant. I don't
7 remember why, but we did go to the restaurant.

8 Q. Well, that's why I was asking if that was
9 the next day, because her testimony was that you
10 all went back to go talk to management and sign a
11 report; could that have happened the next day or
12 could that have happened the night before?

13 A. I thought it happened the night of, so...

14 Q. Okay. But you did go back to the
15 restaurant?

16 A. Yeah.

17 Q. Have you been back to Tabbuli since?

18 A. We haven't been back to Charleston since.

19 Q. Have you been to Tabbuli before?

20 A. No.

21 Q. First time in Charleston?

22 A. Yes.

23 Q. Well, I hope you all come back and have a
24 better time.

25 Tell me about your understanding of

1 Stefani's medical condition in the days and weeks
2 following the incident.

3 A. She --

4 Q. How did this affect her?

5 A. She had headaches, she had light
6 sensitivity, she went to see like a chiropractor, a
7 neuro doctor, she's been prescribed medicine, pain
8 medicine, a neuro med is what she normally calls
9 it, a muscle relaxer, she can't drive at night.

10 In the weeks and months following her
11 behavior was different. Her memory nowadays is --
12 her short-term memory like is frustrating. It used
13 to be a lot better than that. She had to refrain
14 from like playing volleyball, which she -- I mean,
15 she -- that's how we met, she played professional
16 volleyball, I played professional basketball. We
17 both continued to play after we retired. She had
18 to stop doing that for a while. She tried to go
19 back to work but it probably wasn't the best thing
20 to do, but she tried. And she still continues to
21 take medication for headaches. She still can't
22 drive at night, which it can be a little bit taxing
23 for us with me having to do all the night driving.
24 And that's pretty much it.

25 Q. When was the last time she played

1 volleyball? Is she back playing volleyball?

2 A. No. She went back, I don't remember if
3 it was a few months or a year after the incident,
4 and she went back, she hadn't played so her body
5 was not used to it and she tore her Achilles. She
6 tore her Achilles right around the time I graduated
7 from the Basic Special Agent Academy. And so she
8 hasn't been able to play volleyball since then.

9 Q. How many headaches would you say now she
10 has a month that require taking medication?

11 A. That she tells me about?

12 Q. Or that you know about?

13 A. At least 15 days out of the month.

14 Q. So you're saying every other day she has
15 to take medication for a headache?

16 A. Yeah. And from looking at the recent
17 history, yeah.

18 Q. Okay. How has her condition improved
19 since the light fell?

20 A. She is not as short tempered as she was
21 following the incident. She -- if her Achilles was
22 better she could play volleyball. She did show a
23 little bit of -- I forgot that she did show a
24 little bit of hesitancy playing volleyball 'cause a
25 ball is flying, sometimes it can hit you in the

1 head, but I think she's gotten past that. She
2 still gets like her words mixed up, but not as
3 often as she used to. Her short-term memory seems
4 to be getting a little bit worse though.

5 Q. Why do you think it may be getting worse?

6 A. Because we'll be literally having a
7 conversation and I'll repeat back to her what she
8 just said, and she will really believe that she
9 didn't say what I'm telling her she just said.

10 Q. Have you talked to any of her medical
11 providers?

12 A. I have not.

13 Q. Are you aware of any medical treatment
14 that she plans to seek in the future?

15 A. I know she wants to continue with the
16 chiro, start back up with the speech therapist and
17 whatever pain medication she needs for the
18 headaches.

19 Q. Anything else?

20 A. Not to my knowledge.

21 Q. Okay. How has this incident impacted
22 you?

23 A. It's been rough seeing her like this. We
24 met in 2008, she was very strong, she just knew
25 what she wanted, 'cause she knew what she was

1 doing. She was outgoing, very extroverted. And
2 she's trying to get back there, but it just seems
3 easier to go the other way, you know, because, you
4 know, having to lose the ability, the independence
5 of being able to drive whenever you need to drive
6 has been taking a toll on her.

7 The fact that she couldn't play
8 volleyball was a huge part of the definition of her
9 athleticism and who she was. Playing like at NC
10 State and then playing overseas in at least five
11 countries, if not six, that was a big part of her
12 identity, and she's lost that. And she's trying to
13 get that back. It's just hard because of
14 everything that's happened since that event has
15 just kept her away from doing those things that she
16 really loved to do.

17 And for me it's just hard seeing that in
18 her. And it's a little sad. From that aspect it's
19 a little frustrating in our marriage when we try to
20 communicate and she doesn't remember things. But I
21 see her still fighting to get back, so that's
22 exciting. But yeah, when I actually get a chance
23 to sit down and think about it, it hurts my heart
24 because I just want her to be able to do what she
25 wants to do and it doesn't seem like she can

1 sometimes.

2 Q. And Ashley, I'll tell you the same thing
3 I told Stefani, which is that you understand I have
4 a job to do, just as Stefani's lawyer has a job to
5 do, you know, we may differ on the facts or
6 questions of law in the case, but I want you to
7 know that genuinely I'm sorry this happened to you
8 guys. You didn't ask for it to happen and I'm
9 sorry it did.

10 A. Thank you.

11 Q. And I hope both you and she continue to
12 get better.

13 A. Thank you.

14 Q. I do.

15 Have you had any conversations with
16 anyone from Tabbuli or Tall Sam I Am after the
17 incident?

18 A. I don't think I have. I know like right
19 after I feel like she was able to talk to someone.
20 I don't remember if I actually spoke to anyone.

21 Q. Did you overhear any of that
22 conversation?

23 A. I'm sure Stef's told me about it, but I
24 don't.

25 Q. Why did you give a statement? Anyone ask

1 you to give a statement?

2 A. I think so. She got a lawyer and I was a
3 trooper at the time, so I can't remember if I was
4 like I should probably give a statement or they
5 asked me to give a statement, but it just made
6 sense.

7 Q. Did you talk about the substance of that
8 statement with anyone?

9 A. With Stefani.

10 Q. Were you married at the time?

11 A. No, no, we were just engaged. We didn't
12 get married till 2018.

13 Q. Have you personally incurred any expenses
14 as a result of this happening to Stefani?

15 A. Not that I kept track of.

16 Q. Okay. Any that you haven't kept track
17 of? Any that comes to mind?

18 A. I mean, we're married, so like my money
19 is her money, her money's my money.

20 Q. I gotcha. Did anyone at the scene make
21 any comments as to a belief as to why the light
22 fell?

23 A. No.

24 Q. Do you have any personal knowledge as to
25 why the light fell?

1 A. No.

2 Q. Do you know the identity of any witnesses
3 other than Stefani?

4 A. The manager of -- her name's in my
5 statement. I don't know if she actually saw what
6 happened, but she helped us afterwards.

7 Q. Gotcha.

8 A. And I mean, there were people there, like
9 the guy jumped up and immediately picked it up and
10 put it back above where we were sitting, but I
11 didn't catch his name or nothing. I was worried
12 about making sure Stef was okay.

13 Q. So is it fair for me to say the only
14 individuals who were present that night, names you
15 know were Stefani and this manager?

16 A. Yeah.

17 Q. Can you estimate for me how high the
18 light fell from?

19 A. I don't know where it was exactly. I
20 just know where it was put back from.

21 Q. Okay.

22 A. So I don't know where -- how far up it
23 was when it fell, I just know where the guy put it
24 back to.

25 Q. From where it was put back to where

1 Stefani's head would have been, can you estimate
2 how great that difference is for me?

3 A. Four to six feet.

4 Q. Okay. Did you make any statements,
5 verbal statements to anyone at Tabbuli that night?
6 Did you talk to anyone at Tabbuli that night?

7 A. The waitress, the manager, Stef.

8 Q. Tell me about your conversation with the
9 manager.

10 A. It was just after the event happened, we
11 were -- she was super nice. It was we were really
12 cordial, just really trying to get the report done,
13 maybe make sure Stef was okay. The conversation
14 was friendly.

15 Q. Did anyone from Tabbuli or Tall Sam I Am
16 ever make a statement to you to the effect of
17 paying for medical expenses?

18 A. I believe the manager did that night.

19 Q. Okay. What did the manager say about
20 that?

21 A. That they would cover the medical
22 expenses, and I'm paraphrasing because I don't
23 remember the exact wording. She did talk about
24 that we were trying to get everything sorted out.

25 Q. Stefani's testimony was that somebody

1 called her later and said something to the effect
2 of that "we'll cover things," I believe that was
3 her paraphrase.

4 A. Okay.

5 Q. Now, is it your testimony that a manager
6 specifically offered to pay medical expenses?

7 A. I believe that was discussed, 'cause she
8 knew we were going to the emergency room.

9 Q. Okay. And did she refer to any specific
10 providers or any specific treatment or any specific
11 expenses?

12 A. No, because we only talked about the
13 emergency. I don't know if it was like an ER
14 hospital, but it was like a 24-hour facility that
15 was right next to our hotel, so I knew I was going
16 to take Stefani there.

17 Q. How did you know this person worked for
18 Tabbuli?

19 A. She was able to go into the back office.
20 Looked like it was an office behind the bar. It
21 was an office behind the bar. She offered to like
22 get ice for Stefani, which I don't think a customer
23 would be able to do that. I don't remember exactly
24 what she was wearing. She was identified as the
25 manager. And I can't remember if I went and got

1 the waitress and she went and got the manager. I
2 just remember she came over, and I was like, this
3 must be a manager.

4 Q. Okay. Did this person indicate as to why
5 they offered to pay any medical expenses?

6 A. No.

7 Q. Okay. And at that point Stefani had not
8 yet obtained any medical treatment, had she?

9 A. No, because we were still at the
10 restaurant. We hadn't left yet.

11 Q. Right. When did she next seek medical
12 treatment?

13 A. When she got back to Charlotte. Sometime
14 after she got back to Charlotte.

15 Q. Tell me about the motor vehicle collision
16 she was involved in in 2010.

17 A. I don't know much about that except for
18 what Stef has said.

19 Q. What did she say?

20 A. It was in like the center turn lane and
21 it was with another driver. I believe it was a
22 female. They had to go to court and both were
23 found liable.

24 Q. Okay. My understanding is that she's
25 actually been involved in two prior motor vehicle

1 wrecks: One in college, maybe 2004, give or take,
2 and one more recent that was a hit and run; do you
3 know anything about that one?

4 A. Hit and run. She's probably told me
5 about it. I don't specifically recall all of the
6 motor vehicle collisions she's been in, especially
7 with all of the motor vehicle collisions I've
8 worked as a trooper.

9 Q. Okay. Do you recall her being in any
10 other motor vehicle collisions?

11 A. No, not since I've known her.

12 Q. Do you recall her being injured in either
13 of those wrecks?

14 A. I don't think so.

15 Q. About how many times a year would she go
16 to a chiropractor before the light fell on her
17 head?

18 A. I don't know.

19 Q. You never talked about that with her?

20 A. No.

21 Q. She never told you, I'm going to a
22 chiropractor?

23 A. No. She might be saying she's going to
24 the doctor, but no.

25 Q. Okay. She never --

1 A. She lived in Charlotte until 2018, I
2 lived in Georgia until we got this job, so we
3 hadn't really talked about doctors' appointments
4 being in a long-distance relationship.

5 Q. Do you know anything about the amount of
6 medical expenses that Stefani's claiming as a
7 result of this incident?

8 A. I do not know the number.

9 Q. Strange question, but: How does she
10 sleep?

11 A. On her stomach, which is strange in
12 itself.

13 Q. I agree, but quality-wise -- that was
14 poorly phrased. I'm sorry. Quality-wise, how does
15 she sleep? Does she wake up a lot? Have trouble
16 falling asleep?

17 A. She does have trouble falling asleep.
18 She does wake up two, three times a night.

19 Q. Okay. Back to this person, the manager
20 that we discussed earlier: Do you have any
21 personal knowledge of whether this person was
22 authorized to extend any offer to pay for medical
23 expenses by the company?

24 A. I just know she was the manager.

25 Q. But you don't know if that was within her

1 scope of authority or not?

2 A. I have no idea.

3 Q. Does Stefani's injuries prevent her from
4 doing any tasks around the home?

5 A. No.

6 Q. What physical symptoms that she was
7 experiencing prevented her from playing volleyball
8 prior to tearing her Achilles?

9 A. She did have some dizziness, headaches,
10 fear of the ball flying at her head, and I think
11 the doctors told her, you know --

12 Q. Don't play volleyball?

13 A. Right.

14 Q. Do you know if that was said to her
15 specifically?

16 A. No, just some general conversation.

17 Q. Okay.

18 A. She was eventually told she had a
19 concussion, and you don't play sports when you have
20 a concussion.

21 Q. Do you know which part of the light
22 struck her?

23 A. No.

24 Q. Did you see the light strike her at all?

25 A. I saw something fall and hit her in the

1 head, and then felt it bounce off of my shoulder.
2 Didn't know it was a light at the time.

3 Q. Gotcha. And you hadn't noticed that
4 light at all prior to it falling?

5 A. No. We were looking at the stage. We
6 weren't really looking up to see if things were
7 where they should be.

8 Q. Was there music there that night?

9 A. Yeah.

10 Q. Was there a deejay?

11 A. I think so.

12 Q. Do you know what the deejay looked like
13 at all?

14 A. No. I don't even remember the set up.

15 Q. Front of the restaurant? Back of the
16 restaurant?

17 A. The fashion show was at the back of the
18 restaurant.

19 Q. Okay.

20 A. I don't remember where the deejay was.

21 Q. I know I'm asking you to go back a couple
22 years now. I get it.

23 A. Yeah. I mean, I don't really try to pay
24 attention to where the deejay is, just go and enjoy
25 the show as a guest.

1 Q. Sure. Has Stefani -- other than the ways
2 we've already discussed, has Stefani mentioned any
3 other ways in which this incident has impacted her
4 life?

5 A. Trying to run through everything we
6 discussed. Not that I can think of.

7 Q. Okay. Did you go to any other
8 restaurants while you were staying in Charleston
9 after this happened?

10 A. After?

11 Q. Uh-huh.

12 A. Probably. We like to go and eat, but I
13 don't remember specifically.

14 Q. Okay. All right. Well, I think that's
15 all I have for you, Ashley. I told you we'd be
16 quick, and I hope we were comparatively.

17 Have you understood all the questions
18 I've asked you today?

19 A. Yes.

20 Q. Have you answered fully and truthfully to
21 the best of your ability?

22 A. Yes.

23 Q. Is there any reason you need to change or
24 add to any of your answers?

25 A. No.

1 Q. Okay. And this is your opportunity, is
2 there anything you'd like to add in general?
3 Anything you think I need to know?

4 A. No, nothing more than we've already
5 discussed.

6 MR. NEINAST: Okay. Great. All right.
7 That's all I have for you. Mike may have a few
8 questions for you, but that's it. Thank you.
9 Appreciate your time.

10 THE WITNESS: Thanks.

11 EXAMINATION

12 BY MR. LISKA:

13 Q. Ashley, do you recall if that managers
14 name was Cait Chapin?

15 A. Sounds familiar.

16 Q. That manager -- after that person put
17 that light back up above your all's head, did the
18 manager take that light back down?

19 A. That's what -- yeah, that's what I've
20 been told.

21 Q. Did you actually see that?

22 A. I don't remember.

23 Q. Okay. Stefani said that earlier today, I
24 was wondering if you saw it too.

25 A. I was worried about Stef, and that's like

1 what's most prevalent in my memory is making sure
2 that was she okay.

3 Q. Okay. You were asked about, you know,
4 how'd the light fall and what caused it to fall.
5 And Stefani had mentioned today that obviously it
6 wasn't secure, and how it was supposed to be or
7 else it wouldn't have fallen; do you agree with
8 that?

9 A. Yes.

10 MR. NEINAST: Object to the form.

11 BY MR. LISKA:

12 Q. Do you even know if there was a deejay
13 there that night?

14 A. I remember like because it was -- it was
15 a fashion show, there was someone talking. Was it
16 a deejay? I don't know, but there was music, and
17 there was someone talking on the microphone.

18 MR. LISKA: Okay. That's all we got for
19 now till trial.

20 EXAMINATION

21 BY MR. NEINAST:

22 Q. I got a couple quick follow ups based on
23 that.

24 Ashley, do you have any idea how that
25 light was supposed to be secured or whether it was

1 supposed to be secured?

2 A. I'm not a member of building and codes,
3 so...

4 Q. Right. I mean, have you ever -

5 A. I mean, I assume that when I go somewhere
6 and there's a light or speaker or something that is
7 above somebody's head it should be secured.

8 Q. But you have no knowledge of a process or
9 procedure by which that's supposed to be done?

10 A. No.

11 Q. Have you ever personally installed
12 lighting?

13 A. No.

14 Q. You said there was music playing and
15 someone talking, was that person talking into a
16 microphone, I'm guessing?

17 A. I guess so, 'cause we could hear them and
18 they were like -- it's a fashion show.

19 Q. Right. Kind of running festivities, I
20 guess you would say?

21 A. I feel like they were just talking about
22 the fashion show, like what people were wearing.

23 Q. Kind of announcing things?

24 A. Yeah, like they do at fashion shows.

25 MR. NEINAST: All right. That's all I

1 have.

2 EXAMINATION

3 BY MR. LISKA:

4 Q. Have you seen Stefani's photosensitivity?

5 A. Yeah. She can't -- especially when we're
6 driving at night if it's completely dark outside,
7 even if she's in the passenger seat she has to have
8 a special pair of glasses that they gave her to try
9 to combat the lights. She's not good with flashes.
10 Even when the sun's going down.

11 Like we were driving here yesterday and
12 the sun was setting, so it's getting closer to the
13 horizon, and we had to switch out because she
14 couldn't take that anymore. She had to get in the
15 passenger seat and block out that light as much as
16 possible with the visor and her sunglasses.

17 Q. How about irritability?

18 A. Yeah.

19 Q. You've seen that yourself?

20 A. She irritable.

21 Q. You've seen concentration problems?

22 A. Yes.

23 Q. You've talked about the headaches. How
24 about balance problems?

25 A. Her balance has gotten better. She

1 doesn't bump into things.

2 Q. Was she doing that for a while after this
3 happened to her, having balance problems?

4 A. I can't say that I saw that because she
5 was in Charlotte and I was in Georgia.

6 Q. Okay.

7 A. We would see each other on the weekends.
8 When we would see each other on the weekends we
9 weren't doing like a lot of walking around or
10 things like that. We either be at the house or
11 going out to eat somewhere. That was it. We
12 didn't do a lot of outside.

13 Q. Have you seen her have problems finding
14 words?

15 A. Oh yeah. Oh yeah. Finding words,
16 mispronouncing words, mixing up words, reading
17 words backwards.

18 Q. How about sensitivity to noise?

19 A. Oh yeah, she -- we have debates over TV
20 volume all the time. I'm thinking it's not that
21 loud, she's like "it's loud." And she use
22 everything. We had a dog Dax who's a barker,
23 probably my fault, but she would hate when he would
24 start barking, you know, like ring the doorbell,
25 strange noise he would bark, and it would drive her

1 nuts.

2 MR. LISKA: I think that's all we got.

3 We'll see.

4 MR. NEINAST: No, we're done.

5 (The Witness, after having been advised of
6 her right to read and sign this transcript, does not
7 waive that right.)

8 (The deposition concluded at 12:30 p.m.)

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATE OF REPORTER

I, Sherri L. Puleo, Shorthand Reporter and
Notary Public for the State of North Carolina at
Large, do hereby certify that the foregoing
transcript is a true, accurate, and complete record.

I further certify that I am neither
related to nor counsel for any party to the cause
pending or interested in the events thereof.

Witness my hand, I have hereunto affixed
my official seal this 7th day of January, 2022, at
Mecklenburg County, North Carolina.



Sherri L. Puleo, Shorthand Reporter
My Commission expires
February 26, 2022

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

PAGE

EXAMINATION BY MR. NEINAST

3

35

EXAMINATION BY MR. LISKA

34

37

CERTIFICATE OF REPORTER

40

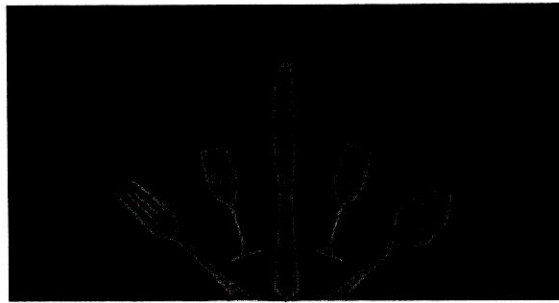
REQUESTED INFORMATION INDEX

(No Information Requested)

EXHIBITS

(No Exhibits Proffered)

Incident Report



ACCIDENT/INCIDENT REPORT FORM

Date of incident: 7/20/17 Time: 10:20 AM/PM (PM)

Name of injured person: Stefani Eddins

Address: 4819 Palustris Ct. Charlotte, NC 28269

Phone Number(s): _____

Date of birth: 10-26-1943 Male _____ Female ✓

Who were the party involved?

Type of incident: Light fell on her head

Details of incident: The light fixture above the speaker fell onto Ms. Eddins head

Injury requires physician/hospital visit? Yes X No _____

Name of physician/hospital: Candle Point Emergency

Address: 5249 Emmett L. Davis Jr. Dr., North Charleston, 29418

Physician/hospital phone number: 843-746-2400

Signature of injured party X Stefani Eddins

07/20/2017

Date

*No medical attention was desired and/or required.

Signature of injured party

Date

Photograph of light

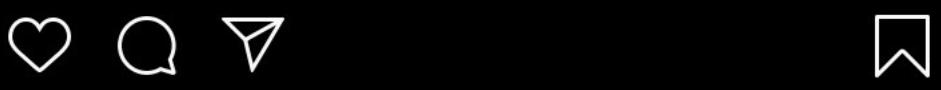


SWB 000066

Photograph of scene



Tabbuli marketing



Liked by  pouncecatcafe and 28 others

tabbuli ❤️ Our Weekly Event Calendar is here! 🌿

FINALLY! We have so many ways to... more

View 1 comment

July 17, 2017

More from White Haute Nights at Tabbuli



See All Events

23 >

**White Haute Nights at Tabbuli** added an event.August 15, 2017 at 2:53 PM · 

THU, AUG 17, 2017

White Haute Nights

Tabbuli Grill - Mediterranean & American

1 person interested

1 Like · 1 Comment



White Haute Nights at Tabbuli is on Facebook. To connect with White Haute Nights at Tabbuli, log in or create an account.

Log In

or

Create New Account

Transcript of Record

1 THE COURT: Correct.

2 MR. NEINAST: But may not refuse to disclose any
3 relevant fact within his knowledge merely because he
4 incorporated a statement with just fact and communication
5 with the attorney. The facts are fine. I have no issue
6 with my witness testifying to facts. What I have an issue
7 with is questions like did you ask your attorney that. What
8 did you ask your attorney? That's the problem here and
9 that's where I see crossing the line from, okay. What
10 facts does the corporation know? What facts does the
11 30(b)(6) deponent know and if those facts are deficient
12 then fine. That's fair grounds for cross examination. I
13 have no issue with that. Turnabout is fair play, Judge.

14 The problem is when we get into exactly how those
15 facts were communicated to the witness. That's my problem
16 here.

17 THE COURT: All right. Do this. Submit your
18 request to admit to him. If you have any objections to
19 them then you send them to me, I will take an in camera
20 review and I will make a determination as to whether you
21 can answer them or not in the manner in which they are
22 asked.

23 MR. NEINAST: Okay.

24 THE COURT: Thank you. Y'all have a great day.

25 MR. NEINAST: We have two others. We have a

1 motion for Summary Judgment and a Motion to exclude both
2 plaintiff's experts and they kind of dovetail with each
3 other, Your Honor, so I'm just going to take them up
4 collectively.

5 THE COURT: Okay.

6 MR. NEINAST: So basically just by way of a little
7 factual background here. What we are dealing with here is
8 a light that no one knows any specifics about. There's
9 kind of just an unfortunate --- facts in this case. So we
10 don't have the manufacture of the light. We don't have the
11 exact light itself. There's no testimony at all in the
12 record about how it was secured or whether it was even
13 secured to the pole prior to it falling. So what plaintiff
14 has done is retained these two experts to try to muddy the
15 waters in essences. The first expert he's got is Mr. James
16 Riverbark and with all due respect to Mr. Riverbark I like
17 him, he's a nice guy. He's never worked as a expert
18 witness before. He owes a couple of restaurants up around
19 Fort Mill and Rock Hill but he's not familiar with the
20 industry standard in Charleston and basically what he said,
21 Your Honor, is I don't know what a reasonable degree of
22 professional certainty is but I think maybe there's some
23 red flags in their training. Some unusual things that have
24 gone on here but what he couldn't say was how the light
25 fell. What he couldn't say is here is how a problem with

1 your training or your policies or your procedures is
2 casually related to this light falling off this speaker. So
3 that just didn't happen. So the problem there is number
4 one he's not qualified. Owning a restaurant doesn't
5 qualify you to talk about temporary lighting fixtures and
6 how they should or should not be installed. It may qualify
7 you to say, hey, this is what I do in my restaurant. And
8 if you have additional experience in other restaurants
9 let's say, in Charleston, maybe that qualifies you to
10 testify to the industry standard in Charleston. But just
11 because he owns restaurants up in Fort Mill, Rock Hill
12 doesn't qualify him to testify as to what a restaurant in
13 Charleston should do or what a DJ in Charleston should do
14 as far as installing their lighting fixtures. And he even
15 said in his deposition was what I would do is I would look
16 out for anything obvious. I would train my staff to look
17 out for anything obvious. And if they saw something, what I
18 would expect them to do is talk to the DJ, as an
19 independent contractor, and say, hey, here's something that
20 may be unsafe I expect you to remedy it, right. That's
21 exactly what our 30(b)(6) deponent and our manager
22 testified to, that they do and that they would do. So the
23 only question with Mr. Riverbark then becomes was there
24 anything sufficiently obvious or dangerous about this light
25 placed on top of a speaker that in his opinion, in his

1 experience, would have rendered it so obviously dangerous
2 that he would expect his staff to say something about it to
3 the independent contractor, because he said, I don't touch
4 DJ stuff. I don't touch band stuff. It's their equipment,
5 it's their material. And he couldn't do that. He has no
6 lighting experience. He's not an engineer. He's not an
7 architect. He has really no pertinent experience to the
8 facts of this case. Working in a restaurant does not
9 inherently make you an expert on temporary lighting, Your
10 Honor. It's really that simple.

11 The other issue here with plaintiff's expert,
12 with regard to his second expert, Mr. Martin Williams, he
13 is a forensic architect and ordinarily, and I've seen Mr.
14 Williams come up in construction cases in the past and
15 ordinarily what forensic architects will do in cases as I'm
16 sure, Your Honor knows, is they will say okay, here's the
17 billing code, here's how it was violated. Well, that's not
18 what happened in this case. What happened is Mr. Williams
19 threw out a bunch of building codes and then in his
20 deposition he brought all of them back. Said, well, we've
21 got the IPMC, The International Property Managers Code.
22 What violations are the IPMC are there? Well, I don't
23 really know. Okay, was the IPMC binding in Charleston
24 County in 2017. I don't know. I don't know about that.
25 Okay. Well, what violations of the International Building

1 Code are you alleging happened? Well, you know, I can't
2 really point to a specific section. He goes on about a
3 page and a half. I believe it's in the memo. I can't
4 really point to a specific section but, you know, some
5 codes have nebulous elements to me and maybe there is
6 something there, I don't know. Okay. What about the
7 National Fire Protection Code? Well, here's this code
8 section that I found that deals with equipment not rated
9 for outdoor use and will need to be supervised. Okay.
10 Well, was this equipment rated for outdoor use? I don't
11 know. So that's problem number one. We have no applicable
12 code section. We have no applicable regulation. We have no
13 applicable statute that was violated. It doesn't take a
14 jury or it doesn't take an expert, rather, to point to this
15 and argue or determine that it was a dangerous condition.
16 We don't agree that it was but we recognize that there
17 could be some argument on the other side but it just
18 doesn't have to come from an expert. So that opinion can't
19 assist the trier of fact because there is no opinion.
20 There is no opinion stating here are the binding applicable
21 code sections that were violated. And the other issue
22 there is that he cites, and we discussed this in greater
23 detail in the memorandum, he cites a couple of sources that
24 are just completely out of the blue. One of them is a
25 thirty year old industry newsletter basically for theaters

1 in the United Kingdom. It doesn't deal with the United
2 States. It doesn't deal with our electrical codes, our
3 fire codes, our building codes, any of that. He couldn't
4 even say it was scholarly. What do you know about the
5 backgrounds of the authors of this? I don't know anything
6 about them. Are they safety professionals? I don't know.
7 Is this computer viewed? I don't have any idea. It's not a
8 code. It's just a secondary source pulled from some
9 library or repository of secondary sources that he
10 apparently has. But it has no providence and it has no
11 applicability of this case.

12 The final issue of Mr. Williams is really two-
13 fold and it deals with his methodology. The first problem
14 with his methodology is that there isn't any. All he said,
15 Judge, is this would not have fallen but for someone
16 securing it, which is a totally fair statement and may be
17 true, who knows. But that's not the question in this case.
18 That's not the question of causation. The question is what
19 caused this light to fall. We can discuss preventive
20 measures all day long. You know in a car accident case we
21 could say every car should have roll cage. Every car
22 should have thirty air bags. None of us should never drive
23 more than thirty miles an hour. Right? We could have
24 welded this light to the pole. The DJ could have welded
25 this light to the pole. They could have bolted it down.

1 They could have put a cage around it. They could have
2 taken a million different preventive measures. But the
3 question is what is reasonable under the circumstances and
4 we would argue that bolting a light to a pole for a couple
5 of hours at a fashion show when you are just going to, you
6 know, take it home at the end of the night anyway isn't
7 reasonable. Placing it on a stationary surface is.

8 Number Two, what he said is not, this is what I
9 like though. He's saying, only here's a list of preventive
10 measures that could have prevented the light from falling,
11 who knows. He admitted I have no idea why the light fell.
12 His answer when asked specifically why, well gravity exist.
13 That's not enough. This is no different than the classic
14 fact pattern of a barrel falling out of a second story
15 window. Unless the plaintiff can prove, hey, here is why
16 the light fell, then he can't survive summary judgment.
17 That's simple premises liability law, Your Honor. They
18 have to prove that a dangerous or defective condition of
19 which he knew or should have known occurred proximately
20 causing the plaintiff's damages. They haven't done that.
21 Because the condition is not dangerous or defective. Their
22 experts haven't proven that. There's no proof of that.
23 It's a stationary object on top of another stationary
24 object.

25 There's no proof that music was playing, how loud

1 it was, how long the light was there, how it was secured,
2 if it was secured. It very well could have been secured
3 properly. The experts don't know. And Mr. Williams tries
4 to get around that by saying, well, here's the manufactures
5 data sheets that I found for lights. They look pretty
6 similar. I don't know if it's the same one but, you know,
7 maybe it's a similar model and here's a list of accessories
8 that you can purchase for those lights. They include
9 chains, they include guards and all this stuff. Well,
10 which ones of those were included with this light? I don't
11 know. What instructions were included with this light? I
12 don't know. You don't even know what kind of light this
13 was, do you? No, he doesn't.

14 So, Judge, it's a very different case. If we get
15 a manual in from a manufacturer or there's a building code
16 that says you have to chain this thing whatever you put it
17 on top of. That's not the case here. There's no evidence
18 of that whatsoever. And the other issue, as far as Mr.
19 Williams methodology goes, is during plaintiff's expert
20 disclosures they discussed the fact that he's performed
21 this photogrammetry analysis of the scene in question based
22 on a couple of photographs. Okay. Sure. I mean, we see
23 that all the time. I mean experts are retained to that all
24 the time. No big deal. The way that works is the experts
25 look at these photographs and they use computer software to

1 determine based on relative heights on something they can
2 measure and the angle of the photograph, dimensions of
3 various items in the photograph. The problem is that those
4 measurements are just not in the case. There's no other way
5 to say it. We asked him about it in his deposition, he
6 said, well, I didn't write anything down. My measurements
7 are all in the disclosures. There aren't any measurements
8 about the photographs and disclosures. He doesn't know how
9 tall any of the objects in the photographs are. He doesn't
10 know how tall the couch the plaintiff and her fiancée was
11 sitting on is. He doesn't know how tall anyone in the
12 photographs is. So, I wouldn't necessarily have an issue
13 if he had said, look here are all my calculations, here's
14 the software print out, here's the number that I crunched
15 to be able to arrive to this conclusion. That's a
16 methodology. That's something we can review. That's
17 something, you know, maybe we'll have a discussion about
18 later on down the road but it's supported by actual data.
19 Him just saying, well, I looked at the photograph and it
20 looks like that pole is maybe 8 feet off the ground, I
21 don't know. That's pure visual estimation and it doesn't
22 pass. A jury can look at that and say yes it looks about
23 eight feet off the ground, who knows. But an expert, to
24 support an opinion about that, a scientific opinion about
25 that, has to provide the data. He's got to show his work

1 and he hasn't done that.

2 So, Judge, with respect to Mr. Williams, at the
3 absolute least we would ask for instructions lending his
4 opinions and excluding any photogrammetry analysis that's
5 been done because it clearly hasn't been done, he's just
6 guesstimated distances.

7 So, if I can just quickly address a couple of
8 quick more points on motion for summary judgment, Your
9 Honor. There's no evidence of a dangerous or defective
10 condition. There's no evidence of proximate cause here
11 whatsoever. In plaintiff's counsel's response to the
12 motion for summary judgment he raises a issue of spoliation
13 and we've kind of hinted at that already with some of that
14 deposition questioning of Mr. Diehl, the corporate
15 representative, for the defendant. And the issue here
16 appears to be that we've produced video. We've produced
17 the video clip of the light falling and hitting the
18 plaintiff. No one in this case is debating that that
19 happened. The problem, per plaintiff's counsel is,
20 apparently that we've only produced about twenty seconds of
21 it. And, to be clear, that production and that retrieval
22 of the video appears to have happened well before any
23 notice of litigation. Well before any preservation letter.
24 Well before any spoliation letter. Well before any notice
25 that this was going to go to court.

1 So, it's completely reasonable, number one, for
2 my client to say, hey, it looks like a light fell and hit
3 somebody's head, can we pull a video of that? Sure. We
4 pull a video of the light hitting her head. Here you go.
5 That's not spoliation. That's not obstruction of evidence.
6 And that's the second prong here is there is absolutely no
7 evidence of spoliation period. I mean period. There's no
8 evidence that we refused to produce a longer video. There's
9 no evidence that a longer video existed at some point.
10 There's no evidence that anyone consciously said, hey let's
11 limit this to only the minute the light fell on her. I
12 mean, it's just ridiculous to say that it's spoliation
13 because they didn't immediately and initially pull seven
14 hours or eight hours or whatever of video. As I'm sure
15 you've seen in a million premises cases, Your Honor, these
16 video systems loop and Mr. Diehl testified to that. They
17 loop and they override things as they go because of
18 infinite storage space is just not practicable for
19 businesses or anyone. So that video I'm sure has been
20 overridden but what happened is this video was pulled and
21 it was preserved and it shows the light hitting the
22 plaintiff. I don't personally know what any video before
23 that could possibly show that would show causation because
24 it shows the light falling. It doesn't show why the light
25 fell because again there's no evidence why the light fell

1 but it does show the light falling. So the other issue
2 with this spoliation and why it's a red herring is it's ---
3 for the jury. It doesn't allow him to survive summary
4 judgment particularly when any hypothetical evidence, any
5 adverse inference wouldn't go to causation. And I'm sure
6 plaintiff's counsel is going to get up here and say, well,
7 it goes to notice. It doesn't go to causation, it goes to
8 notice.

9 Our manager admitted that the DJ brought it in.
10 I mean, I don't think there's any reason to debate in this
11 case that the light was present on the speaker for at least
12 some period of time. Probably a reasonable period of time.
13 So it's purely a red-herring. It's window dressing. Just
14 to say hey look, Judge, maybe there's some evidence out
15 there that would show causation that would show why this
16 light fell. There's not.

17 Discovery in this case has been extensive. It
18 frankly has been prolonged at this point. The video shows
19 what it shows. There's absolutely no testimony from any
20 witness in this case as to why the light fell even
21 plaintiff herself admits I have no idea.

22 THE COURT: Have you all mediated this case?

23 MR. NEINAST: We have, Your Honor.

24 THE COURT: Okay. All right. Yes, sir?

25 MR. LISKA: Sounds pretty good when you listen to

1 the defense side. Like there's no case, okay. But, for
2 the record, the plaintiff disagrees with a lot of the
3 factual representations of the evidence made by counsel
4 there. I filed everything. The court has the deposition.
5 The court has the Rule 26. The court has the CDs of the
6 experts. Let's back up. This commercial restaurant has
7 filed a motion for summary judgment and it is their burden,
8 the court knows that, it's their burden and the court has
9 to look at all reasonable inference in favor of plaintiff
10 on this. They don't get summary judgment if there is a
11 scintilla of evidence that would support plaintiff going
12 forward. And that's why our courts, Court of Appeal and
13 Supreme Court says summary judgment is a "drastic" remedy.

14 So, let's talk about the defendant's duty. They
15 want to keep it in this little twenty second box where this
16 light finally fell off and struck my client on the head.
17 This case is much broader than that. It goes way back
18 before. It goes back to their general duty of a commercial
19 restaurant to keep it's premises in a reasonably safe
20 condition. The law also says they have to discover risk
21 and eliminate those risks. Their own witness, Rule
22 30(b)(6) witness said, yes, all of our employees have a
23 responsibility to look out for hazards. They do constant
24 circles through the restaurant. They close the restaurant
25 throughout the day if they observe something that they

1 would deem potentially hazardous and then they would
2 address it, call for help to remedy or address it. So
3 that's their duty.

4 So let's talk about the scintilla of evidence.
5 This is a temporary portable stage light. They can't say
6 who brought it in there or who set it up. That's the Rule
7 30(b)(6) guy. Regardless, it does not matter because what
8 our experts have said is that the industry and code safety
9 standards, which the law says that's evidence of what they
10 are supposed to do to meet their responsibilities and their
11 duties. When you have that stage light, you have to
12 properly secure it. And the way to properly secure it is
13 there is a bolt and there's a bracket, okay. And if those
14 two things don't work you have a safety chain that's
15 suppose to be attached to it. So if it does happen to fall
16 because that bolt and bracket wasn't properly secured like
17 somebody was suppose to do, okay, that safety chain is
18 there. But it is the restaurants duty, it's not anybody
19 else's duty, ultimately it is nondelegable it is the
20 restaurants duty to make sure and supervise that to make
21 sure it is properly secured and installed. Then the last
22 thing they are supposed to do under the code and safety
23 standard, that are evidence in this case, is that okay if
24 you've got this bolt and this bracket and the safety chain
25 don't work you have to barrier that temporary portal stage

1 light from patrons. So guess what, if it gets noisy in
2 there, if it get crowded in there, if it gets loud in
3 there, and this speaker that you put on top of the speaker
4 starts vibrating off the speaker the barrier keeps it ---
5 from your patrons. But what happened in this case is not
6 only did they not barrier it, not properly secure it, they
7 pushed the couch underneath it. My client goes in there to
8 eat dinner and she sits down at the table and they say,
9 hey, we have a fashion show, why don't you come sit up here
10 and enjoy the fashion show. She says okay so she walks up
11 there and then they say here you can sit right here on this
12 couch. Okay. So they put her on that couch they had moved
13 there underneath this hazard that wasn't secure and a ten
14 pound hazard. So that's their duty. And even their
15 manager and their Rule 30(b)(6) witness said that's our
16 duty. We've got to make sure that the area that we are
17 seating our patrons is safe. They did not do that.

18 So, what their policy is also they are supposed
19 to investigate when an incident happens. What happened.
20 What caused it. They do that to do a group cause analysis.
21 So the manager does that, that night. She goes down and
22 she talks to all the witnesses. She looks at the light,
23 she looks at the speaker and determines in her deposition
24 it fell because an admission on her part it was not
25 properly secure. That's what she said. And Mark Williams,

1 he says, listen, I'm familiar --- oh, the light. We
2 requested a picture of the light, photographs of the light.
3 They produce photographs of the light. So a photograph is
4 in the record, in these motions, these memorandums. It's
5 something they produced in response to our request for
6 production. Mark looks at that light and says that light is
7 on top of a speaker, it's not secured, it's upside down.
8 It's not secure with the bolt, it's not secure with the
9 bracket and there's no safety chain. So you've violated
10 all those safety code standards and when you pushed the
11 couch underneath there and you had stuff sitting on the
12 couch you violated that standard, too. So the spoliation,
13 okay, we ask for not just twenty seconds, Your Honor, we
14 asked for the whole day because they are saying, oh, we
15 don't know who put this light here but we do have a camera
16 that focuses on that area where that light was. We do have
17 a camera at that front door. Okay. Well we asked for all
18 of that. And why that is important is because that night
19 the manager said, hey, immediately after this happened your
20 client was being mean and she said that she was going to
21 sue us. So what does she do, she gets on the phone with
22 corporate and corporate keeps the video. Hey we got a
23 incident here. This light fell off, you know, speaker or
24 whatever she said, and fell on top of this ladies head and
25 she is threatened to sue us. Okay. That's notice. Will

1 said they didn't have any notice. They had notice. So
2 when we requested this in discovery, they give us this
3 twenty seconds and I asked the Rule 30(b)(6) why did you
4 only give us twenty seconds when we request that whole day.
5 So what's the spoilation? To show who is coming in that
6 door. We bring in this light that they claim, what did
7 they do to secure that light all that kind of stuff. So if
8 they are going to say this is a notice case they spoiled
9 that evidence. It is not a notice case, it's a breach of
10 duty case. They traded this hazard and they traded by, at
11 the very least, sticking her under this ten pound object
12 that was not properly secured and it fell on her head.

13 So you wanted to get in notice. They have
14 constructive notice too, Your Honor. Both of us cited the
15 *O'Leary-Payne* case. And *O'Leary-Payne* says, look two
16 things. You are going to deem to have constructive notice
17 even if you didn't have notice, we are going to deem you
18 had notice. Because number one if you've got employees who
19 are required to have regular inspection of the area and
20 they should have observed the dangerous condition, our
21 experts say, yeah, if you see a unsecured light up on a
22 speaker that you are about to use, that's a dangerous
23 condition, you should observe that. And as noted by their
24 Rule 30(b)(6) says, oh yeah, our employees do this constant
25 circle throughout the restaurant looking for hazards if

1 they observe something will shut it down. So that fits
2 perfect with *O'Leary-Payne* if they want to argue notice.
3 They had constructive notice. It's not based on research,
4 okay. Mark Williams says I know, you know, what it takes
5 to properly secure this light and I know you are supposed
6 to have a chain. They didn't do any of these things and I
7 know you are not supposed to put people under this either
8 even if you do have everything properly secured because
9 things happen. People bump into speakers, people bump into
10 lights. You can't have this ten pound object sitting above
11 somebody's head it might fall on them. You are suppose to
12 barrier it. That's what this code says. So they just
13 breach their deal. He said I looked at that light, the
14 pictures they gave us representing the light. I looked at
15 other pictures of the restaurant to determine how high that
16 light was. She testified how tall she is. She's 5'11. He
17 used that. He used all sorts of information and it's in
18 his deposition. All of that was left out of the
19 presentation made earlier. So for those reasons, we think
20 summary judgment, there is at least a scintilla of evidence
21 that we should go forward.

22 Now, the experts. I don't think Will is claiming
23 that Mark Williams is not qualified as an expert. I don't
24 think he's claiming that James Riverbark is not qualified
25 as an expert. What he doesn't like is what they are going

1 to say. So, I'd like them to stipulate yeah they are
2 qualified in their fields. What Mark says, and if the
3 court wants, I have attached as Exhibit C to the Rule 26
4 disclosures and I've attached C(1) and C(2), as their CDs.
5 I can present them to you, if you like.

6 THE COURT: She sent them to me. I've got them up.

7 MR. LISKA: Very good. Thank you. So they are
8 going to talk about industry and code safety standards,
9 which is evidence of what they should have been doing in
10 this case. They are going to say they require a
11 restaurant owner to supervise the installation. Whoever is
12 putting it in they have got a duty to supervise it to make
13 sure that it's done properly as a temporary stage light to
14 make sure it's secure, which includes the bracket, the
15 bolt, the chain and then also a duty to barrier. Now,
16 unless if you are a restaurant owner or an architect who
17 deals with this stuff or safety expert you're not going to
18 know that stuff. So they are going to use their education,
19 training, and experience to educate the jury about these
20 things. That's why they are proper experts in this case.
21 And just because they don't know exactly when it was
22 installed or who installed it those kind of things that
23 doesn't matter for their opinions in this case educating
24 the jury what their duties were on the part of the
25 defendant.

1 That's it, Your Honor.

2 THE COURT: All right.

3 MR. NEINAST: A couple of quick points in
4 response, Your Honor, if I may. First, and foremost, is
5 the simple argument that the DJ was an independent
6 contractor. The Blackletter law here in South Carolina is
7 you are not liable for torts if you are an independent
8 contractor. Exceptions, of course, when you are dealing
9 with a dangerous activity your nondelegable duty and a few
10 others that don't really apply to this case but those are
11 the main two. There's no evidence that this is an
12 inherently dangerous activity putting up a stage light.
13 It's not a massive trellis of a hundred pounds, you know,
14 fire hazard kind of light. It's a little, you know, you
15 might put in your backyard if you're throwing a party that
16 kind of thing. And there's no evidence that installing
17 lighting in a safe way is a nondelegable duty. If I need
18 to install lighting in my house, I hire a electrician. They
19 come in, they rewire my house and I trust them to do it in
20 a safe and reasonable manner because they are the experts
21 here. They have superior knowledge, they have superior
22 control. It's their equipment, it's their tools. They have
23 a right to control the work and do it in a safe way. If
24 there's something obviously dangerous about it like an
25 electrician comes in and there's exposed wiring after he

1 leaves, well, yeah, maybe that's a different story. But
2 that's not this case. This is a case of someone else
3 outside the contract or bringing in their equipment that
4 they own, that they control, that they maintain, that they
5 knew how to install in a safe way.

6 THE COURT: Were they brought into the case?

7 MR. NEINAST: They were not brought into the case,
8 Your Honor.

9 THE COURT: The DJ?

10 MR. NEINAST: The DJ's not brought in, Judge. We
11 are the only defendant. The sole evidence in the record is
12 that this was the DJ's light. Our 30(b)(6) designee said
13 we don't own this light. It's not in our inventory. We
14 don't employee any DJ's. We solely use DJ's and performers
15 and models and that kind of thing as independent
16 contractors. There's no evidence that this was one of our
17 employees. The only evidence in the record. The only
18 scintilla of evidence in the record is that we did not put
19 this light on that speaker.

20 THE COURT: All right. What evidence do you have
21 that they did?

22 MR. LISKA: It doesn't matter. The light was up
23 there on top of the speaker.

24 THE COURT: It matters.

25 MR. LISKA: Let me back up. Okay. First of all

1 the DJ, you kind of look like why didn't the DJ get brought
2 in here.

3 THE COURT: Right.

4 MR. LISKA: Because from day One. Do you know of
5 any other parties? They wouldn't tell us that. We take a
6 deposition they said, oh, you know what, we think it was
7 the DJ that brought this light in here and put it on top of
8 our speaker. Okay. We think that. I said, okay. Who's
9 the DJ? We don't know. Male or female? We don't know.
10 What's the name of the DJ? We don't know. So a DJ's
11 supposed to be brought in here. That's a red-herring. It
12 doesn't matter because the duty is under the safety
13 standards, industry standards they have to supervise the
14 installation of that light. No matter who did it. It
15 doesn't matter if it was the DJ or not. They didn't do
16 that. They didn't make sure it was properly secured. Then
17 they stuck a couch and a patron underneath that light and
18 it is an inherently dangerous situation because you can't
19 stick a ten pound object above somebody's head if it's not
20 properly secured and not expect it to fall on somebody when
21 the place starts making noise and people bump into it.
22 Okay. And it's also, if you look at their exceptions, the
23 one is the principle sees and realizes that the contractor
24 did it wrong. They are supposed to. That's their duty.
25 That's what the industry codes say. They are supposed to

1 be supervising this to make sure it's done properly and
2 they didn't do it. It's not a homeowner. It's a
3 commercial restaurant and it's nondelegable duty so that's
4 great. Hide the DJ so they can't bring the DJ in, you know,
5 and then say, oh we're not going to tell you who that is.
6 We're not going to give you the video and you don't have
7 any evidence. Well, that's not the important evidence, the
8 important evidence is that they didn't make sure it was
9 done properly and they stuck somebody underneath a
10 dangerous situation.

11 MR. NEINAST: Judge, taking those points in
12 reverse order. So, first of all, this isn't obviously or
13 inherently dangerous. The case law dealing with those
14 sorts of activities talks about things like blasting and
15 gun ranges and heavy duty construction equipment. It's a
16 light. It's a light fixture with a light bulb in it.
17 That's not inherently dangerous. It's not hardwired in.
18 It's not, you know, a obvious fire hazard. These case are
19 completely inapplicable. And as far as us having an
20 absolute duty to protect against the torts of any third
21 party, any contractor that comes onto our premises, that's
22 just wrong. That is not the law in South Carolina.

23 MR. LISKA: It is in this case because that's what
24 ...

25 MR. NEINAST: Judge ...

1 MR. LISKA: ... the safety standards say.

2 MR. NEINAST: It is not.

3 MR. LISKA: That's what Mark Williams testified
4 to. He testified ...

5 MR. NEINAST: Mark Williams can testify to
6 whatever Mark Williams wants to testify to but South
7 Caroling law is South Carolina law.

8 MR. LISKA: If he doesn't like his testimony he
9 can impeach him. That's the weight of the evidence.

10 MR. NEINAST: Judge, if I can respond with just a
11 few more quick points. The testimony of our manger, Ms.
12 Cait Chapin as far as why this light fell. She said, well,
13 it wasn't secured. With all due respect to Ms. Chapin
14 that's not legal cause. We can sit today and play Monday
15 morning quarterback and say if it had been chained or
16 bolted on it might not have fallen. The fact of the matter
17 is, why did this light fall. What caused it to fall. What
18 initiated that string of dominos. We don't know. Someone
19 could have bumped into it. The music could have been
20 playing too loud. It could have been set on the edge of the
21 speaker instead of in the middle of it. Who knows. There
22 is no scintilla at all in this case proving why this light
23 fell. There is a lot of window dressing about what could
24 have prevented it from falling but there is not a single
25 scintilla that proves why it fell.

1 MR. LISKA: The issue is the violation of the
2 industry and code safety standards. Because had they done
3 these things, not put a patron underneath that unsecured
4 light, which they admit was not properly secured, the
5 manager admitted that, this wouldn't --- we wouldn't have
6 been here. It would be a no harm, no foul case. So that's
7 why we have to go back to what their duty was. And in this
8 case, with this light, their duty was to make sure that it
9 was properly installed and supervised to insure it was done
10 right. They can delegate to somebody but if they delegate
11 it that person must know. It's their baby, okay, and they
12 messed up. This light fell and struck my client in the
13 head and caused a minor ...

14 MR. NEINAST: Judge, those code sections are
15 inapplicable. They are not binding.

16 MR. LINSKA: And that's fine. He can hire an
17 expert to come in here and say that but our expert says
18 they are. And they violated it.

19 THE COURT: All right. Guys, I've been doing this
20 a long time. This is a 2015 case filed 2017, we've got to
21 do something.

22 MR. NEINAST: I agree, Your Honor. I agree.

23 MR. LINKA: Set it for trial in front of a jury.

24 THE COURT: It doesn't always go to the jury. It
25 ends up in a summary judgment or a directed verdict motion

1 after a four day trial after, obviously then, you know,
2 what ends up happening is they file a --- the defense will
3 file a offer of judgment and then end up, you know, it get
4 kicks out. You lose out on the money that you were offered
5 and you got to pay \$6,200.00 because that's exactly what
6 happened last week. All right. You will have my answer in
7 ten (10) days.

8 (End of Hearing)

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

GARY C. JOHNSON, P.S.C.

RECEIVED
Jan 17 2023
SC Court of Appeals

/s/ Michael E. Liska

Michael E. Liska

SC Bar No. 102542

2265 Executive Drive

P.O. Box 55106

Lexington, KY 40505

Tel: 859-268-4300

Fax: 859-268-7318

Email: mliska@garycjohnson.com

Attorneys for Appellant

Dated: January 17, 2023
Hilton Head Island, South Carolina